ORDINANCE NO. 1090

BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, North Dakota, as follows:

Declaration of Purpose and Intent.

1. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

2. The provisions and prohibitions of this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

Definitions. For the purpose of this chapter, certain words and phrases are defined as follows:

1. ñdB(A)ò means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for a type 1, 2, SIA, or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. ñNoiseò means any sound.

3. ñPersonò means any person, partnership, association, joint venture, corporation or any other entity.

Unlawful Noise.

1. It is unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. Loud, unnecessary or unusual noises or noises which annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others are defined with reference to subsection 2 of this section.

2. The standards which shall be considered in determining whether a violation exists include, but are not limited to, the following:

a. The volume of the noise.

b. The intensity of the noise.

c. Whether the nature of the noise is usual or unusual.

d. Whether the origin of the noise is natural or unnatural.

e. The volume and intensity of the background noise, if any.

f. The proximity of the noise to residential sleeping facilities.

g. The nature and zoning of the area within which the noise emanates.

h. The density of inhabitation of the area within which the noise emanates.

i. The time of the day or night the noise occurs.

j. The duration of the noise.

k. Whether the noise is recurrent, intermittent or constant.

3. A noise need not exceed the decibel levels in Table I be in violation of this section.

Tables; Exceptions.

1. It is unlawful to project a sound or noise excluding noise emanating from a motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table I below as measured at the property line of the property from which the noise is emanating.

a. Sound or noise projecting from one use district into another use district with a different noise level limit may not exceed the limits of the district into which the noise is projected.

b. The permissible levels in decibels set forth in Table I are modified so that

any noise occurring on property deemed to be nonconforming use property is determined upon the conforming zoning designation of the property.

TABLE I. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

Zoning District

	Residential	Commercial	Industrial
Maximum number of dB(A) permitted from 7:00 a.m. until 11:00 p.m. daily	55	65	80
Maximum number of dB(A) permitted from 11:00 p.m. until 7:00 a.m. of the following day	50	60	75

2. Motorized vehicles. It is unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table II as follows:

TABLE II. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

a. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:

Maximum allowable limit: 88 dB(A) measured at 25 feet.

b. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:

Maximum allowable limit: 80 dB(A) measured at 25 feet.

3. Exceptions. The following uses and activities are exempt from noise level regulations under this section:

a. Noises of safety signals, warning devices, and emergency relief valves.

b. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of any emergency.

c. Noises resulting from work of an emergency nature.

d. Any construction or reasonable and necessary maintenance activities except in residentially-zoned areas between the hours of 11:00 p.m. to 7:00 a.m.

e. Any other noise resulting from activities of a temporary duration permitted by law and for which a special permit therefore has been granted under this section by the city.

f. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations are exempt. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.

g. All railroad locomotives and railroad operations and motor carriers engaged in interstate commerce.

h. The use of snow removal equipment, including but not limited to tractors, plows and snow blowers in the aftermath of a snowfall.

i. The following events will be exempt:

a. Buggies-n-Blues Sponsored Events
_____b. 4th of July City Events
c. Mandan Racetrack
d. Mandan Shell Concerts in the Park
e. Use of Fireworks As Currently Set by the City of Mandan

4. Application for special permit. Application for relief from the noise level designated in this section on the basis of undue hardship may be made to the chief of police for the City of Mandan. Any permit granted by the chief of police shall contain all conditions under which the permit has been granted and shall specify a reasonable time that a permit is effective. The chief of police may grant the relief as applied upon a finding:

a. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

b. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this

section; and

c. That no other reasonable alternative is available to the applicant; and

d. The chief of police may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Guests on Premises. It is unlawful for any person to permit or allow guests on his or her premises to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

Noisy Party or Gathering Prohibited. No persons shall participate in any party or gathering consisting of two or more people when the party or gathering occurs in a residentially zoned or used area or building between the hours of 11:00 p.m. and 7:00 a.m. and when the party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, considering the time of day and the residential character of the area or building.

Order to Disperse - Refusal Prohibited. When a police officer determines that a party or other gathering of people is creating unreasonable noise, disturbing the peace, or is disturbing the quiet or repose of another person, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person ordered to leave the premises by a police officer shall refuse to do so.

Tenant or Owner - Cooperation Required. Every owner of a premises, or tenant in charge of a premises, who has knowledge of a disturbance shall cooperate with police and make reasonable effort to stop the disturbance.

Violations - Prima Facie Evidence. The following shall be prima facie evidence of a violation in any prosecutions under this Chapter:

1. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the police department is called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of a police officer.

2. As to the owner if the owner does not reside at the premises, if the police department gives the owner written notices of three violations of this ordinance by his

tenants at any single location within a six month period.

3. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this Chapter.

Classification; Penalty. A violation of any provision of this ordinance is an infraction, for which the maximum penalty is a fine in the amount of $500.00.

_____
President of City Commission

ATTEST:

_____
City Administrator

First Reading: _____
Second Reading and Final Passage: _____
Publication Date: _____