

Moab City Council Agenda Item
Meeting Date: April 13, 2021

Item: City of Moab Noise Control Ordinance 2021-07 - initial draft for consideration

Staff Presenter: Laurie Simonson, City Attorney

Disposition: Discussion and request for direction to staff

Attachments:

- Attachment 1: Draft City of Moab Noise Control Ordinance 2021-07
- Attachment 2: Current City of Moab Noise Ordinance (Moab Municipal Code Chapter 8.24)
- Attachment 3: City of Ogden Noise Ordinance
- Attachment 4: Grand County Draft Noise Ordinance
- Attachment 5: Utah Code Annotated §10-3-703
- Attachment 6: Sand Flats UTV Plot
- Attachment 7: FHWA Remel Graph of Vehicle Noise Emissions vs. Speed
- Attachment 8: 40 Code of Federal Regulations §205.152
- Attachment 9: 40 Code of Federal Regulations §205.52

Background:

The purpose of this draft Noise Control Ordinance (“Ordinance”) is to prevent noise pollution and excessive noise which may jeopardize the health, comfort, convenience, welfare, peace or safety of the citizens of Moab or degrade their quality of life. The City of Moab has the authority to regulate noise pursuant to authority granted by state statute and by the City’s inherent police power as noise pollution and excessive noise are health and safety issues. (See Attachment 1 at page 3.)

This Ordinance, if adopted, is intended to replace the City’s current noise regulations found in Moab Municipal Code, Chapter 8.24. Attachment 2 reflects the City’s current noise regulations. (Please note that Attachment 2 – Current City of Moab Noise Ordinance does not reflect the correct Chapter number for the current noise regulations. This is because at the March 23, 2021 City Council meeting, the Council adopted Ordinance 2021-04 moving

the City's noise regulations from Chapter 17 "Zoning" to Chapter 8 "Health and Safety" and so the correct numbering for the City's current noise regulation is Chapter 8.24. At the time of drafting this Agenda Summary, this change was not yet reflected in the City's Municipal Code as it does take time by our Code codifiers to make these changes.)

The City's noise consultant, Les Blomberg of the Noise Pollution Clearinghouse, reviewed the City's current noise regulations and believed that the current regulations needed to be updated to more current community standards and thus recommended a revision of the City's noise regulations in total. However, should the Council desire not to repeal the City's current noise regulations in their entirety, the Council has the authority to repeal and replace portions of the current noise regulations as it sees fit.

The provisions of this Ordinance are the result of collaboration with the OHV/ATV community (local business owners, Ride with Respect, the Motorized Trail Commission) and the County and Utah State University. Staff would also like to thank local OHV and ATV business owners for their time in meeting with the City Manager regarding this important issue.

The provisions of this Ordinance are based upon: (1) previous input and direction from the City Council; (2) input from the OHV/ATV community; (3) the Environmental Protection Agency's Model Community Noise Control Ordinance; (4) the City's prior Noise Ordinance (Moab Municipal Code Chapter 8.24) (Attachment 2); (5) the Noise Ordinance from the City of Ogden (Attachment 3); (6); the County's draft noise control ordinance (Attachment 4); consultation provided by Les Blomberg of the Noise Pollution Clearinghouse; (7) constraints placed on the City by state and federal law.

The provisions of this Ordinance, and specifically some of the decibel limits, are similar to those found in other communities. For example, the City of Ogden, UT's noise ordinance has a 55 dBA maximum sound level for residential receiving land use from 7:00 a.m. to 10:00 p.m. and a 50 dBA limit from 10:00 p.m. to 7:00 a.m. which are the same as proposed in this draft Ordinance. (See Attachment 3 at page 4 and Attachment 1 at page 11.) The City of Ogden's maximum sound levels for non-residential receiving land uses are higher than those propose by this Ordinance but this Ordinance's recommended maximum sound levels for non-residential receiving land uses are based upon the recommendation of the City's noise consultant, Les

Blomberg. The City of Ogden's maximum allowable noise sound pressure levels for motor vehicles weighing less than 10,000 pounds is 80 dBA measured from 25 feet. (See Attachment 3 at page 7.) This is consistent with the dBA level proposed in this Ordinance during the times of 8:00 a.m. to 8:00 p.m. (See Attachment 1 at page 14.) This Ordinance does propose a 78 dBA maximum allowable noise sound pressure levels for motor vehicles weighing less than 10,000 pounds from 8:00 p.m. to 8:00 a.m. Note that the City of Ogden's noise ordinance does have hours restrictions for maximum allowable noise sound pressure levels for motor vehicles weighing more than 10,000 pounds. (See Attachment 3 at page 7.) The City of Ogden's enforcement section (12-14-10) indicated that a violation of the ordinance is a Class B misdemeanor which is consistent with this Ordinance. (See Attachment 3 at page 8 and Attachment 1 at page 16.)

The decibel limits proposed in this Ordinance are also consistent with those proposed by Grand County. For example, the County has proposed a 92 dBA limit measured by a 20" stationary test for ATVs manufactured in 2021 or earlier (and then phases in more restrictive maximum sound pressure levels over time). (See Attachment 4 at page 10.) This Ordinance proposes a 92dBA limit for motor vehicles when measured by a 20" stationary test during daytime hours. (See Attachment 1 at page 13.)

The County's ordinance proposes a maximum sound pressure level of 80 dBA for vehicles weighing less than 10,000 pounds (and motorcycles) measured by a 25' pass by test during daytime hours and 78 dBA for nighttime hours. (See Attachment 4 at page 10.) This Ordinance proposes the same DBA limits for daytime hours and nighttime hours. (See Attachment 1 at page 14.)

The County's ordinance also proposes a maximum sound pressure level of 74 dBA for vehicles weighing less than 10,000 pounds (and motorcycles) measured by a 50' pass by test during daytime hours and 72 dBA for nighttime hours. (See Attachment 4 at page 11.) This Ordinance proposes the same DBA limits for daytime hours and nighttime hours. (See Attachment 1 at page 14.) The County's nighttime hours (called "Restricted Hours" in their ordinance) are from 9:00 p.m. to 7:00 a.m. (and 9:00 p.m. to 9:00 a.m. on Sunday), except during the summer months, defined as May through September, when the Restricted Hours are from 10:00 p.m. to 6:00 a.m. (See Attachment 4 at page 8.) The proposed nighttime hours in this Ordinance are 8:00 p.m. to 8:00 a.m. based upon the rationale behind the initial draft

legislation (Senate Bill 168) that the City supported. The Council is certainly able to change the nighttime hours in this Ordinance as it deliberates this draft.

The enforcement provisions of this Ordinance are consistent with the enforcement provisions of the draft County ordinance. Violation of the County's ordinance is a Class B misdemeanor. (See Attachment 4 at page 15.) Violation of this Ordinance is a Class B misdemeanor. (See Attachment 1 at page 16. Section 8.24.080(A) "Violation.") Note that state law limits the penalties that a municipality may impose for violation of a "moving traffic ordinance." The City may not impose a civil penalty for a "moving traffic ordinance." (See Attachment 5. UCA §10-3-703.)

This Ordinance also includes recommendations made by the Motorized Trails Committee. City staff has met with the Motorized Trails Committee and its Chair, Clif Koonz would like to thank them very much for their time and input.

This Ordinance includes input received from local OHV and ATV business owners at the Moab Chamber of Commerce listening sessions held on March 15 and 26, 2021. Local business owners felt that their fleets would comply with a 92 dBA stationary tailpipe test. Some local business owners indicated that they are also following a voluntary nighttime curfew for their rental fleets. Additionally, there was a strong sentiment conveyed at these listening sessions that the noise regulations adopted by the City and County be consistent. This Ordinance strives to achieve that goal.

This Ordinance includes various options for the Council to consider to address vehicular noise such as a stationary test (20" tailpipe test), pass by test (at 25' or 50') and a compliance with EPA labeling requirements. The Council is at liberty to include all of these options in the Ordinance or just some of them.

For purposes of reference regarding decibel levels for a pass by test, attached to this Agenda Summary are two pieces of data. The first is a plot of data obtained by Councilmember Duncan on San Flats Road on October 14, 2020 with decibel readings for passenger cars, SUV/van, Jeep, pickup truck, vehicle and trailer, big truck, motorcycle, Hummer, and UTV. (See Attachment 6.) The second is a graph of vehicle noise emissions vs. speed. This data is provided to give a general understanding of vehicle decibel readings. (See Attachment 7.)

Finally, it is important to note that by setting vehicle decibel limits, the City is not engaging in discrimination. Discrimination has a specific legal definition under Title VII of the Civil Rights Act. Title VII specifies certain protected categories. Vehicle ownership or operation is not a protected category under Title VII. Moreover, decibel limits for motorcycles and trucks over 10,000 pounds are already regulated by federal law. Street motorcycles or off-road motorcycles with engine displacements of 170 cc and lower manufactured in 1986 and thereafter are mandated by federal law to not exceed 80 dBA measured at 50 feet and street motorcycles manufactured from 1983 to 1985 cannot exceed 83 dBA measured at 50 feet. (See Attachment 8.) Off-road motorcycles with engine displacements greater than 170 cc manufactured in 1986 and thereafter are mandated by federal law to not exceed 82 dBA measured at 50 feet and street motorcycles manufactured from 1983 to 1985 cannot exceed 86 dBA measured at 50 feet. (See Attachment 8.) Vehicles in excess of 10,000 pounds manufactured in 1988 and thereafter are mandated by federal law to not exceed 80 dBA measured at 50 feet. Vehicles in excess of 10,000 pounds manufactured in from 1979 to 1987 are mandated by federal law to not exceed 83 dBA measured at 50 feet. (See Attachment 9.)

This draft Noise Control Ordinance is presented to the Council for discussion and deliberation. The Council is at liberty to add to or remove portions of the Ordinance as it sees fit. Staff requests particular input as to the information contained in brackets in the draft Ordinance.