

ORDINANCE 22-2019-

**AN ORDINANCE CONCERNING NOISE LEVELS IN
UNINCORPORATED ARCHULETA COUNTY, COLORADO**

WHEREAS, the Board of County Commissioners of Archuleta County, Colorado, finds and declares that noise that exceeds the limits provided for within this ordinance is a major source of environmental pollution that represents a threat to the serenity and quality of life in Archuleta County; and,

WHEREAS, excess noise often has an adverse physiological and psychological effect on human beings and thus contributes to an economic loss to the community; and,

WHEREAS, C.R.S. § 30-15-401(1)(m) and § 25-12-107(1) authorize a board of county commissioners to adopt ordinances, which control and regulate noise on public and private property within its jurisdiction; and,

WHEREAS, the Archuleta County Board of County Commissioners finds that adopting a noise ordinance is in the best interests of the public health, safety and welfare of the citizens of Archuleta County, Colorado.

NOW THEREFORE;

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
ARCHULETA COUNTY, COLORADO:**

Section 1. Purpose.

The Board of County Commissioners of Archuleta County finds and declares that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in Archuleta County, Colorado. Excess noise often has an adverse physiological and psychological effect on human beings, thus contributing to an economic loss to the community. Accordingly, it is the policy of the Board of County Commissioners of Archuleta County to establish county-wide standards for noise level limits for various time periods and areas. Noise in excess of the limits provided in this Ordinance constitutes a Noise Disturbance and a public nuisance.

Section 2. Scope of Ordinance.

This Ordinance shall apply within the unincorporated territory of Archuleta County, Colorado.

Section 3. Definitions.

The following definitions shall apply to this Ordinance:

- a. "Commercial zone" means:
 - i. An area where offices, clinics, and the facilities needed to serve them are located;
 - ii. An area with local shopping and service establishments located within walking distances of the residents served;

- iii. A tourist-oriented area where hotels, motels, and gasoline stations are located;
 - iv. A large integrated regional shopping center;
 - v. A business strip along a main street containing offices, retail businesses, and commercial enterprises;
 - vi. A central business district;
 - vii. A commercially dominated area with multiple-unit dwellings; and
 - viii. All areas in unincorporated Archuleta County within the Commercial (C) Zoning District as set forth in the Archuleta County Land Use Regulations.
- b. “Construction Activities” means any and all activity incidental to the erection, demolition, assembling, alteration, installation or equipping of buildings, structures, roads or appurtenances thereof, including land clearing, grading, excavating, and filling.
 - c. “db(A)” means Sound Levels in decibels measured on the “A” scale of a standard sound level meter having characteristics defined by the American National Standards Institute, publication S1.4 -- 1971.
 - d. “Decibel” is a unit used to express the magnitude of a change in Sound Level. The difference in decibels between two Sound Pressure levels is twenty times the common logarithm of their ratio. In Sound Pressure measurements Sound Levels are defined as twenty times the common logarithm of the ratio of that sound pressure level to a reference level of 2×10^{-5} N/m² (Newton’s/meter squared). As an example of the effect of the formula, a three-decibel change is a one hundred percent increase or decrease in the Sound Level, and a ten-decibel change is a one thousand percent increase or decrease in the Sound Level.
 - e. “Device” means any equipment or mechanism which is intended to produce or which actually produces sound when installed, used or operated.
 - f. “Industrial zone” means an area in which noise restrictions on industry are necessary to protect the value of adjacent properties for other economic activity but shall not include agricultural, horticultural, or floricultural operations and includes but is not limited to all areas in unincorporated Archuleta County within the Industrial (I) Zoning District as set forth in the Archuleta County Land Use Regulations.
 - g. “Light industrial zone” means:
 - i. An area containing clean and quiet research laboratories;
 - ii. An area containing light industrial activities which are clean and quiet;
 - iii. An area containing warehousing; or
 - iv. An area in which other activities are conducted where the general environment is free from concentrated industrial activity.
 - h. “Motorcycle” means a self-propelled vehicle with not more than three wheels in contact with the ground that is designed primarily for use on the public highways.

- i. “Motor vehicle” means a self-propelled vehicle with at least four wheels in contact with the ground that is designed primarily for use on the public highways.
- j. “Noise Disturbance” means any Sound which is or may be:
 - i. Harmful or injurious to the health, safety or welfare of any Person;
 - ii. Of such volume, frequency and/or intensity that it unreasonably interferes with the enjoyment of life, quiet, comfort or outdoor recreation of a Person of ordinary sensitivity and habits; or,
 - iii. Unreasonably interferes with the value of real property or any business conducted thereon.
- k. “Off-highway vehicle” means a self-propelled vehicle with wheels or tracks in contact with the ground that is designed primarily for use off the public highways. “Off-highway vehicle” shall not include the following:
 - i. Military vehicles;
 - ii. Golf carts;
 - iii. Snowmobiles;
 - iv. Vehicles designed and used to carry persons with disabilities; and
 - v. Vehicles designed and used specifically for agricultural, logging, firefighting, or mining purposes.
- l. “Person” means any individual, association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of any association, partnership or corporation, or the state or any political subdivision of the state.
- m. “Property Boundary” means an imaginary line along the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
- n. “Public Right-of-Way” means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.
- o. “Public Space” means any real property or structures thereon which are owned or controlled by a governmental entity.
- p. “Residential zone” means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings. The zone includes areas where multiple-unit dwellings, high-rise apartment districts, and redevelopment districts are located. A residential zone may include areas containing accommodations for transients such as motels and hotels and residential areas with limited office development, but it may not include retail shopping facilities. “Residential zone” includes but is not limited to hospitals, nursing homes, and similar institutional facilities as well as any parcel of ground occupied as a single or multi-family residence and is located in a platted subdivision; a subdivision for which a survey map has been recorded with the Archuleta County Clerk and Recorder; within five hundred feet of a permanent

residential dwelling; and all areas in unincorporated Archuleta County within the Residential Zoning Districts of Agricultural/Ranching (AR), Agricultural Estate (AE), Rural Residential (RR), Residential (R), and Mobile Home Park (MH), all as set forth in the Archuleta County Land Use Regulations.

- q. “Snowmobile” means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off the public highways. “Snowmobile” shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.
- r. “Sound” means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- s. “Sound Level” means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, as specified in the American National Standards Institute specifications.
- t. “Sound Pressure” means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy.

Section 4. Noise Disturbance Prohibited.

No Person shall permit, make, cause to be made or continue any Noise Disturbance, nor shall any Person make any noise or Sound in excess of the levels set forth herein.

Section 5. Maximum Permissible Noise Levels.

- a. Every activity to which this Ordinance is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. A noise measured or registered in the manner provided in Section 6 below from any source at a level which is in excess of the db(A) established for the time period and land uses listed in this Section is hereby declared to be a Noise Disturbance, a public nuisance and is unlawful.

Zone	7:00 a.m. to next 7:00 p.m.	7:00 p.m. to next 7:00 a.m.
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light Industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)
Construction Activities	80 db(A)	75 db(A)

- b. In the hours between 7:00 a.m. and the next 7:00 p.m., the noise levels permitted in Section 5.a. may be increased by ten db(A) for a period of not to exceed fifteen minutes in any one-hour period.
- c. Periodic, impulsive, or shrill noises shall be considered a public nuisance when such noises are at a Sound Level of five db(A) less than those listed in Section 5.a.

- d. The Maximum Permissible Noise Levels set forth in Section 5.a. shall be shortened on Saturdays and Sundays to 8:00 a.m. to 7:00 p.m.
- e. It shall not considered a Noise Disturbance if a Person uses lawn mowers or other commonly accepted yard equipment, chain saws, and like equipment and which exceed the Maximum Permissible Noise Levels set forth in Section 5.a.; however, such use shall be limited to the hours of 8:00 a.m. to 7:00 p.m.
- f. Construction Activity projects and the use of chainsaws and similar type of equipment for purposes of property maintenance or fire prevention, during the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority, or if no time limit is imposed, for a reasonable period of time for completion of the project. Construction Activities shall not be conducted between the hours of 7:00 p.m. and 7:00 a.m.

Section 6. Classification and Measurement of Noise.

For the purposes of determining and classifying any noise as a Noise Disturbance and, as such, in violation of Section 5 above, the following test measurements and requirements shall be applied:

- a. Any noise occurring on private property shall be measured at or within the boundary of the property from which a noise complaint is made.
- b. Any noise originating within a Public Right-of-Way, Public Space or other public land shall be measured at a distance of at least twenty-five feet (25') from the noise source.
- c. The noise shall be measured on a weighing scale on a sound level meter of standard design and quality and in accordance with the standards promulgated by the American National Standards Institute.
- d. For the purposes of this Ordinance, measurements with sound level meters shall be made when a wind velocity at the time and place of such measurement is not more than five miles per hour (5 mph) and consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

Section 7. Exceptions.

The provisions of this Ordinance shall not apply to:

- a. Any noise resulting from an authorized emergency vehicle responding to an emergency call or acting in time of emergency.
- b. The operation of aircraft or to other activities which are subject to federal law with respect to noise control.
- c. Operation of agricultural equipment.
- d. General traffic and railroad noise.
- e. The use of property by the state, any political subdivision of the state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of

their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays.

Section 8. Maximum Sound Levels for Off-Highway Vehicles.

- a. No person shall operate, allow to be, or cause to be operated in a Residential Zone any Off-road Vehicle in such a manner that the Sound Level emitted by such Off-road Vehicle exceeds the following levels:

Weekdays: 7:00 a.m. to next 7:00 p.m.		Weekends: 8:00 am to next 7:00 p.m.		All other times
Speed of 35 mph or less	Speed of more than 35 mph	Speed of 35 mph or less	Speed of more than 35 mph	Any Speed
82 db(A)	86 db(A)	82 db(A)	86 db(A)	50 db(A)

- b. Noise shall be measured at a distance of twenty-five feet (25') or more from the Off-road Vehicle and within the speeds specified.
- c. The noise levels set forth in this Section shall be permitted only during the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 8:00 a.m. to 7:00 p.m. on Saturdays and Sundays. During all other hours, no person shall operate, allow to be or cause to be operated in a Residential Zone an Off-road Vehicle in such a manner that the Sound Level emitted by such Off-road Vehicle exceeds 50 db(A) as set forth above.

Section 9. Mufflers Required.

- a. No Person shall operate anywhere in the unincorporated areas of Archuleta County, Colorado any Motorcycle, Motor Vehicle or Off-road Vehicle that is not equipped with a muffler in constant operation and is not properly maintained to prevent any noise in excess of the noise emitted when the muffler was originally installed by the manufacturer of the Motorcycle, Motor Vehicle or Off-road Vehicle.
- b. No Person shall operate a Motorcycle, Motor Vehicle or Off-road Vehicle which has a muffler that has been equipped or modified with a cutoff and bypass or any similar Device or modification.

Section 10. Authorized Enforcement Personnel.

- a. Any Level I peace officer, as such term is defined in C.R.S. §18-1-901(1), is authorized to enforce the provisions of this Ordinance.
- b. Any person designated as a code enforcement officer by the Board of County Commissioners of Archuleta County is authorized to enforce the provisions of this Ordinance.

Section 11. Violations and Penalties.

Violation of any provision of this Ordinance shall be a Class 2 petty offense and shall be punishable as follows:

- a. For the first violation, the Person shall be assessed a fine of not less than fifty dollars (\$50.00) and not more than one hundred fifty dollars (\$150.00), except that if a penalty assessment is issued as provided by Section 10.b, the fine shall be the minimum.
- b. For a second offense by the same Person, the Person shall be assessed a fine of not less than one hundred fifty dollars (\$150.00) and not more than five hundred dollars (\$500.00), except that if a penalty assessment is issued as provided by Section 10.b, the fine shall be the minimum.
- c. For a third or any subsequent offense thereafter by the same Person, the Person shall be punished by a fine of not less than five hundred dollars (\$500.00) but not more than one thousand dollars (\$1,000.00) for each separate offense.
- d. Violations of this Ordinance may also be enforced through the penalty assessment procedure pursuant to C.R.S. § 16-2-201, as the same may from time to time be amended, requiring the defendant to appear at the place, time and date specified in the notice, or, in lieu thereof, to pay the specified fine in person or by mail at the place and within the time specified in the notice. Payment of the specified fine shall constitute acknowledgment of guilt of the offense charged.
- e. In addition to any other penalty, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10.00) paid to the Clerk of the Court for credit to the victims and witnesses assistance and law enforcement fund for the Sixth Judicial District.

Section 12. Prosecution.

All prosecutions for all offenses under this Ordinance shall be by the Sixth Judicial District District Attorney according to the Colorado County Court Rules of Criminal Procedure.

Section 13. Action to Abate.

- a. Pursuant to C.R.S. § 25-12-104, as may be amended from time to time, whenever there is reason to believe that a Noise Disturbance and/or public nuisance exists, as defined herein, Archuleta County or any resident of Archuleta County may maintain an action in equity in the district court of the judicial district in which the alleged nuisance exists to abate and prevent such Noise Disturbance and/or public nuisance and to perpetually enjoin the person conducting or maintaining the same and the owner, lessee, or agent of the building or place in or upon which such Noise Disturbance and/or public nuisance exists from directly or indirectly maintaining or permitting such nuisance.
- b. Notwithstanding any other provision of this Section, Archuleta County shall not maintain an action pursuant to this Section if the alleged Noise Disturbance and/or public nuisance involves a mining operation or the development, extraction, or transportation of construction materials, as those terms are defined in C.R.S. § 34-32.5-103, a commercial activity, the commercial use of property, avalanche control activities, a farming or ranching activity, an activity of a utility, or a mining or oil and gas operation.
- c. When proceedings by injunction are instituted, such proceedings shall be conducted under the Colorado Rules of Civil Procedure. The court may stay the effect of any order

issued under this Section for such time as is reasonably necessary for the defendant to come into compliance with the provisions of this Subsection.

- d. Any violation or disobedience of any injunction or order expressly provided for by C.R.S. § 25-12-104 shall be punished as a contempt of court by a fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00). Each day in which an individual is in violation of the injunction established by the court shall constitute a separate offense. The court shall give consideration in any such case to the practical difficulties involved with respect to effecting compliance with the requirements of any order issued by the court.

Section 14. Disposition of Fines, Fees and Forfeitures.

All fines, fees and forfeitures for violations of the provisions of this Ordinance shall be paid into the treasury of Archuleta County upon payment of said fines, fees and forfeitures.

Section 15. Repeal.

Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance (specifically Ordinance 2003-8A) are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 16. Severability.

If any part of this Ordinance shall be held void or unconstitutional by a Court of competent jurisdiction, such part shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions of the Ordinance.

Section 17. Effective Date.

This Ordinance shall be in full force and effect thirty days after it has been published, or on or before _____, 2019.

Section 18. Certification.

The County Clerk shall certify to the passage of this Ordinance and make not less than three copies of same for inspection by the public during regular business hours.

INTRODUCED, READ AND ORDERED PUBLISHED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, STATE OF COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE ____ DAY OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY, STATE OF
COLORADO

By: _____

DRAFT

I hereby certify that the above Ordinance was introduced to the Board of County Commissioners of Archuleta County, State of Colorado, at its meeting of _____, 2019 and ordered published one time in full in *The Pagosa Sun* newspaper and on the County website on _____, 2019.

ATTEST:

By: _____
Kristy Archuleta

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE PAGOSA SUN* NEWSPAPER AND ON THE COUNTY WEBSITE, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE ____ DAY OF _____, 2019, BY A VOTE OF ____ IN FAVOR AND ____ AGAINST.

BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY, STATE OF
COLORADO

By: _____
Ronnie Maez, Chair

I hereby certify that the above Ordinance was finally adopted by the Board of County Commissioners of Archuleta County, State of Colorado, at its meeting of _____, 2019 and ordered published one time by title only in *The Pagosa Sun* newspaper and on the County website on _____, 2019.

ATTEST:

By: _____
Kristy Archuleta

Published in full on the Archuleta County website, www.archuletacounty.org on _____, 2019.

By: /s/ Mary Helminski, Paralegal