

**ORDINANCE 2024-771**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA AMENDING FORTUNA MUNICIPAL CODE TITLE 8, HEALTH AND SAFETY, ADDING CHAPTER 8.45, NOISE CONTROL ORDINANCE, TO PROTECT THE PEACE, HEALTH, SAFETY, WELFARE, AND QUALITY OF LIFE OF ITS COMMUNITY MEMBERS FROM EXCESSIVE, UNNECESSARY, AND UNREASONABLE NOISE, AND FINDING THE ORDINANCE TO BE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

**WHEREAS**, the City Council of the City of Fortuna recognizes that excessive, unnecessary, and unreasonable noise poses a hazard to the public peace, safety, welfare, and quality of life of its community members; and

**WHEREAS**, a substantial body of science and technology exists, providing a solid foundation by which excessive, unnecessary, and unreasonable noise may be substantially abated to protect the community's peace, health, safety, welfare, and quality of life; and

**WHEREAS**, the City of Fortuna does not currently have a Noise Control Ordinance; and

**WHEREAS**, City of Fortuna community members have a right to an environment free from excessive, unnecessary, and unreasonable noise; and

**WHEREAS**, the City Council of the City of Fortuna wishes to protect the peace, health, safety, welfare, and quality of life of its community members by prohibiting excessive, unnecessary, and unreasonable noise; and

**WHEREAS**, the Noise Control Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the Ordinance will have a significant adverse effect on the environment. Additionally, the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15308 in that the Ordinance establishes maximum acceptable noise levels and enforcement mechanisms to protect the environment from excessive, unnecessary, and unreasonable noises exempt from the California Environmental Quality Act; and

**WHEREAS**, the City Council of the City of Fortuna has considered the staff report, supporting documents, public comment, and all appropriate information that has been submitted with this Ordinance; and

**WHEREAS**, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FORTUNA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The above recitals are each incorporated by reference and adopted as findings by the City of Fortuna City Council.

**SECTION 2. CEQA.** The Noise Control Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the Ordinance will have a significant adverse effect on the environment. Additionally, the Noise Control Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15308 in that the Noise Control Ordinance establishes maximum acceptable noise levels and enforcement mechanisms to protect the environment from excessive, unnecessary, and unreasonable noise.

The City Council hereby directs staff to prepare, execute, and file a notice of exemption with the Humboldt County Clerk within five (5) working days of adopting the Noise Control Ordinance.

**SECTION 3. Municipal Code Amendment.** Chapter 8.45, Noise Control Ordinance, is hereby added to Title 8, Health and Safety, of the Fortuna Municipal Code in the form and substance set forth in “**Attachment 1**” attached hereto and incorporated by reference. Following approval of this Ordinance, without modifying the substance, the City Clerk shall cause the Fortuna Municipal Code amendments to be consistent in form and style with Title 8 of the Fortuna Municipal Code.

**SECTION 4. Effective Date.** The effective date of this ordinance is thirty (30) days after adoption by the City Council of the City of Fortuna.

**SECTION 5. Severability.** If any provision of this ordinance is determined to be invalid, such invalidity does not affect the remaining provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council of the City of Fortuna declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

**SECTION 6. Limited Repeal.** Any provision of the City of Fortuna Municipal Code or appendices to it that are inconsistent with the requirements of this ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this ordinance.

**FIRST READING CONDUCTED** at a regular meeting of the City Council on this 5th day of August, 2024, by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

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Tami Trent, Mayor

**ATTEST:**

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Siana L. Emmons, City Clerk

**SECOND READING CONDUCTED and ORDINANCE ADOPTED** at a regular meeting of the City of Fortuna City Council on this 19th day of August, 2024 by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

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Tami Trent, Mayor

**ATTEST:**

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Siana L. Emmons, City Clerk

Chapter 8.45  
Noise Control Ordinance

Sections:

- 8.45.010 Purpose
- 8.45.020 Applicability
- 8.45.030 Definitions
- 8.45.040 Noise standards
- 8.45.050 Evaluation criteria
- 8.45.060 Exceptions
- 8.45.070 Acoustic study and noise attenuation requirements
- 8.45.080 Noise compatibility and isolation
- 8.45.090 Motor vehicle noise
- 8.45.100 Inspections
- 8.45.110 Enforcement and penalties for offenses
- 8.45.120 Exception permits

**8.45.010 Purpose.**

This chapter aims to protect Fortuna community members' peace, health, safety, general welfare, and quality of life from the detrimental effects of excessive, unnecessary, and unreasonable noise.

**8.45.020 Applicability.**

This chapter shall apply to all new uses, activities, processes, and structures. Uses, activities, processes, and structures that are legal and permitted as of the effective date of this ordinance but that do not conform to the Noise Control Ordinance shall become nonconforming uses and subject to the provisions of Municipal Code Section 17.06.130, Nonconforming uses. Nothing in this chapter shall be deemed to authorize any otherwise prohibited activity. In the event of a conflict between the standards in this chapter and any other provision of law, the more restrictive shall govern.

**8.45.030 Definitions.**

Unless otherwise clearly indicated, the terms used in this chapter are defined as follows:

- A. A-Weighted Sound Level means the sound level in decibels as measured on a sound level meter using the A-weighting scale, abbreviated as dBA.
- B. Ambient noise. Ambient noise is the typical or existing environmental noise level at a given location and time. It does not include noise from individually identifiable sources that are not normally present. Ambient noise shall be measured as an average sound level during a five-minute period utilizing a precision sound level meter, slow response, and "A-weighting."
- C. City. The City of Fortuna
- D. Decibel. The measurement unit used for loudness of sound/noise. The symbol of dB.

- E. LAeq. A-weighted, equivalent continuous sound level.
- F. Ldn. The average equivalent sound level over a 24-hour period, with a penalty of 10 dBA added for noise occurring between 11 p.m. and 7:00 a.m. and a penalty of 5 dBA added for noise occurring between 7:00 p.m. and 11 p.m.
- G. Lmax. The maximum sound level during a measurement period or a noise event.
- H. Manned aircraft. An aircraft carrying or being operated by one or more persons within the aircraft.
- I. Motor vehicle. Any self-propelled vehicle, such as automobiles, vans, motorcycles, trucks, recreational vehicles, minibikes, and go-carts. A self-propelled wheelchair, motorized tricycle, or motorized quadricycle is not considered a motor vehicle if operated by a person who is otherwise unable to move about as a pedestrian.
- J. Muffler. A device consisting of a series of chambers, baffle plates, or other mechanical design to receive exhaust gas from an internal combustion engine and reduce noise.
- K. Noise disturbance. Any sound that violates the standards of this ordinance or any other noise compatibility level enacted by State or Federal law.
- L. Noise-sensitive land uses: Land uses where excessive noise levels could cause adverse health effects or disruption. Noise-sensitive land uses include single and multi-family residences, group homes, libraries, hospitals, health care facilities, schools and other learning institutions, places of worship or other lawful public assembly, and additional uses as determined by the City.
- M. Sound. A form of energy that can be generated, move from place to place, and dissipate over distance.
- N. Sound measurement. For this chapter, sound measurement refers to the result obtained when measuring sound levels with a sound level meter using the A-weighted scale at slow meter response.
- O. Unmanned aerial vehicle (UAV). An aircraft that does not have a human pilot, crew, or passengers onboard. This includes but is not limited to drones.

#### **8.45.040 Noise standards.**

It shall be unlawful and a public nuisance for any person within Fortuna city limits to make, maintain, emit, cause, or permit any disturbing, excessive, unnecessary, or offensive noise whether of natural or unnatural origin, which results in discomfort or annoyance to a reasonable person of normal sensitivity in the area; or which exceeds standards included in Table 8-45.1 Allowable Exterior Levels, or any other noise compatibility level established by State or Federal Law, whichever is more restrictive.

Uses, activities, and processes shall not generate or emit any noise or sound in excess of the levels provided in Table 8-45.1, Allowable Exterior Levels, beyond the property line of the parcel on which they are located except as provided in Section 8.45.060, Exceptions.

#### **Table 8-45.1 Allowable Exterior Sound Levels**

| Land Use Type   | Allowable Exterior Sound Levels <sup>(1)</sup> |   |
|---|--|---|
|   | Time Interval                                  | Maximum Exterior Noise Level <sup>(2)</sup> |
| Residential and Noise-Sensitive Land Uses <sup>(3)(4)</sup> | 7:00 a.m. to 8:00 p.m.                         | 60dBA                                       |
|   | 8:00 p.m. to 7:00 a.m.                         | 55 dBA                                      |
| Commercial Land Uses I <sup>(5)</sup>                       | 7:00 a.m. to 8:00 p.m.                         | 70 dBA                                      |
|   | 8:00 p.m. to 7:00 a.m.                         | 65 dBA                                      |
| Industrial Land Uses <sup>(5)</sup>                         | 7:00 a.m. to 8:00 p.m.                         | 75 dBA                                      |
|   | 8:00 p.m. to 7:00 a.m.                         | 65 dBA                                      |

(1) Each noise limit specified in Table 8-45.1 shall be reduced by 5 dBA for impulse or simple tone noises. If the ambient noise exceeds the resulting standard, the ambient noise level shall be the standard.

(2) Maximum noise levels shall not be exceeded for an aggregate period of more than three minutes within a one-hour time period or by more than 10 dBA at any time.

(3) Residential standards apply to all noise-sensitive land uses as described herein. These uses may require special mitigation.

(4) Interior noise levels for residential and other noise-sensitive land uses interior noise levels shall not exceed 45 dBA when windows are closed.

(5) Commercial standards apply to Mixed Use Districts

#### 8.45.050 Evaluation criteria.

The following criteria, at minimum, may be used to determine the presence, nature, and severity of a potential violation of this chapter:

- A. Whether the noise exceeds the maximum allowable exterior noise levels included in Table 8-45.1;
- B. The ambient noise level;
- C. The intensity and duration of the noise;
- D. Whether the origin of the noise is natural or unnatural;
- E. The proximity of the noise source to receptors;
- F. The time the noise occurs;
- G. Whether the noise is recurrent, intermittent, or constant;
- H. The purpose or motivation behind the generation of the noise;
- I. Whether a commercial or noncommercial activity produces the noise; and
- J. Whether the noise is produced by equipment normally required for maintenance of residential properties or authorized construction projects.

## 8.45.060 Exceptions.

The following are exempt from the noise compatibility standards of Table 8-45.1:

- A. Any audible warning device that is required by law to protect the health, safety, and welfare of the community such as those typically utilized by public safety or other emergency personnel;
- B. Emergency vehicle responses and all necessary equipment utilized in response to a state of emergency, including equipment required to maintain utility services during an unexpected power outage;
- C. Any City-sponsored activity or construction that is in response to an emergency or disaster;
- D. The ringing of bells or chimes from any building clock, church or school;
- E. Noise created by recreational activities that occur on public property which are permitted by law and/or granted a license or permit by the City of Fortuna, including but not limited to parades, sporting events, rodeos, concerts, and firework displays;
- E.F. Fortuna Fire Chief approved consumer fireworks are allowed on July 2, 3, 4 and December 31 until 1 a.m. If July 4 falls on a Tuesday, Wednesday, or Thursday, Fortuna Fire Chief approved consumer fireworks may be used until 1 a.m. on the immediately preceding and following Friday and Saturday. If consumer fireworks are the subject of a future ban or prohibition, this exception is immediately null and void.
- F.G. Manned aircraft as defined herein, airport, and railroad operations;
- G.H. Public- or private school-sanctioned activities that are conducted on school grounds including but not limited to school athletics and school entertainment events;
- H.I. Unmanned aerial vehicles that are used to increase the public safety of City of Fortuna community members when operated by trained certified police pilots and other lawful emergency personnel;
- I.J. Authorized construction activities and uses between 7 a.m. to 8 p.m., Monday through Saturday or as otherwise established through the discretionary land use permit process;
- J.K. Noise generated by the City's contracted refuse and solid waste handler;
- K.L. Mechanical devices, apparatus, or equipment associated with agricultural operations conducted on property that is zoned for agricultural land uses;
- L.M. Noise created by pick-up or delivery vehicles in commercial or industrial zones from 7:00 a.m. to 8:00 p.m., Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday or Sunday;
- M.N. Public Works operations and construction, maintenance, or repair projects; and
- N.O. Other activities as granted an exception permit by the Community Development Director or Zoning Administrator according to Section 8.45.120 of this chapter

## 8.45.070 Acoustic study and noise attenuation requirements.

The Community Development Director may require an acoustic study for any proposed project that could have or create a noise exposure greater than that deemed acceptable and require a project to incorporate noise attenuation measures deemed necessary to ensure compliance with this chapter.

#### **8.45.080 Noise compatibility and isolation.**

The City shall only permit new land uses that would generate noise levels in excess of the noise compatibility standards included in Table 8-45.1 if mitigation measures are included to bring the land use into compliance with this chapter.

The City shall require proposed commercial and industrial projects that are adjacent to noise-sensitive land uses to incorporate the following stationary source noise measures:

- A. Proposed new loading docks adjacent to noise-sensitive land uses shall include noise-attenuating features to ensure that associated noise does not exceed 60 dBA Ldn at the property line of any existing noise-sensitive land use or where the municipal code permits a noise-sensitive land use by right;
- B. HVAC systems shall be enclosed such that associated noise does not exceed 60 dBA Ldn at the property line of any existing noise-sensitive land use or where the municipal code permits a noise-sensitive land use by right; and
- C. Proposed amplified announcing systems shall not exceed 65 dBA Lmax during daytime hours, 60 dBA Lmax during nighttime hours, and 60 dBA Ldn 24 hours per day at the property line of any existing noise-sensitive land use or where the municipal code permits a noise-sensitive land use by right.

#### **8.45.090 Motor vehicle noise.**

- A. All motor vehicles operated within City limits shall be subject to the noise standards and decibel levels outlined in the [California Vehicle Code](#).
- B. It is unlawful for any person to sound a vehicular horn except as a warning signal (California Vehicle Code, Section 27001).
- C. Every motor vehicle subject to registration shall at all times be equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise, and no muffler or exhaust system shall be equipped with a cutout, bypass, or similar device.
- D. A person shall not modify the exhaust system of a motor vehicle in a manner that will amplify or increase the noise emitted by the vehicle's motor so that the vehicle becomes noncompliant with the provisions of California Vehicle Code [Section 27150](#) or exceeds the noise limits established for the type of vehicle in [Article 2.5](#) (commencing with [Section 27200](#)) of the California Vehicle Code. No person shall operate a motor vehicle with an exhaust system so modified.
- E. The use, operation, or granting permission to be played, used, or operated of any sound playing or amplifying device, horn, or other machine or device for producing or reproducing sound from any motor vehicle on any public street to be plainly audible at any time at a distance of ten feet (10') from the motor vehicle in which it is located is prohibited.

- F. No person shall operate a motorcycle or any other motor vehicle in such a manner that it exceeds California Department of Motor Vehicles noise limits or makes, continues, or permits to be made or continued any unreasonably loud, unnecessary, or excessive noise.

#### **8.45.100 Inspections.**

- A. To evaluate compliance with the provisions of this chapter, the City is hereby authorized to inspect all noise sources and take measurements whenever and wherever necessary to determine the quantity and character of noise. If any person refuses or restricts entry and free access to any part of a premise or refuses inspection, testing, or noise measurement of any activity, device, facility, or process, the City may seek a warrant to inspect, test, or measure noise.
- B. It shall be unlawful for any person to refuse to allow or permit the City's Code Enforcement Officer, Chief of Police, or their designee free access to any premises when in compliance with a warrant or order for inspection, testing, and noise measurement issued by the appropriate court.
- C. It shall be unlawful for any person to violate the provisions of any warrant or court order requiring inspection, testing or measurement of noise sources.
- D. No person shall hinder, obstruct, delay, resist, prevent in any way, interfere or attempt to interfere with any authorized person while in the performance of their duties under this chapter.

#### **8.45.110 Enforcement and penalties for offenses.**

- A. The City's Code Enforcement Officer, Chief of Police, or their designee is responsible for enforcement of this chapter.
- B. Infraction. Any person violating or permitting violation of any of the provisions of this chapter is guilty of an infraction for each of the first two violations within a period of one year, and upon conviction thereof, shall be punished by a fine not to exceed the fine prescribed in accordance with the provisions of Section 36900 (b) of the California Government Code, or successor legislation. Each day such violation is committed or permitted to continue shall constitute a separate offense and be punishable. Any repetition or continuation of any violation, reasonably capable of immediate correction after receipt of written or verbal notice shall constitute a separate offense and shall be punished as such.
- C. Misdemeanor. Any person violating or permitting the violation of any of the provisions of this chapter for the third time within one year is guilty of a misdemeanor, and shall be punished by a fine or, by imprisonment in the County Jail, or by both such fine and imprisonment not to exceed the maximum fine and/or imprisonment established in Section 36901 of the California Government Code, or successor legislation.
- D. Administrative Remedies. A person violating or permitting violation of any of the provisions of this chapter may be cited in accordance with Chapter 1.09 of the Fortuna Municipal Code.
- E. As an additional remedy, the violation of any provision of this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

F. All remedies included herein are considered cumulative.

**8.45.120 Exception permits.**

A. A person residing, visiting, or conducting business in the City may apply for an exception from one or more provisions of this Chapter if the City requirement(s) is more stringent than State noise control regulations. The applicant must submit an exception permit application that includes the following information at least 45 days before the proposed activity:

1. The location and nature of the activity;
2. The duration and hours of said activity;
3. The nature and intensity of the noise that will be generated; and
4. Any other information required by the Community Development Director or Zoning Administrator.

B. Minimum required findings for approval.

1. The proposed activity will not violate state or federal law or California Department of Motor Vehicle or California Department of Environmental Protection regulations;
2. The noise levels generated by the proposed activity will not constitute a threat to public health, safety, welfare, or quality of life; and
3. Compliance with the regulations would constitute an unreasonable hardship on the applicant.

C. An exception permit application shall be reviewed and acted on by the Community Development Director or Zoning Administrator at least ten days before the proposed activity starts. The decision be in writing and state the conditions of approval, if any, or the reasons for denial.

D. Appeal of decision.

Any person who is dissatisfied with an exception permit decision may file a written notice of appeal with the City Clerk within three days of the decision but in no event less than five days before the proposed activity. The City Manager shall act as the review authority for exception permit appeals.