RESOLUTION NO. 2575

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING SECTION 130.20 (NOISE) OF THE CODE OF THE TOWN OF PAYSON, MAKING CONFORMING CHANGES TO SECTIONS 73.05, 90.04, 111.09, AND 130.18 OF THE CODE OF THE TOWN OF PAYSON AND SECTIONS 15-02-013 AND 15-11-002 OF THE UNIFIED DEVELOPMENT CODE, AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD. (NOISE AMENDMENTS)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend Section 130.20 (NOISE) of the Code of the Town of Payson and to make conforming changes to Town Code Sections 73.05, 90.04, 111.09, and 130.18 and Unified Development Code Sections 15-02-013 and 15-11-002; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Section 130.20 (NOISE) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit A.

Section 2. Section 73.05(I) (GENERAL RESTRICTIONS ON MOTORIZED PLAY VEHICLES) is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit B.

Section 3. The definition of a PUBLIC NUISANCE ANIMAL in Section 90.04 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit C.

Section 4. Section 111.09 (UNDUE NOISE PROHIBITED) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit D.

Section 5. Section 130.18 (CONSTRUCTION OF BUILDINGS AND OTHER PROJECTS) of the Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit E.

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Section 6. Section 15-02-013(C)(6)(f) of the Unified Development Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit F.

Section 7. The definition of a NUISANCE in Section 15-11-002 of the Unified Development Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit G.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of October, 2010, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

EXHIBIT A TO RESOLUTION 2575

130.20 NOISE

(A) *General Prohibition*

(1) Unreasonably loud, disturbing, and unnecessary noise is prohibited.

(2) Noise that is detrimental to the life or health of any individual is prohibited.

(3) Noise that disturbs the public peace and welfare is prohibited.

(B) *Factors To Be Considered*

In determining whether noise is in violation of subsection (A), all relevant factors may be considered, including, but not limited to the following:

(1) The sensitivities of an ordinary person

(2) Time of day

(3) Duration of the noise

(4) Intensity of the noise

(5) Frequency of the noise

(6) Type of the noise

(7) Nature of the noise

(8) Other ambient noise

(9) Zoning District from which the noise emanates

(10) Adjacent land uses

(11) Current and historic noise levels and land uses in the area of the noise and surrounding areas

(12) The public benefit, if any, from the noise

(C) *Specific Acts Prohibited*

The following are declared to be loud, disturbing and unnecessary noises and noise in violation of this Section. This enumeration shall not be deemed to be exclusive:

(1) Gatherings and Entertainment. Noise from an Establishment or gathering during Restricted Hours that is plainly audible 300 feet or more from the edge of the property and disturbs the slumber, peace, or quiet of any person.

For the purposes of this subsection, the following definitions shall apply:

(a) Establishment - A restaurant, bar, hotel, dance studio or hall, auditorium, amphitheater, show, store, any place of public amusement, entertainment, accommodation, or any other similar gathering.

(b) Restricted Hours -

(i) Friday, Saturday, and holidays - 11:00 p.m. - 7:00 a.m. the following morning;

(ii) Sunday through Thursday - 10:00 p.m. - 7:00 a.m. the following morning;

(iii) During the annual August Rodeo - 12:00 midnight - 7:00 a.m. the following morning;

(iv) For events at the Payson Multi Event Center, 11:00 p.m. - 7:00 a.m. the following morning.

(2) Stereos, Instruments, and Amplified Music. Sound from stereos, musical instruments, and other amplified music between the hours of 11:00 p.m. and 7:00 a.m. in such a manner or with such volume as to annoy or disturb the quiet, comfort or repose of a person in a residential dwelling.

(3) Loudspeakers or Amplifiers on Vehicles. Use of mechanical loudspeakers or amplifiers on a motor vehicle for advertising or other purposes. This subsection shall not apply to vehicles that participate in a parade or procession permitted by the Police Chief.

(4) Exhaust Discharge. Operation of a motor vehicle, a motorized play vehicle, or any other internal combustion engine which is not at all times equipped with a muffler upon the exhaust. Such muffler shall be in good working order and in constant operation to prevent excessive or unusual noise. A cut-out, by-pass, or similar muffler elimination appliance shall not be used.

(5) Vehicle Use. Use of any motor vehicle so out of repair, so loaded, or in such a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.

(6) Squealing Tires. Squealing a motor vehicle's tires while accelerating.

(7) Exhaust Braking. Use of any mechanical exhaust device designed to aid in the braking or deceleration of any motor vehicle which results in excessive, loud, unusual or explosive noise from such vehicle, otherwise known as engine-braking or a Jake brake.

(8) Outdoor Construction/Repair. Operation of equipment or performing any outside construction or repair work on buildings, structures or projects, operating any pile driver, power shovel, pneumatic hammer, derrick, power hoist, concrete truck or any other construction type device or any other device, equipment or vehicle utilized for the purposes of outdoor construction or repair except within the time periods specified in this subsection.

(a) Start/stop times. From June 1 to September 1, inclusive, all construction or repair work shall not begin prior to 5:00 a.m. and must stop by 10:00 p.m. From September 2 to May 31, inclusive, all construction or repair work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m.

(b) Weekends and holidays. Notwithstanding anything to the contrary herein, construction, repair, industrial and manufacturing work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m. on Saturday, Sunday or a state or federal holiday.

(c) Exemptions. Refuse collection vehicles are exempt from the provisions of this subsection.

(9) Animals. Keeping any animal or fowl in a manner which causes (i) loud, frequent, raucous, or long continued noise that disturbs the comfort and repose of any person in the vicinity; or (ii) repeated howling, barking, whining, or other utterances that disturb the peace and quiet of any person or deprive any person or persons of the quiet and peaceful enjoyment of their property.

(10) Non-Emergency Signaling Devices. Sounding an amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes from any place for more than ten (10) consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of worship and ice cream trucks is exempt from the provisions of this subsection.

(11) Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing in residential areas between the hours of 11:00 p.m. and 7:00 a.m.

(12) Noise Sensitive Areas. Creating excessive noise on any street adjacent to a school, place of worship, or court while the same is in session, or adjacent to a hospital, when such noise unreasonably interferes with the working or session thereof; provided that signs must be displayed in such streets indicating that the same is a school, place of worship, court or hospital.

(D) *Exemptions*

The following acts shall be exempt from the provisions of this Section:

(1) All Town governmental activities and operations, including private contractors engaged in such activities

(2) Emergency repair of Public Utilities, including private contractors engaged in such activities

(3) Town Sponsored Events

(4) Emergency Vehicles (whether public or private) and sounds used to alert persons to the existence of an emergency.

(5) Alarm activations as defined in Chapter 98.

(6) Temporary exemptions approved by the Council for activities including but not limited to special events, concerts, parades, festivals, sporting contests, and other activities. Prior to approving any exemption, the Council shall consider the potential disruption versus the public benefit of any such exemption.

(E) *Persons Responsible*

A person causing, playing, directing, controlling or permitting any noise in violation of this section shall be liable for such noise.

(F) *Enforcement*

(1) The Police Chief shall have primary responsibility for the enforcement of this Section.

(2) Nothing in this Section shall prevent the Police Chief from obtaining voluntary compliance by way of warning, notice, or education.

(3) If a person's conduct would otherwise violate this Section and consists of (a) speech or communication and (b) a gathering with others to picket or otherwise express in a non violent manner a position on social, economic, political, or religious issues, the person must be ordered to, and have opportunity to, move, disperse, or otherwise remedy the violation prior to an arrest or citation being issued.

(G) *Penalties*

(1) Except as provide in subsection (2) below, a violation of this section is a class one misdemeanor.

(2) A violation of subsection (C)(4) (if the vehicle is a motorized play vehicle), subsection (C)(7), or subsection (C)(9) is a civil violation.

(3) Any person who pleads responsible or who is found responsible of violating subsection (C)(9) shall be subject to the following:

(a) A minimum fine in the amount of $50 for the first offense within any 12-month period.
(b) A minimum fine in the amount of $100 for the second offense within any 12-month period.
(c) A minimum fine in the amount of $250 for the third and all subsequent offenses within any 12-month period.

Alternatively, or in addition to, the above described fines, the magistrate court may order that arrangements be made to abate the violation including, but not limited to, muzzling the animal, requiring a bark collar, the owner's voluntary removal of the animal, or court-ordered removal of the animal.

EXHIBIT B TO RESOLUTION 2575

73.05 ~~(I) No person shall operate a motorized play vehicle at any time upon town right-of-way, including streets, roadways and alley ways, without a muffler upon the exhaust in good working order and in constant operation to prevent excessive or unusual noise.~~

(I) Reserved.

EXHIBIT C TO RESOLUTION 2575

PUBLIC NUISANCE ANIMAL. Any animal that unreasonably annoys or endangers the life or health of persons or domestic animals, or which disturbs the peace and quiet of any person. The term PUBLIC NUISANCE ANIMAL shall include, but not be limited to the following:

(1) Any animal in violation of Section 130.20(C)(9) ~~that makes disturbing noises, including but not limited to, repeated howling, barking, whining or other utterances in such a manner as to disturb the peace and quiet of any person or deprive any person or persons of the quiet and peaceful enjoyment of their property~~.

(2) Any animal that is found running at large.

(3) Any animal that damages, soils, defiles or defecates on any property other than that of its owner.

(4) Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.

(5) Any animal in heat that is not confined so as to prevent attraction or contact with other animals.

(6) Any animal that, without provocation, molests, attacks or otherwise interferes with the freedom of movement of persons in a public right-of-way.

(7) Any animal that chases motor vehicles, bicycles, or other vehicles in a public right-of-way.

(8) Any animal that attacks domestic animals.

EXHIBIT D TO RESOLUTION 2575

111.09 ~~No licensee nor any person in his behalf shall make any outcry, blow a horn, ring a bell or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, alleys, parks or other public places of the town, or upon any private premises in the town where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the public thoroughfares for the purpose of attracting attention to any goods, wares or merchandise which the licensee proposes to sell.~~

Reserved.

EXHIBIT E TO RESOLUTION 2575

130.18 ~~(A) Noise limitations. It is be unlawful for any person to operate equipment or perform any outside construction or repair work on buildings, structures or projects, operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, concrete truck or any other construction type device or any other device, equipment or vehicle utilized for the purposes of construction except within the time periods specified in this section.~~

~~(B) Construction start/stop times. From June 1 to September 1, inclusive, all construction or repair work shall not begin prior to 5:00 a.m. and must stop by 10:00 p.m. each day. From September 2 to May 31, inclusive, all construction or repair work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m. each day.~~

~~(C) Weekends and holidays. Notwithstanding anything to the contrary herein, construction, repair, industrial and manufacturing work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m. on Saturday, Sunday or state or federal holiday.~~

~~(D) Penalties. Any person convicted of violating any provision in this section shall be guilty of a class one misdemeanor and shall be punishable as provided in A.R.S. §§ 13-707, 13-802 and 13-902, as amended from time to time.~~

~~(E) Exemptions. The following activities or sources are exempt from the regulations and standards set forth in this section.~~

~~(1) Refuse collection vehicles.~~
~~(2) Construction or routine maintenance of public service utilities.~~
~~(3) The emission of sound for the purpose of alerting to the existence of an emergency, or the emission of sound in the performance of emergency work.~~

Reserved.

EXHIBIT F TO RESOLUTION 2575

15-02-013(C)(6)(f) ~~The playing of music or performance of entertainment out of doors in the Special Plan District for the Green Valley Redevelopment Area between the hours of 11:00 p.m. on Fridays, Saturdays, holidays and at the Payson Multi-Event Center during special events at the Payson Multi-Event Center conducted pursuant to a special use permit for such events and 7:00 a.m. of the following day, and between the hours of 10:00 p.m. on Sunday through Thursday and 7:00 a.m. of the following day shall not constitute a violation of Section 130.20 of the Town Code provided that the same is not plainly audible at a distance of three hundred feet from the building, structure or property from which it emanates and is loud or unreasonable so as to disturb the slumber, peace and quiet, or otherwise interfere with or annoy the comfortable enjoyment of life or property of any person.~~

Reserved.

EXHIBIT G TO RESOLUTION 2575

NUISANCE (Also, Public Nuisance) Use(s) or activities that may produce explosion or fire hazard, objectionable or hazardous smoke, dust, radiation, odor, noise in violation of Section 130.20 of the Town Code, glare, fumes, trash, pollen, disease, or other conditions such as abandoned or inoperable vehicles, garbage, graffiti, junk, litter, refuse, rubbish, or unsightly premises, that adversely affect public health, safety and general welfare, constitute a nuisance.