

**ORDINANCE NO. 19-11**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS TOWN CODE, CHAPTER 11 "OFFENSES," RELATING TO NOISE**

**RECITALS:**

**WHEREAS**, the Mayor and the Council of the Town of Fountain Hills (the "Town Council") finds and determines that the control of noise is necessary to preserve the quality of life for the residents of Fountain Hills.

**WHEREAS**, the Town Council desires to amend Chapter 11 of the Town Code, Section 11-1-7 "Noise," as set forth in Exhibit A; and

**WHEREAS**, the Town Council has determined that the changes to the Town Code are necessary to protect the health, safety, and general welfare of the residents of Fountain Hills.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals set forth above are hereby incorporated as if fully set forth herein.

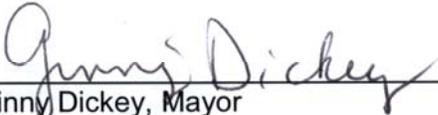
SECTION 2. Section 11-1-7 of the Town Code is amended as set forth in Exhibit A.

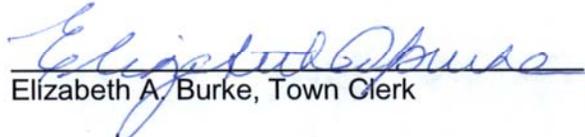
SECTION 3. If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, June 4, 2019.

**FOR THE TOWN OF FOUNTAIN HILLS:**

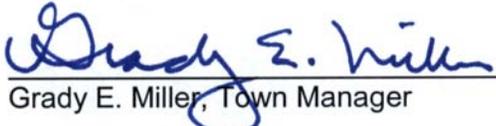
**ATTESTED TO:**

  
\_\_\_\_\_  
Ginny Dickey, Mayor

  
\_\_\_\_\_  
Elizabeth A. Burke, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Grady E. Miller, Town Manager

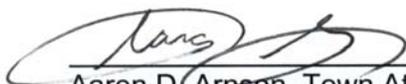
  
\_\_\_\_\_  
Aaron D. Amson, Town Attorney

EXHIBIT A  
TO  
ORDINANCE 19-11

[TOWN CODE SECTION 11-1-7]

**Section 11-1-7 Noise**

- A. Purpose. The purpose of this Section is to promote the health and general welfare of the citizens and businesses of the Town by balancing the need to protect the community peace and quiet enjoyment of residential neighborhoods and business districts against unreasonable noise with the legitimate goal of promoting and encouraging commercial, and business, and residential growth in the community.
- B. Definitions. The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
1. "A band level" means the total sound level of all noise as measured with a sound level meter using an A-weighting network. The unit is the dB(A).
  2. "Complainant" means a person who files a noise complaint.
  3. "Decibel" means a sound pressure that is 20 times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure,  $2 \times 10^{-5}$  newton/meter<sup>2</sup>.
  4. "Emergency work" means any (a) work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency that has or may result in a disruption of service and that is necessary to restore property to a safe condition following a public calamity, (b) work required to protect the health, safety or welfare of persons or property or (c) work by private or public utilities when restoring utility service.
  5. "Noise violation" means any noise created that exceeds the maximum limits as specified in this Section or that is unreasonable under the circumstances existing at the time and place of the violation.
  6. "Sound level (noise level)" means the sound measured with the A-weighting and slow response by a sound level meter.
  7. "Sound level meter" means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels that satisfies the pertinent requirements for Type 1 sound level meters as set forth in the most recent version of American Standard Specifications for Sound Level Meters ANSI S1.4-1983.
  8. "Sound Source" means the cause and location of the noise.

C. Measurement Standard. Where applicable, Ssound level shall be measured with a sound level meter operated in accordance with the manufacturer’s guidelines and instructions.

D. ~~Per Se Noise Violations Prohibited. Subject to the complaint processing provisions in Subsection 11-1-7(E) below, it shall be a violation of this Section to emit or allow to be emitted noise in excess of the permissible noise levels set forth in Table 1 below.~~

1. Subject to the complaint processing provisions in Subsection 11-1-7(D)(2) below, it shall be a per se violation of this Section to emit or allow to be emitted noise in excess of the permissible noise levels set forth in Table 1 below.

*[REPLACE TABLE 1 IN ITS ENTIRETY WITH THE FOLLOWING TABLE 1]*

**Table 1 Permissible Noise Levels:**

Time	Decibel dB(A)
6:00 a.m. to 10:00 p.m.	70
10:00 p.m. to 6:00 a.m.	50

2. Complaint Processing. After receiving a noise complaint from a complainant, an individual authorized under Subsection H of this Section shall measure the noise level with such measurements being made where the complainant’s peace and quiet was disturbed. The authorized individual shall determine a per se noise violation has occurred when the decibel levels at the complainant’s location exceed the maximum decibel levels set forth in Table 1 above.

3. The 10:00 p.m. cutoff may be extended to 11:00 p.m. in conjunction with a temporary use permit issued by the Town pursuant to Section 2.03 of the Town Zoning Ordinance.

E. ~~Violations for Unreasonable Noise. Complaint Processing. It is unlawful for any person to make or create unreasonable noise, with intent to disturb the peace or quiet of a neighborhood, family, or person, or with knowledge of doing so. For purposes of this Subsection, the determination of unreasonable noise shall be made based upon the circumstances existing at the time and place of the violation and independently of Subsection 11-1-7(D) above. After receiving a noise complaint from a complainant, an individual authorized under Subsection H of this Section shall measure the noise level with such measurements being made at the wall of the complainant’s location. The authorized individual shall determine a noise violation has occurred when the decibel levels at the complainant’s location exceed the maximum decibel levels set forth in Table 1 above.~~

F. Sound Truck. It is unlawful to play, operate, or use any device known as a sound truck, loud speaker or sound amplifier, radio or phonograph with loud speaker or sound amplifier or any instrument of any kind or character that emits loud and raucous noises and is attached to and upon any vehicle.

G. Braking devices. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the Town any compression release or other

engine braking device designed to aid in the braking or deceleration of any vehicle which results in noise in excess of that which would otherwise be produced from such vehicle without such braking device. The provisions of this Subsection do not apply to public safety vehicles or to any vehicle while descending Golden Eagle Boulevard.

H. Violations. The Town Manager or designee, code official or Town-designated law enforcement officer may issue civil citations pursuant to Subsection 1 8 3(D) of this Code to enforce violations of this Section. After civil enforcement as set forth in Subsection 1 8 3(D) of this Code, any Town-designated ~~POST-certified~~ law enforcement officer or the Town Prosecutor may issue criminal complaints pursuant to Subsection 1-8-2(A) to enforce this Section.

I. Exemptions. The following uses and activities shall be exempt from Town noise level regulations:

1. Noises resulting from air-conditioning equipment when such equipment is in proper operating condition.
2. Noises resulting from lawn maintenance equipment operated during daylight hours when such equipment is functioning with all mufflers and standard noise-reducing equipment in use and in proper operating condition.
3. Noises of safety signals, warning devices and emergency pressure relief valves.
4. Noises resulting from an authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
5. Noises resulting from emergency work.
6. Church chimes or bells.
7. Any noise created by any Town or Town contractor vehicles, equipment or facilities while being operated or utilized for official business
8. Noises resulting from a special event being held pursuant to a Town-issued special event permit.
9. An un-amplified human voice.
10. Noises resulting from an event being held by a school.

J. Other Remedies. Nuisance Party. Nothing in this Section shall be construed as affecting the ability of the Town or other body to initiate or continue concurrent or subsequent criminal prosecution of any person for any violations of the provisions of the Town code or State law arising out of the circumstances necessitating the application of this Section. ~~A Nuisance party is unlawful and constitutes a civil infraction.~~

~~1. Definitions. For the provisions of Section 11-1-7(J) the following definitions apply:~~

- ~~a. "Minor" means any person under the age of twenty one (21) years.~~

- b. ~~“Enforcement Officer” means either a (i) Town designated law enforcement officer or (ii) Town code enforcement officer.~~
  - c. ~~“Notice of Violation” has the same meaning as the term is defined in Section 1-8-3.~~
  - d. ~~“Nuisance Party” means a gathering of one (1) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering.~~
  - e. ~~“Owner” means the Owner of any property, as well as any agent of an Owner who acts on behalf of the Owner to control or otherwise regulate the occupancy or use of the property.~~
  - f. ~~“Premises” means the property that is the site of a nuisance party. For residential properties, “premises” means the dwelling unit or units where the nuisance party occurs.~~
  - g. ~~“Responsible person” means any person in attendance who engaged in a nuisance party, including any Owner who is in attendance, occupant, tenant, guest or any sponsor, host or organizer of the nuisance party. “Responsible person” does not include Owners or persons in charge of premises where a nuisance party takes place if the persons in attendance obtained use of the premises through illegal entry or trespassing.~~
2. ~~Abatement of a nuisance party. An Enforcement Officer may abate a nuisance party by reasonable means including, but not limited to, warning, citation, or, in case of a law enforcement officer, arrest of violators under applicable ordinances or state statutes, and dispersal of the persons attending the gathering.~~
3. ~~When an Enforcement Officer responds to the first nuisance party and while at the scene determines that there is a threat to the public peace, health, safety, or general welfare, the officer may issue a citation to any Responsible Person(s).~~
- a. ~~If on a first response to a nuisance party, any of the following crimes are being committed:~~
    - i. ~~Minor in possession of alcohol;~~
    - ii. ~~Minor in consumption of alcohol;~~
    - iii. ~~Possession or use of illegal drugs;~~
    - iv. ~~Weapons misconduct, in violation of A.R.S. Section 13-3102; or~~
    - v. ~~Any felony offense~~



d. ~~Weapons misconduct, in violation of A.R.S. Section 13-3102; or~~

e. ~~Any felony offense.~~

~~Then the Responsible Person(s) shall be assessed a fine commensurate with two (2) times the fine for a third or subsequent nuisance party, as set forth in this subsection.~~

6. ~~Owner liability for nuisance parties.~~

a. ~~The Owner of the property where the nuisance party occurred may be liable for a civil infraction.~~

b. ~~Civil penalties for Owners~~

i. ~~An Owner who is not in attendance at the nuisance party, and who did not organize or sponsor the nuisance party, may be issued a written notice of violation.~~

ii. ~~Subsequent Nuisance Parties.~~

1. ~~If, after a written notice of a violation is issued by the Town, an Enforcement Officer responds for a second time to the same premises for a nuisance party within one hundred twenty (120) days of the first response, such response shall be deemed a second nuisance party and the fine is five hundred dollars (\$500.00), inclusive of any applicable fines, fees, assessments or surcharges.~~

2. ~~If, after a written notice of a second violation is issued, an Enforcement Officer responds to the same premises for a third or subsequent nuisance party within one hundred twenty (120) days of the second nuisance party response, such response shall be deemed a third or subsequent nuisance party and the fine is one thousand dollars (\$1,000.00), inclusive of any applicable fines, fees, assessments or surcharges.~~

3. ~~If on response to a third or subsequent nuisance party, any of the following crimes are being committed at the party:~~

a. ~~Minor in possession of alcohol;~~

b. ~~Minor in consumption of alcohol;~~

c. ~~Possession or use of illegal drugs;~~

d. ~~Weapons misconduct, in violation of A.R.S. Section 13-3102; or~~

~~e. Any felony offense.~~

~~Then the Owner shall be assessed a fine commensurate with two (2) times the fine for a third or subsequent nuisance party, as set forth in this subsection.~~

~~c. Within ten (10) business days of receipt of a citation or notice of violation, the Owner may petition the Presiding Magistrate for a waiver of the civil fine, under any of the following circumstances:~~

~~i. The Owner has taken steps reasonably necessary to prevent a subsequent nuisance party or to exclude the uninvited person from the premises, or the Owner is actively attempting to evict the Responsible Person(s) from the premises.~~

~~ii. The Owner of a property with over fifty (50) individually rented units obtains and maintains private security services for the entire property.~~

~~iii. If an Owner evicts tenants from a premises where a nuisance party occurred and new tenants at the same premises are given notice of a nuisance party violation, the Owner must be re-notified in the same manner as set forth in Subsection 1-8-3(c) of this Code.~~

~~7. Enforcement. Enforcement Officers are authorized to enforce the provisions of this section provided that enforcement is initiated by a complaint from a member of the public or as otherwise provided by law. The complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible. Enforcement Officers shall enforce the provisions of this section using their sound discretion and the consideration of the totality of the circumstances, including but not limited to the uses of the premises (e.g. residential, commercial, etc.).~~

~~8. Other remedies. Nothing in this section shall be construed as affecting the ability of the State to initiate or continue concurrent or subsequent criminal prosecution of any Responsible Person(s) or Owner for any violations of the provisions of the Town code or State law arising out of the circumstances necessitating the application of this section.~~