

1 BEFORE THE BOARD OF SUPERVISORS

2 OF THE COUNTY OF FRESNO

3 STATE OF CALIFORNIA

4 ORDINANCE NUMBER _____

5 AN ORDINANCE AMENDING CHAPTER 8.40 OF THE FRESNO COUNTY

6 ORDINANCE CODE PERTAINING TO NOISE CONTROL.

7 The Board of Supervisors of the County of Fresno ordains as follows:

8 **Section 1.** That Chapter 8.40 of the Fresno County Ordinance Code is hereby amended by to
9 read as follows:

10 **8.40.010 Purposes.**

11 The board of supervisors declares and finds that excessive noise levels are detrimental to the
12 public health, welfare and safety and contrary to the public interest as follows:

- 13 A. By interfering with sleep, communication, relaxation and the full use of one's property;
14 B. By contributing to hearing impairment and a wide range of adverse physiological and
15 psychological stress conditions; and
16 C. By adversely affecting the value of real property.

17 It is the intent of this chapter to protect persons from excessive levels of noise within or near a
18 residence, school, church, hospital or public library and to warn persons of the hazards of
19 excessive noise in places of public entertainment.

20
21 **8.40.020 Definitions.**

22 The following words, phrases and terms as used in this chapter shall have the following
23 meanings:

- 24 A. "Agricultural property" means land used for or devoted to the production of crops and
25 livestock.

1 B. "Ambient noise level" means the composite of noise from all sources excluding the
2 alleged offensive noise. In this context it represents the normal or existing level of environmental
3 noise at a given location for a specified time of the day or night.

4 C. "'A' weighted sound level" means the sound level in decibels as measured with a sound
5 level meter using the "A" weighted network (scale) at slow meter response. The unit of
6 measurement is referred to herein as dB(A) or dBA.

7 D. "Construction" means construction, erection, enlargement, alteration, conversion or
8 movement of any building, structures or land together with any scientific surveys associated
9 therewith.

10 E. "Cumulative period" means an additive period of time composed of individual time
11 segments which may be continuous or interrupted.

12 F. "Decibel" means a unit for measuring the amplitude of a sound, equal to twenty times
13 the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference
14 pressure, which is twenty micropascals.

15 G. "Enforcement Official" means the Health Officer, the County Administrator, the Sheriff, a
16 code enforcement officer, or any duly authorized deputy or designee of that official.

17 GH. "Emergency work" means the use of any machinery, equipment, vehicle, manpower or
18 other activity in a short term effort to protect, or restore safe conditions in the community, or
19 work by private or public utilities when restoring utility service.

20 H. "Fixed noise source" means a device or a machine which creates sounds while fixed or
21 stationary, including but not limited to residential, agricultural, industrial and commercial
22 machinery and equipment, pumps, fans, compressors, air conditioners and refrigeration
23 equipment.

24 I. "Health officer" means the health officer of the county or his duly authorized deputy.
25

1 JK. "Hospital" means any building or portion thereof used for the accommodation and
2 medical care of the sick, injured or infirm persons and includes rest homes and nursing homes.

3 LK. "Impulsive noise" means a noise of short duration, usually less than one second, with an
4 abrupt onset and rapid decay.

5 ML. "Intruding noise level" means the sound level created, caused, maintained or originating
6 from an alleged offensive source, measured in decibels, at a specified location while the alleged
7 offensive source is in operation.

8 NM. "Mobile noise source" means any noise source other than a fixed noise source.

9 ON. "Noise disturbance" means any sound which violates the quantitative standards set forth
10 in this chapter.

11 PO. "Residential property" means a parcel of real property which is developed and used
12 either in whole or in part for residential purposes.

13 QP. "School" means public or private institutions conducting regular academic instruction at
14 preschool, kindergarten, elementary, secondary or collegiate levels.

15 RQ. "Simple tone noise" means any noise which is distinctly audible as a single pitch
16 (frequency) or set of pitches as determined by the health officer.

17 SR. "Sound level meter" means an instrument meeting American National Standard
18 Institute's Standard S1.4-1971 for Type I or Type 2 sound level meters or an instrument and the
19 associated recording and analyzing equipment which will provide equivalent data.

20 21 **8.40.030 Noise measurement criteria.**

22 Any noise measurement made pursuant to the provisions of this chapter shall be made with a
23 sound level meter using the "A" weighted network (scale) at slow meter response. Fast meter
24 response shall be used for impulsive type sounds. Calibration of a measurement equipment
25 utilizing an acoustic calibrator shall be performed immediately prior to recording any noise data.

1 The exterior noise levels shall be measured within fifty feet of the affected residence, school,
2 hospital, church or public library. Where practical, the microphone shall be positioned three to
3 five feet above the ground and away from reflective surfaces.

4 The interior noise levels shall be measured within the affected dwelling unit, at points at least
5 four feet from the wall, ceiling or floor nearest the noise source, with windows in the normal
6 seasonal configuration. The reported interior noise level shall be determined by taking the
7 arithmetic average of the readings taken at the various microphone locations.

8
9 **8.40.040 Exterior noise standards.**

10 A. It is unlawful for any person, including an owner, whether through the owner or the
11 owner's agent, lessee, sublessor, sublessee or occupant, at any location within the
12 unincorporated area of the county, to create any noise, or to allow the creation of any noise, on
13 property owned, leased, occupied or otherwise controlled by such person which causes the
14 exterior noise level when measured at any affected single- or multiple-family residence, school,
15 hospital, church or public library situation in either the incorporated or unincorporated area to
16 exceed the noise level standards as set forth in the following table:

Category	Cumulative Number of minutes in any one-hour time period	Noise Level Standards, dBA	
		Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
1	30	50	45
2	15	55	50
3	5	60	55
4	1	65	60
5	0	70	65

1
2 B. In the event the measured ambient noise level exceeds the applicable noise level
3 standard in any category above, the applicable standard shall be adjusted so as to equal the
4 ambient noise level.

5 C. Each of the noise level standards specified above shall be reduced by five dB(A) for
6 simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive
7 noises.

8 D. If the intruding noise source is continuous and cannot reasonably be discontinued or
9 stopped for a time period whereby the ambient noise level can be measured, the noise level
10 measured while the source is in operation shall be compared directly to the noise level
11 standards.

12
13 **8.40.050 Interior noise standards.**

14 A. It is unlawful for any person, at any location within the unincorporated area of the county
15 to operate or cause to be operated within a dwelling unit, any source of sound or to allow the
16 creation of any noise which causes the noise level when measured inside a receiving dwelling
17 unit situated in either the incorporated or unincorporated area to exceed the noise level standards
18 as set forth in the following table:

Category	Cumulative Number of minutes in any one-hour time period	Noise Level Standards, dBA	
		Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
1	5	45	35
2	1	50	40
3	0	55	45

1
2 B. In the event the measured ambient noise level exceeds the applicable noise level
3 standard in any category above, the applicable standard shall be adjusted so as to equal the
4 ambient noise level.

5 C. Each of the noise level standards specified above shall be reduced by five dB(A) for
6 simple tone noises, noises consisting primarily of speech or music, or for recurring impulse
7 noises.

8 D. If the intruding noise source is continuous and cannot reasonably be discontinued or
9 stopped for a time period whereby the ambient noise level can be measured, the noise level
10 measured while the source is in operation shall be compared directly to the noise level
11 standards.

12
13 **8.40.051 Property Owner's Responsibility.**

14 It is a violation of this chapter for any person who is an owner of real property at which a Noise
15 Disturbance is present or has been present, when that owner is not a resident or current
16 occupant of the real property at which the Noise Disturbance occurred, to fail to take
17 reasonable steps to prevent further Noise Disturbance(s) from taking place for a period of six
18 months after having been notified in writing by the Enforcement Officer that a Noise Disturbance
19 is present or has been present at the owner's real property. It shall be a defense and excuse to
20 a violation of this Section if the owner can demonstrate that the owner has taken all legally
21 available and reasonable steps to prevent the recurrence of the Noise Disturbance.

22
23 **8.40.055 Violation by Individual Participant in Noise Disturbance.**

24 Subject to Section 8.40.060(J) of this chapter, It is a violation of this chapter for any person
25 present at a location that is the source of a Noise Disturbance caused by a gathering, party,

concert, event, or meeting including ten or more people, and who is not a resident, owner, lessee or employee of the owner or lessee of the location that is the source of the Noise Disturbance to refuse or fail to leave that location when instructed to by the Sheriff, his or her duly authorized deputy or other sworn peace officer.

8.40.060 Noise source exemptions.

The following activities shall be exempted from the provisions of this chapter:

A. Activities conducted in public parks, public playgrounds, and public or private school grounds, including but not limited to school athletic and school entertainment events;

B. Any mechanical device, apparatus or equipment used, related to or connected with emergency activities or emergency work;

C. Noise sources associated with construction, provided such activities do not take place before six a.m. or after nine p.m. on any day except Saturday or Sunday, or before seven a.m. or after five p.m. on Saturday or Sunday;

D. Noise sources associated with the maintenance of residential property provided such activities take place between the hours of six a.m. and nine p.m. on any day except Saturday or Sunday, or between the hours of seven a.m. and nine p.m. on Saturday or Sunday;

E. Noise sources associated with agricultural activities on agricultural property;

F. Noise sources associated with a lawful commercial or industrial activity caused by mechanical devices or equipment, including air conditioning or refrigeration systems, ~~installed prior to the effective date of this chapter; that this exemption shall expire on July 1, 1980~~ provided that any such noise sources are less than the noise levels specifically provided for in a current and legal permit, license or approval issued for the lawful commercial or industrial activity;

1 G. Noise sources associated with work performed by private or public utilities in the
2 maintenance or modification of its facilities;

3 H. Noise sources associate with the drilling or redrilling of petroleum, gas, injection or water
4 wells;

5 I. Noise sources associated with the collection of waste or garbage from property devoted
6 to commercial or industrial uses;

7 J. Any activity to the extent regulation thereof has been preempted by state or federal law.
8

9 **8.40.070 Air conditioning and refrigeration.**

10 Notwithstanding the provisions of Section 8.40.040 where the intruding noise source when
11 measured as provided in Section 8.40.030 is an air conditioning or refrigeration system or
12 associated equipment installed prior to July 1, 1980, the exterior noise level shall not exceed
13 fifty-five dBA, except where such equipment is exempt from the provisions of this chapter. The
14 exterior noise level shall not exceed fifty dBA for such equipment installed or in use after July 1,
15 1980.
16

17 **8.40.080 Waste and garbage collection equipment.**

18 Notwithstanding the provisions of Section 8.40.040, noise sources associated with the collection
19 of waste or garbage from residential property by persons authorized to engage in such activity,
20 and who are operating truck-mounted loading or compacting equipment, shall not take place
21 before six a.m. or after seven p.m., and the noise level created by such activities when
22 measured at a distance of fifty feet in an open area shall not exceed the following standards:

23 1. Eighty-five dBA for equipment in use, purchased or leased within six months from the
24 effective date of this chapter;
25

1 2. Eighty dBA for that equipment set forth in subsection D (1) above after five years from
2 the effective date of this chapter.

3 3. Eighty dBA for new equipment purchased or lease after six months from the effective
4 date of this chapter.

5 4. Seventy-five dBA for new equipment purchased or leased after thirty-six months from
6 the effective date of this chapter.

7
8 **8.40.090 Electrical substations.**

9 Notwithstanding the provisions of Section 8.40.040, noise sources associated with the operation
10 of electrical substations shall not exceed fifty dBA when measured as provided in Section
11 8.40.030.

12
13 **8.40.100 Warning signs in places of public entertainment.**

14 It is unlawful for any person to operate or permit the operation or playing of any loudspeaker,
15 musical instrument, motorized racing vehicle, or other source of sound for public entertainment
16 within a building or structure wherein the noise level exceeds ninety-five dBA as read on the
17 slow response of a sound level meter at any point normally occupied by a customer, without a
18 conspicuous and legible sign stating: "WARNING! SOUND LEVELS WITHIN MAY CAUSE
19 HEARING IMPAIRMENT."

20
21 **8.40.110 Variances.**

22 A. The owner or operator of a noise source which ~~the health officer~~ any Enforcement
23 Officer has determined violates any of the provisions of this chapter may file an application with
24 the health officer for variance from strict compliance with any particular provisions of this
25 chapter were such variance will not result in a hazardous condition or a nuisance and strict

1 compliance would be unreasonable in view of all the circumstances. The owner or operator shall
2 set forth all actions taken to comply with such provisions, and the reasons why immediate
3 compliance cannot be achieved. A separate application shall be filed for each noise source;
4 provided, however, that several mobile sources under common ownership or fixed sources
5 under common ownership on a single property may be combined into one application.

6 B. Upon receipt of the application and within thirty days, the health officer shall either (1)
7 approve such request in whole or in part, (2) deny the request, or (3) refer the request directly to
8 the board of review for action thereon in accordance with the provisions of this chapter. In the
9 event the variance is approved, reasonable conditions may be imposed which may include
10 restrictions on noise level, noise duration and operating hours, an approved method of
11 achieving compliance and a time schedule for its implementation. The decision of the health
12 officer is subject to appeal to the ~~board of review~~ County Hearing Officer for a hearing de novo
13 by filing a written appeal with the Clerk of the Board of Supervisors with a copy to the health
14 officer not later than fifteen days following the mailing of the health officer's decision to the
15 applicant.

16 C. Factors which the health officer or the ~~reviewing body~~ County Hearing Officer must
17 consider shall include but not be limited to the following:

- 18 1. Uses of property within the area affected by the noise, and the impact on residents or
19 occupants of such property;
- 20 2. Factors related to initiating and completing all remedial work;
- 21 3. Age and useful life of the existing noise source;
- 22 4. The general public interest, welfare and safety.

23 D. The ~~board of review~~ County Hearing Officer may grant variances from provisions of this
24 chapter subject to such terms, conditions and requirements ~~and~~ may be deemed reasonable to
25 achieve compliance with the provisions of this chapter. The health officer or his duly appointed

1 representative shall ~~act as secretary of the board of review~~ provide assistance and any relevant
2 information in the health officer's possession during the Hearing Officer's consideration of a
3 variance from the provisions of this chapter.

4 E. Within fifteen days following the decision of the ~~board of review~~ County Hearing Officer
5 on an application for a variance, the applicant or the health officer may appeal the decision to
6 the board of supervisors for a hearing de novo by filing a notice of appeal with the clerk of the
7 board of supervisors. The board of supervisors shall either affirm, modify or reverse the decision
8 of the board of review. Such decision shall be final and shall be based upon the considerations
9 set forth in this section.

10
11 **8.40.120 Violation—Enforcement.**

12 A. Any violation of Sections 8.40.070, 8.40.080, 8.40.090 or 8.40.100 ~~The violation of any~~
13 ~~of the provisions of this chapter~~ shall be an infraction punishable as provided in Section
14 1.12.020 of this code and enforcement of these sections shall be the primary responsibility of
15 the health officer.

16 B. The violation of any provision of this chapter other than those listed in Section
17 8.40.120(A) is a misdemeanor punishable by up to six (6) months in jail and a fine of up to one
18 thousand dollars (\$1,000.00).

19 C. Notwithstanding any provision of this chapter, any person who violates any provision of
20 this chapter other than those listed in Section 8.40.120(A), may also be subject to an
21 administrative penalty in the amount of \$250.00 for the first violation; \$500.00 for the second
22 violation occurring within six (6) months; and \$1,000.00 for the third and all subsequent
23 violations occurring within six months. Pursuant to Section 53069.4, of the California
24 Government Code, the Enforcement Officer may immediately issue an administrative citation to
25 any person for a violation of this chapter other than those listed in Section 8.40.120(A)

1 committed in the presence of the Enforcement Officer or upon the Enforcement Officer's
2 confirmation of a violation.

3 1. At minimum, an administrative citation issued for a violation of this chapter shall
4 contain the following information: (a) the date and time of the violation and any previous
5 administrative citations for violations of this chapter within the preceding six month period to the
6 person receiving the administrative citation; (b) a description of the Noise Disturbance that
7 constituted the violation including the category of the violation if under Sections 8.40.040 or
8 8.40.050 of this chapter or the other specific section violated; (c) the address or a definite
9 description of where the violation occurred; and (d) evidence identifying the person receiving the
10 administrative citation as the person responsible for the violation.

11 2. For purposes of administrative citations, each violation of Section 8.40.040 or Section
12 8.40.050 that occur in a one-hour period shall be considered a single violation. Violations that
13 occur in any subsequent one-hour period shall be counted as separate and additional violations.

14 3. The Enforcement Officer shall have discretion to issue a warning to any person
15 violating this provisions of this chapter in lieu of immediate issuance of an administrative citation
16 provided the violation is ceased immediately and permanently by the person violating the
17 provision of this chapter.

18 D. Violations of this chapter are hereby declared a threat to public peace, health and safety
19 and a public nuisance. Violations of this chapter may be enforced by a legal action to abate the
20 nuisance through injunction and other remedies.

21 ~~The provisions of this chapter may also enforced an injunction issued out of the superior court~~
22 ~~upon suit of the county. Any violation of the provisions of this chapter shall be deemed to be a~~
23 ~~public nuisance.~~

24 ~~The county health officer shall enforce the provisions of this chapter.~~

25 E. The provisions of this chapter may be enforced by any Enforcement Officer.

1
2 **8.40.130 Right of Entry and Inspection.**

3 A. Any Enforcement Officer shall have the right to enter any location at which a Noise
4 Disturbance is found to be present at which members of the public are being allowed access.

5 B. Nothing in this Chapter shall limit the right of the Sheriff or any sworn peace officer from
6 entering any location at which a Noise Disturbance is found to be present when authorized by
7 federal and state law.

8 C. Except as specifically stated in this Section, Right of entry for inspection by any
9 Enforcement Officer shall be as provided Section 1.08.010 of this code.

10
11 **8.40.140 Service procedures for administrative citations.**

12 A. The administrative citation issued pursuant to this chapter shall be served on the
13 responsible person as follows:

14 1. The Enforcement Officer may personally serve the responsible person. The Enforcement
15 Officer may obtain the signature of the responsible person on the administrative citation to
16 establish personal service. If the responsible person refuses or otherwise does not sign the
17 administrative citation, the lack of signature shall in no way affect the validity of the
18 administrative citation and proceedings.

19 2. If the responsible person is not present for personal service when the Enforcement
20 Officer determines there is a violation, or if the responsible person refuses to accept service of
21 the administrative citation in any other circumstances, the Enforcement Officer shall mail the
22 administrative citation to the responsible person by first class mail, postage prepaid.

23 B. Service of the administrative citation shall be effective on the date posting, mailing or
24 personal service.

1 C. Proof of Service. Proof of service of the administrative citation may be made by a
2 declaration of service by any officer or employee of the county or by affidavit of any person over
3 the age of eighteen years. The failure of a person to receive properly addressed service shall
4 not affect its validity or the validity of any proceedings relating to the violation(s).

5 D. If pursuant to the Enforcement Officer's investigation, real property upon which a
6 violation of this chapter exists or is maintained, even if a tenant, agent, or other person appears,
7 whether in conjunction with the owner, or independently, to be causing or maintaining the
8 violation, the administrative citation shall be issued to all parties participating or causing the
9 violation. If the real property appears to be owned by someone other than the current record
10 owner, that is, a property owner, and the name and address of the property owner is known, an
11 administrative citation shall be issued both to the current record owner, and to the property
12 owner. In such case a copy of the administrative citation issued to the property owner shall be
13 sent to the current record owner and a copy of the administrative citation issued to the current
14 record owner shall be sent to the property owner.

15 E. Unless the responsible person properly requests a hearing pursuant to Section 8.40.150
16 to challenge an administrative citation issued pursuant to this chapter within 15 days of the date
17 of issuance, the administrative citation shall constitute the final administrative order and the
18 imposition of the administrative penalty shall become a final order.

19
20 **8.40.150 Appeals of administrative citations.**

21 The procedures to appeal an administrative citation issued pursuant to this chapter are as
22 follows:

23 A. Hearing Request. Any person issued an administrative citation for a violation of this
24 chapter may contest issuance of the citation by the procedures found in Section 1.13.170 of this
25 code.

1 B. Advanced Deposit Hardship Waiver. Any person who intends to request a hearing to
2 contest an administrative citation issued for a violation of this chapter and who is financially
3 unable to make the advanced deposit of the citation amount, as required by Section 1.13.170 of
4 this code, may file a request for an advanced deposit hardship waiver by the procedures found
5 in Section 1.13.180 of this code.

6 C. Hearing Officer. Hearings to challenge the administrative citations issued for a violation
7 of this chapter before a County Hearing Officer.

8 D. Hearing Procedures. The procedures for a hearing to contest an administrative citation
9 issued for a violation of this chapter are the same as those procedures listed in Section
10 1.13.200 of this code.

11 E. Hearing Officer's Decision. A hearing officer appointed to hear a contest to an
12 administrative citation issued for a violation of this chapter shall follow the procedural
13 requirements of Section 1.13.210 of this code.

14 F. Right to Judicial review. Any person aggrieved by the decision of an administrative
15 hearing officer on an administrative citation, may obtain review of the administrative decision by
16 filing a petition for review with the Fresno County Superior Court, in accordance with the
17 timeline and other provisions set forth in Section 53069.4. in California Government Code.

18 G. The procedures of Sections 1.14.020-1.14.050 of this code are applicable to this
19 chapter.

20
21 **8.40.160 Recovery of administrative citations and civil penalties.**

22 The county may collect any past due administrative citation(s) or unpaid civil penalties,
23 assessed, and issued pursuant to this chapter, by use of any and all available legal means,
24 including, without limitation, as a personal obligation or a lien recorded against any real property
25 owned by the person(s) found to have committed a violation of this chapter. County Counsel

1 may bring a civil action in the name of the county to recover any past due administrative
2 citation(s) or unpaid civil penalties and may enforce any judgment to collect any unpaid sum in
3 the same manner as civil judgments.

4
5 **8.40.170 Non-exclusive remedy.**

6 This chapter is not the exclusive regulation or penalty for violations of this chapter. It
7 supplements and is in addition to other regulatory codes, statutes, and ordinances heretofore or
8 hereafter enacted by the county, state or any legal entity or agency having jurisdiction.

9
10 **8.40.180 Severability.**

11 If any portion of this chapter is held to be invalid by any court of competent jurisdiction, such
12 decision shall not affect the validity or effectiveness of the remaining portions of this chapter.

13 The Board of Supervisors hereby declares it would have passed each remaining portion
14 irrespective of the fact that any one or more portions are declared invalid.

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1 **Section 2:** This ordinance shall take effect thirty (30) days after final passage.

2
3 THE FOREGOING was passed and adopted by the following vote of the Board of
4 Supervisors of the County of Fresno this ____ day of _____, 2024, to wit:

5 AYES:

6 NOES:

7 ABSENT:

8 ABSTAINED:

9 _____
10 Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

11 ATTEST:
12 Bernice E. Seidel
13 Clerk of the Board of Supervisors
County of Fresno, State of California

14 By _____
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