

**CITY OF MOAB
PLANNING COMMISSION
PUBLIC HEARING
PROPOSED ORDINANCE 2021-04**

The City of Moab Planning Commission will hold a Public Hearing on Thursday, March 11, 2021 at approximately 6:15 p.m. Consistent with provisions of the Utah Open and Public Meetings Act, Utah Code Ann. § 54-2-207(4), the Moab City Planning Commission Chair has issued written determinations supporting the decision to convene electronic meetings of the Planning Commission without a physical anchor location. Due to the health and safety risks related to the ongoing COVID-19 pandemic and considering public health orders limiting in-person gatherings, the Moab Planning Commission will continue to hold meetings by electronic means. The public is invited and encouraged to view and participate in the Council's electronic meetings by viewing the City's YouTube channel: <https://www.youtube.com/MoabCityGovernment>

The purpose of this Public Hearing is to solicit public input on proposed Ordinance 2021-04, A Text Amendment removing Chapter 17.74 Noise from Title 17 Zoning of the Moab Municipal Code (MMC) and relocating the noise provisions to Title 8 Health and Safety by creating Section 8.24 on the MMC.

The proposed ordinance is available for public review at the Moab City Planning website at www.moabcity.org. Written public comment may be directed to the Planning Department at Planning-Commission@moabcity.org. Call-in information to make comments during the meeting can be found on the agenda at: <https://moabcity.org/AgendaCenter/Planning-Commission-2>.

To ensure that the Planning Commission has the opportunity to review written comments prior to the meeting, written comments will only be accepted until 5 pm the day prior to the public hearing (March 10, 2021).

Nora Shepard
Planning Director

Published in the Times Independent, February 25, 2021 and March 4, 2021.

Ordinance 2021-04

A Text Amendment removing Chapter 17.74 Noise from Title 17 Zoning of the Moab Municipal Code (MMC) and relocating the noise provisions to Title 8 Health and Safety by creating Section 8.24 on the MMC.

WHEREAS, the City has enacted Title 17.00, Zoning, of the Moab Municipal Code (MMC) that governs land use and development within the City Limits.

WHEREAS, from time to time the City undertakes revisions of Title 17.00 to improve the quality of land development and align the Code with state law and contemporary planning concepts.

WHEREAS, the City finds that this ordinance will serve the public health, safety, and welfare, and that adoption is in the best interest of the Moab community.

WHEREAS, the City finds that this ordinance will serve the public health, safety, and welfare, and that adoption is in the best interests of the Moab community.

WHEREAS, the administration of noise provisions is currently granted to the Chief of Police, the Zoning Administrator, and the Director of Public Works. Since the noise provisions are currently located in Title 17 of the MMC, any changes to those provisions must be reviewed and recommended by the Planning Commission including the required public notice and hearings.

WHEREAS, the City Council has directed the City Staff to relocate the noise provisions to Title 8 Health and Safety eliminating the need to amend the Zoning Code to effectuate changes to the noise provisions.

WHEREAS, a public hearing was held before the Planning Commission on March 11, 2021. That hearing was duly noticed and the notice was published in the Times Independent on February 25, 2020 and March 4, 2021.

WHEREAS, this ordinance was reviewed by the Planning Commission on March 11, 2021, and the Commission favorably recommended approval of the ordinance to City Council.

NOW, THEREFORE BE IT ORDAINED that the following changes be made to the MMC as follows:

Section 1. Delete Section 17.74 Noise from the MMC Zoning Code

Section 2. Add noise provisions as a new Section 8.24 as follows:

8.24.010 Definitions.

8.24.020 Purpose.

- 8.24.030 Jurisdiction.
- 8.24.040 Powers and duties.
- 8.24.050 Scope.
- 8.24.060 Emergency orders.
- 8.24.070 General prohibition of noise.
- 8.24.080 Noise levels.
- 8.24.090 Specific noise prohibitions.
- 8.24.100 Exemptions.
- 8.24.110 Relief from restrictions.
- 8.24.120 Enforcement responsibility.
- 8.24.130 Enforcement.
- 8.24.140 Penalty.

8.24.010 Definitions.

For the purposes of these regulations, unless otherwise defined in other sections of these regulations, the following terms, phrases and words shall have the meaning herein given:

“Continuous sound” means any sound that exists, essentially without interruption, for a period of ten minutes or more.

“Cyclically varying noise” means any sound that varies in sound level so that the same level is obtained repetitively at relatively uniform levels of time.

“Device” means any mechanism that is intended to produce, or that actually produces noise when operated or handled.

“Dynamic braking device” means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purposes of braking without the use of wheel brakes, commonly referred to as “Jacob’s Brake” or “Jake Brake.”

“Emergency” means a situation or occurrence, which in the opinion of the Chief of Police, Zoning Administrator, or Public Works Director, may present an imminent threat to the health, safety or welfare of any person, place or property.

“Emergency vehicle” means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

“Emergency work” means work required to restore property to a safe condition following a public calamity or to protect persons or property from an imminent exposure to danger.

“Impulsive noise” means a noise generating excursions of usually less than one second.

“Motor vehicle” means any vehicle that is self-propelled by mechanical power, including, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, mini-bikes, go-carts, snowmobiles and racing vehicles.

“Muffler” means an apparatus consisting of a series of chambers or baffle plates designed to transmit gases while reducing sound.

“Noise” means any sound that is unwanted and causes or tends to cause an adverse psychological or physiological effect on human beings.

“Noise disturbance” means any sound that annoys or disturbs a reasonable person(s) with normal sensitivities or that injures or endangers the comfort, repose, health, hearing, peace or safety of another person(s).

“Plainly audible noise” means any noise for which the information content of that noise is unambiguously transferred to the listener, including, but not limited to the understanding of spoken speech, comprehension of whether a voice is raised or normal, or comprehension of musical rhythms.

“Property boundary” means an imaginary line at the ground surface, and its vertical extension that separates the real property owned by one person from that property owned by another person.

“Sound” means a temporal and spatial oscillation in pressure, or other physical quantity with interval forces that cause compression or rarefaction of the medium, and that propagates at finite speed to distant points.

“Stationary noise source” means any device, fixed or moveable, that is located or used on property other than a public right-of-way. (Ord. 94-26 (part), 1994)

8.24.020

Purpose.

These regulations establish minimum standards to:

A. Reduce the making and creation of excessive, unnecessary, or unusually loud noises within the limits of the City; and

B. Prevent excessive, unnecessary, or unusually loud noises that are prolonged, unusual, or unreasonable in their time, place, or use, that affect and are a detriment to public health, comfort, convenience, safety, or welfare of the residents of the City; and

C. Secure and promote the public health, comfort, convenience, safety, welfare and the peace and quiet of the residents of the City. (Ord. 94-26 (part), 1994)

8.24.030

Jurisdiction.

All noise control in this chapter shall be subject to the direction and control of the Chief of Police, Zoning Administrator and the Public Works Director. (Ord. 94-26 (part), 1994)

8.24.040

Powers and duties.

The Chief of Police, Zoning Administrator and the Public Works Director shall be responsible for the administration of these rules and regulations and any other powers vested in them by law and shall make inspections of any premises and issue orders as necessary to affect the purposes of these regulations, and do any and all acts permitted by law that are necessary for the successful enforcement of these regulations. (Ord. 94-26 (part), 1994)

8.24.050

Scope.

It is unlawful for any person not to comply with any rule or regulation promulgated by this chapter, unless expressly waived by these rules and regulations. (Ord. 94-26 (part), 1994)

8.24.060 Emergency orders.
Whenever the Chief of Police, Zoning Administrator, Public Works Director or their official designees finds that an emergency exists, one or all of the following actions may be required to be taken:
A. *Order of Emergency Suspension.* In time of a public calamity or disaster, emergency suspension of these rules and regulations may be ordered by the Chief of Police, Zoning Administrator or Public Works Director or their official designees for the duration of seventy-two hours, at which time the incident will be assessed and further suspension of these rules ended or suspended.
B. *Approval of Application for Exemption for Emergency Reasons.* An individual may apply for emergency exemption to these rules and regulations based on good and reasonable cause due to emergency circumstances, as defined in this chapter. (Ord. 94-26 (part), 1994)

8.24.070 General prohibition of noise.
It is unlawful for any person to produce, continue, or cause to be produced or continued, any noise disturbance within the limits of the City, as defined in this chapter. (Ord. 94-26 (part), 1994)

8.24.080 Noise levels.
The making and/or creating of excessive or unusually loud noise or sound within the City as identified in subsection (A) of this section, or identified and measured in the manner prescribed in subsection (B) of this section, or in violation of restricted hours as outlined in subsection (C) of this section is unlawful.
A. On the public right-of-way or upon public property, from the source or device as to be plainly audible at a distance of fifty feet or on private property, as to be plainly audible at the property line.
B. The noise shall be measured at a distance of at least twenty-five feet from the source of the device upon public property or within the public right-of-way or twenty-five feet from the property line if upon private property, and shall be measured on a decibel or sound level meter of standard design and quality on the "A" weighing scale. A measurement of sixty-five decibels shall be considered to be excessive and unusually loud.
C. Hours of restriction are as follows:

- Residential:
 - 10:00 p.m. to 7:00 a.m.
 - Monday through Saturday
 - Not before 9:00 a.m. Sunday

- Commercial:
 - 10:00 p.m. to 6:00 a.m.
 - Monday through Saturday.

(Ord. 94-26 (part), 1994)

8.24.090 Specific noise prohibitions.

The following acts are declared to be in violation of these rules and regulations:

A. *Horns and Signaling Devices.* The sounding of any horn or signaling device on any truck, automobile, motorcycle, emergency vehicle, or other within the City, except as a danger warning signal as provided by the Vehicle Code of the state of Utah.

B. *Radios, Television Sets, Tape Players, Musical Instruments and Similar Devices.* Using, operating, or permitting, the use or operation of any radio receiving set, musical instrument, television, phonograph, drum or other device for the production or reproduction of sound:

1. In violation of Section 8.24.080 or in a way that is plainly audible beyond the property boundary of the source, or

2. On public property, public rights-of-way, or private property at any time so as to be plainly audible fifty feet from the device. Permits to exceed the limits of this subdivision may be issued for special events on public property by the Chief of Police, recorder, or Zoning Administrator upon approval from the agency operating the public property;

C. *Public Loudspeakers.* The use or operation of a loudspeaker or sound amplifying equipment in a fixed or moveable position or mounted upon any sound vehicle in or upon any street, alley, sidewalk, park, place or public or private property for the purposes of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmission of music to any persons or assemblages of persons in violation of Section 8.24.080, or cause a noise disturbance, unless a permit is first obtained as provided in Section 8.24.110.

D. *Hawkers and Peddlers.* Selling any item or service by outcry within any area of the City in such a manner as to violate Section 8.24.080. It is unlawful for any person to solicit from any motor vehicle, unless a permit is first obtained as provided in Section 8.24.080

E. *Animals.* Owning, keeping, possessing, or harboring any animal or animals that, by frequent or habitual noise making, violates Section 8.24.080. The provision of this section shall apply to all private and public facilities, including any animal facilities that hold or treat animals;

F. *Loading Operation.* Loading, unloading, opening, or otherwise handling boxes, crates, containers, garbage containers, or other objects in such a manner as to violate Section 8.24.080.

G. *Construction Work.* It is unlawful for any person to perform or cause to be performed, any construction work on any construction site under his control in such a manner as to violate Section 8.24.080. The Chief of Police, Zoning Administrator or Public Works Director may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation, or modify or waive the hours of work for or on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants;

H. *Domestic Power Equipment.* Operating or permitting the operation of any power equipment rated five horsepower or less in residential or commercial zones, including, but not limited to, power saws, lawn mowers, garden equipment, or snow removal equipment for home or building repair or ground maintenance outdoors in such a manner as to violate Section 8.24.080.

I. *Fireworks or Explosives*. The use of explosives, fireworks, discharge of guns or other explosive devices that are audible across a property boundary, public space, or right-of-way without first obtaining a permit as provided by Section 8.24.110. The provision shall not be construed to permit activities prohibited by other statutes, ordinances, or regulations governing such activity;

J. *Liquor License Premises*.

1. *Failure to Control Noise*. Permitting or providing either live or recorded amplified music without first having closed all exterior doors and windows of the licensed premises to control noise. Doors may be opened to provide ingress and egress but shall not be blocked in the open position to provide ventilation. Doors shall be equipped with automatic closing devices to keep them in the closed position except to permit ingress and egress of patrons,

2. *Outdoor Speakers*. Permitting or causing to exist any loudspeaker or sound amplification equipment on any outdoor deck, patio, or garden associated with the licensed premises other than speaker systems or sound amplification in conjunction with approved outdoor dining;

K. *Racing Events*. Permitting any motor racing event at any place in violation of Section 8.24.080 without first obtaining a permit as provided by Section 8.24.110.

L. *Powered Model Mechanical Devices*. Flying a model aircraft powered by internal combustion engines, whether tethered or remote-controlled, or the firing or the operation of model rocket vehicles or other similar noise-producing devices in such a way as to violate Section 8.24.080.

M. *Dynamic Braking Device*. Operating any motor vehicle with a dynamic braking device engaged, except for the avoidance of imminent danger;

N. *Defect in Vehicle*. Operating or permitting the operation or use of any truck, automobile, motorcycle, or other motor vehicle because of disrepair or mode of operation violates Section 8.24.080.

O. *Garbage Collection*. Collecting garbage, waste, refuse or recyclables materials on regularly scheduled collection in such a manner as to violate Section 8.24.080 or within three hundred feet of an area zoned residential;

P. *Standing Motor Vehicles*. Operating, causing, or permitting the operation of any motor vehicle or any auxiliary equipment attached thereto either in violation of Section 8.24.080, or in such a way as to cause a disturbance in a residential zone for a consecutive period of fifteen minutes or longer;

Q. *Bells and Alarms*. Sounding, operating, or permitting the sounding or operation of an electronically amplified signal from any burglar alarm, bell, chime, or clock, including but not limited to, bells, chimes, or clocks in schools, houses of religious worship or governmental buildings that fail to meet the standards in Section 8.24.080 for longer than five minutes in any hour;

R. *Fixed Siren, Whistles and Horns*. Sounding or causing the sounding of any whistle, horn or siren as a signal for commencing or suspending work or for any other purpose in violation of Section 8.24.080, except as a sound of imminent danger;

S. *Recreation Vehicles and Snowmobiles*. Operating a recreational vehicle or snowmobile in any way that violates Section 8.24.080.

T. *Motor Vehicle Noise*. No person shall operate or cause to be operated any motor vehicle unless the exhaust system is free from defects that affect sound reduction;

equipped with a muffler or other noise dissipative device; and not equipped with any cut-out, by-pass or similar device. (Ord. 94-26 (part), 1994)

8.24.100

Exemptions.

The following uses and activities shall be exempt from noise level regulations:

- A. Noise of safety signals, warning devices and emergency pressure relief valves;
- B. Noise resulting from any authorized emergency vehicle when responding to an emergency call or in time of an emergency;
- C. Noise resulting from emergency work;
- D. Noise resulting from lawful fireworks and noisemakers used for celebration of an official holiday;
- E. Any noise resulting from activities of a temporary nature during periods permitted by law for which a license has been approved by the Chief of Police, Zoning Administrator, Public Works Director or their official designees in accordance with Section 8.24.110.
- F. Any noise resulting from the maintenance of golf courses. (Ord. 94-26 (part), 1994)

8.24.110

Relief from restrictions.

Requests for relief from the noise restrictions in these rules and regulations may be made by the Zoning Administrator as it pertains to building issues and the Chief of Police, Zoning Administrator, Public Works Director or their official designees as it pertains to special events, community functions and private events. Upon granting relief, any conditions outlined and agreed upon shall be compiled by the applicant and failure to do so will cause the relief agreement to be suspended.

- A. Commercial agricultural producers holding a valid Moab city business license located in the RA-1 (residential-agricultural zone) are eligible to receive a seasonal exemption from noise restrictions contained in Sections 8.24.080(B) and (C) due to weather and crop management activities outside of their control. The seasonal exemption from restriction requires that eligible agricultural operators complete a relief from restrictions form and notify the Zoning Administrator, Police Department or designated police dispatch center by telephone, facsimile transmission, or in person on the day of operation of any agricultural equipment that would violate noise provisions contained in Section 8.24.080(B) and (C). (Ord. 94-26 (part), 1994)

8.24.120

Enforcement responsibility.

Enforcement responsibility will rest jointly with the Chief of Police, Zoning Administrator, Public Works Director or their official designees. (Ord. 94-26 (part), 1994)

8.24.130

Enforcement.

The Chief of Police, Zoning Administrator, Public Works Director or their official designees may, upon discovery or report of a violation or violations of this chapter, issue a written citation for the violation requiring an appearance in court to answer the charges, or may file a report with the City's prosecutor's office for review and issuance of an information and summons to court to answer the charges. (Ord. 94-26 (part), 1994)

8.24.140 Penalty.

Any person who is found guilty of violating any of the provisions of these rules and regulations, either by failing to do those acts required herein or by doing a prohibited act, is guilty of a Class B misdemeanor, pursuant to Section 26-24-22, Utah Code Annotated, 1953, as amended. If a person is found guilty of a subsequent similar violation within a period of two years, he is guilty of a Class A misdemeanor, pursuant to Section 26-24-22, Utah Code Annotated, 1953, as amended. Each day such violation is committed or permitted to continue shall constitute a separate violation. The City Attorney may initiate legal action, civil or criminal, requested by the City Manager, Chief of Police, Zoning Administrator or Public Works Director to abate any condition that exists in violation of these rules and regulations. In addition to other penalties imposed by a court of competent jurisdiction, any person(s) found guilty of violating any of these rules and regulations shall be liable for all expenses incurred by the City in removing or abating any nuisance or other noise disturbance. (Ord. 94-26 (part), 1994)

SECTION 3. b) The effective date of a resolution by the City Council stating that the City has formally initiated an amendment to the land use regulations and the proposed language of the amendment(s);

PASSED by the City Council in a public meeting on _____ by the following vote:

MOAB CITY COUNCIL:

Those voting aye: _____

Those voting nay: _____

Those abstaining: _____

Those absent: _____

Emily Niehaus, Mayor

ATTEST:

Sommar Johnson, Clerk/Recorder