

NYE COUNTY AGENDA INFORMATION FORM

Action Presentation Presentation & Action

Department: Planning		Agenda Date:
Category: Timed Agenda Item – 11:00 a.m.		February 19, 2019
Contact: Brett Waggoner	Phone: 775-751-4249	Continued from meeting of:
Return to: Brett Waggoner	Location:	Phone:
Action requested: (Include what, with whom, when, where, why, how much (\$ and terms)		
<p>Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2019-02: A Bill proposing to amend Nye County Code Title 9 Public Peace, Morals, and Welfare by adding Chapter 9.30 Noise Control, to conserve and promote the public health, safety, morals and general welfare of the present and future inhabitants of Nye County providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto; and 2) Set an effective date.</p>		
<p>Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)</p> <p>Staff recommends adoption of the Bill with an effective date of March 11, 2019.</p>		
<p>Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.</p>		
<p>Expenditure Impact by FY(s): (Provide detail on Financial Form)</p> <p><input checked="" type="checkbox"/> No financial impact</p>		

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	<i>RB</i> Date 12-04-18
4.	Date	9. Finance	<i>NA</i> Date
5.	Date	10. County Manager	<input checked="" type="checkbox"/> Place on Agenda <i>SC</i>

ITEM # 10

BILL NO 2019-028-**
NYE COUNTY ORDINANCE NO. _____

SUMMARY: A Bill proposing to amend Nye County Code Title 9 Public Peace, Morals, and Welfare by adding Chapter 9.30 Noise Control, to conserve and promote the public health, safety, morals and general welfare of the present and future inhabitants of Nye County providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

TITLE: A BILL PROPOSING TO AMEND NYE COUNTY CODE TITLE 9 PUBLIC PEACE, MORALS, AND WELFARE BY ADDING CHAPTER 9.30 NOISE CONTROL, TO CONSERVE AND PROMOTE THE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE OF THE PRESENT AND FUTURE INHABITANTS OF NYE COUNTY PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, pursuant to NRS 244.119, the Nye County Board of Commissioners (“Board”) is authorized to amend the Nye County Code; and

WHEREAS, pursuant to NRS 244.363, the Board may, by ordinances, regulate, control, and prohibit, as a public nuisance, excessive noise which is injurious to health or which interferes unreasonably with the comfortable enjoyment of life or property within the boundaries of Nye County; and

WHEREAS, the proposed Chapter 9.30 was drafted with the intent to increase citizen satisfaction and community enjoyment;

NOW THEREFORE, pursuant to NRS 244.110, the Board of County Commissioners of the County of Nye, State of Nevada, does ordain:

NYE COUNTY CODE TITLE 9 IS HEREBY AMENDED AS FOLLOWS, with Deletions shown in strike-through red font, and additions and modifications shown in underscored blue font:

CHAPTER 9.30: NOISE CONTROL

9.30.010: APPLICABILITY:

This chapter shall apply to all unincorporated areas of Nye County.

9.30.020: DEFINITIONS:

COUNTY: The County of Nye, State of Nevada.

DEMOLITION: Any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

EMERGENCY: A sudden, unexpected, or unforeseen health or safety hazard that requires immediate action to remedy or safeguard the persons or property within Nye County.

EMERGENCY WORK: Any work that is performed to prevent or remediate the sudden, unexpected, or unforeseen health or safety hazard occurring to the persons or property within Nye County.

MUFFLER or SOUND DISSIPATION DEVICE: Any device for abating the sound of escaping gases of an internal combustion engine.

NOISE: A sound, especially one that is loud or unpleasant or that causes disturbance.

NOISE DISTURBANCE: Any sound which is unreasonably loud, disturbing, or unnecessary or which endangers or injures the health of humans or annoys or disturbs a reasonable person of normal sensitivities.

9.30.030: PURPOSE AND INTENT:

The purpose of this chapter is to protect and preserve the public health and comfortable enjoyment of the people in their life and property by the regulation, control, and prohibition, as a public nuisance, of excessive noise which is injurious to the public's health or unreasonably interferes with the comfortable enjoyment of life or property within the boundaries of the unincorporated areas of Nye County.

9.30.040: GENERAL PROHIBITIONS:

A. No person shall make, continue, or cause to be made or continued:

1. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of persons of ordinary sensitivity, within the unincorporated areas of Nye County;
2. Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons of ordinary sensitivity within the neighborhood from which such noise emanates, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to unreasonably and adversely affect such residences or places of business; or
3. Any noise as outlined in Nye County Code Title 6.20, Section 6.20.010.

B. Factors for determining whether a sound is prohibited by subsection A of this section include, but are not limited to, the following:

1. The proximity of the sound to sleeping facilities, whether residential or commercial;
2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
3. The time of day or night the sound occurs;
4. The duration of the sound;

5. Whether the sound is recurrent, intermittent, or constant; and
6. Any other relevant factors which may assist in determining if a sound is prohibited.

9.30.050: SPECIFIC PROHIBITIONS:

The following acts, and the causing, creating, or continuation thereof, are declared to be per se violations of this chapter. If it is determined that a person committed any of the following acts, a Nye County Code Compliance Officer may issue or cause to be issued a misdemeanor citation. This enumeration does not constitute an exhaustive list of the prohibited noises.

- A. Radios, Television Sets, Boomboxes, Musical Instruments and Similar Devices. Operating, playing, or permitting the operation or playing of any radio, television, phonograph, stereo, drum, musical instrument, sound amplifier, or any device which produces, reproduces or amplifies sounds between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays:
 1. That is plainly audible to any person (in addition to or other than the player(s) or operator(s) of the device and/or those who are voluntarily choosing to listen to the sound) and which unreasonably disturbs the quiet, comfort, or repose of any persons of ordinary sensibilities; or
 2. In such a manner as to be plainly audible at fifty (50) feet from such set or device when operated in or on a motor vehicle on a public right of way, road, or public space.
- B. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. The unreasonably loud or raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing, reproducing, or amplifying sounds between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:
 1. Within or adjacent to a residential area, school, hospital, nursing home, public library, or similar institution or place which is particularly sensitive to noise; or
 2. Within any real property or structures on real property, owned or operated by a government entity and normally accessible to the public, if the sound is plainly audible across the real property line of the public space from which the sound emanates.
- C. Yelling, Shouting, Hooting, and Similar Sounds. Yelling, shouting, hooting, whistling or singing on the public road, between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays, or any time or place so as to unreasonably annoy or disturb the quiet, comfort or repose of any persons of ordinary sensibilities.
- D. Exhaust Discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or motorboat engine except through a muffler or sound dissipation device.
- E. Building Operations. The excavation, erection, demolition, alteration, or repair of any building in any new or existing residential district or section, other than between the hours of 7:00 a.m. and 7:00 p.m. If an emergency arises between the hours of 7:00 p.m. and 7:00 a.m., a permit granted by the Zoning Administrator or his or her designee is required as soon as practicable after the emergency arises. The permit may be granted for a period not to exceed fifteen (15) calendar days while the emergency continues.

If the Zoning Administrator or his or her designee determines that the public health and safety will not be impaired by the excavation, erection, demolition, alteration, or repair of any building in any new or existing residential district between the hours of 7:00 p.m. and 7:00 a.m., and if he or she further determines that loss or inconvenience would result to any party in interest, the Zoning Administrator may grant permission for such work to be done between the hours of 7:00 p.m. and 7:00 a.m. upon application being made at the time the permit for the work is awarded or during the progress of the work.

- F. Noises Near Schools, Hospitals, Churches, Government Buildings, and Similar Locations. The creation of any noise described in Section 9.30.040(A) on any road adjacent to any school, institution of learning, church, court, or other similar building while the same are in session, or adjacent to any hospital at any time, which unreasonably interferes with the workings, activities, or sessions thereof.
- G. Loading and Unloading. Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to cause noise described in Section 9.30.040(A) across a residential real property boundary.
- H. Vehicle or Motorboat Repairs and Testing. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise described in Section 9.30.040(A) across a residential real property boundary.
- I. Emergency Signaling Devices.
 - 1. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this section. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not between the hours of 9:00 p.m. and 8:00 a.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds.
 - 2. Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within fifteen (15) minutes of activation. If an activation of an alarm, even if false or accidental, occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this chapter and shall be subject to the penalties outline in Section 9.30.070 of this chapter.

9.30.060: EXEMPTIONS:

- A. Holders of special event permits, pursuant to Nye County Code Title 12, Chapter 12.10 or outdoor assembly licenses, pursuant to Nye County Code Title 5, Chapter 5.16, issued by the Board of County Commissioners and are not violating any conditions established within are exempt from the provisions of this chapter.
- B. In emergency situations, the provisions of this chapter shall not apply to:
 - 1. Nye County Sheriff's Office, Nevada Highway Patrol, fire, and emergency vehicles and equipment;
 - 2. The emission of sound for purposes of alerting persons to the existence of an emergency; or

3. Sounds emitted in the performance of emergency work.
- C. Activity permitted pursuant to Article 33 of the International Fire Code is exempt from the provisions of this chapter.
- D. School sponsored activities and sporting events are exempt from the provisions of this chapter.

9.30.070: VIOLATION; PENALTY:

Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or imprisonment for not more than six (6) months, or both fine and imprisonment.

SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the _____ day of _____, 2018.

Proposed on the _____ day of _____, 2018.

Proposed by: Commissioner _____.

Adopted on the _____ day of _____, 2018

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: _____
John Koenig, Chairman
Nye County Board of
County Commissioners

ATTEST: _____
Sandra L. "Sam" Merlino
Clerk and Ex-Officio
Clerk of the Board

NYE COUNTY ORDINANCE NO. _____

SUMMARY: A Bill proposing to amend Nye County Code Title 9 Public Peace, Morals, and Welfare by adding Chapter 9.30 Noise Control, to conserve and promote the public health, safety, morals and general welfare of the present and future inhabitants of Nye County providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

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WHEREAS, pursuant to NRS 244.363, the Board may, by ordinances, regulate, control, and prohibit, as a public nuisance, excessive noise which is injurious to health or which interferes unreasonably with the comfortable enjoyment of life or property within the boundaries of Nye County; and

WHEREAS, the proposed Chapter 9.30 was drafted with the intent to increase citizen satisfaction and community enjoyment;

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B. Factors for determining whether a sound is prohibited by subsection A of this section include, but are not limited to, the following:

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 2. In such a manner as to be plainly audible at fifty (50) feet from such set or device when operated in or on a motor vehicle on a public right of way, road, or public space.
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 1. Within or adjacent to a residential area, school, hospital, nursing home, public library, or similar institution or place which is particularly sensitive to noise; or
 2. Within any real property or structures on real property, owned or operated by a government entity and normally accessible to the public, if the sound is plainly audible across the real property line of the public space from which the sound emanates.
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- E. Building Operations. The excavation, erection, demolition, alteration, or repair of any building in any new or existing residential district or section, other than between the hours of 7:00 a.m. and 7:00 p.m. If an emergency arises between the hours of 7:00 p.m. and 7:00 a.m., a permit granted by the Zoning Administrator or his or her designee is required as soon as practicable after the emergency arises. The permit may be granted for a period not to exceed fifteen (15) calendar days while the emergency continues.

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 - 1. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this section. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not between the hours of 9:00 p.m. and 8:00 a.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds.
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 - 1. Nye County Sheriff's Office, Nevada Highway Patrol, fire, and emergency vehicles and equipment;
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3. Sounds emitted in the performance of emergency work.
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SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the _____ day of _____, 2018.

Proposed on the _____ day of _____, 2018.

Proposed by: Commissioner _____.

Adopted on the _____ day of _____, 2018

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: _____
John Koenig, Chairman
Nye County Board of
County Commissioners

ATTEST: _____
Sandra L. Merlino
Clerk and Ex-Officio
Clerk of the Board

Beatty Town Advisory Board
PO Box 837
Beatty, Nevada 89003
775-553-2050



January 14, 2019

Brett Waggoner: Nye County Planning Director

Director Waggoner,

First, thank you for the opportunity to comment on this addition to NCC title 9, 9.30 Noise Control amendment; which is intended to regulate, control and prohibit, as a public nuisance, excessive noise which is injurious to health or unreasonably interferes with the enjoyment of life or property.

The general opinion of the residents of Beatty is that this is something to be supported, however, there are questions and concerns about this draft.

Nye County is diverse in business and industry, population density, geography, and resident priorities. This diversity is part of what makes Nye County attractive to the people that decide to make it their home and business and industry who decide to invest here. It also makes creating laws that meet the needs of this diverse County very difficult, making community input critical.

If there is a community that is experiencing issues with noise complaints, could Nye County Code chapter 17.04.860 G Noise; be used as a template and modified by making a person violating this section guilty of a misdemeanor to give it the force of law?

(G. Noise: Excessive noise which is injurious to health or which interferes unreasonably with the comfortable enjoyment of life or property within the Pahrump regional planning district.)

Would the Commissioners consider passing a law specific to that community now, to address their concerns?

Please allow the rest of the Nye County's communities time to work toward a draft that could be adopted countywide that is in keeping with common community/county goals and values.

Below are some of our questions and concerns with the draft as presented for review.

- As this is the first opportunity that Beatty has had to review the creation of a countywide ordinance addressing noise. We would like more time to consider the proposed ordinance.
- What is/was the catalyst that drove this particular issue and in what areas of the County?
- Who was involved in creating this draft?
- Concerns specific to the draft, section 9.30.050 A.; the hours on weekdays, weekends and holidays need additional discussion and consideration. The weekday hours of 10:00 pm to 7:00 am may be a bit aggressive for our community, 10 pm may be too early for our community. The weekend hours of 10:00 pm to 10:00 am are not suitable for our community. We live in a very hot climate for most of the year and subjecting people to a possible noise violation because they are trying to work on their home or project in the morning before the heat of the day is not in the best interest of the population. We also live in a 24/7 world now and people's work weeks are not as traditional as they once were. This draft is written in such a way that it can be perceived as discriminatory against shift workers. It seems to be written from a white collar perspective (8 to 5 Monday –Friday) versus a blue-collar perspective (industry that operates 24/7).

We suggest that the hours identified for restriction be reevaluated.

Beatty Town Advisory Board
PO Box 837
Beatty, Nevada 89003
775-553-2050



- Nye County rural communities have 24/7 commerce related operations such as mines which would be in violation of this law all the time.
In section 9.30.040: A. GENERAL PROHIBITIONS, it states "No person shall make, continue, or cause to be made or continued."
If this language is intended to exclude commerce/industry related noise it is not clear.
There is no definition of "person" in section 9.30.020: DEFINITIONS.
We ask that you clarify to whom this law will apply by defining person.
- Most Nye County communities do not have zoning which makes delineating appropriate and justifiable noise related to commerce difficult if not impossible. That being said most people can discern when noise is created by one individual/entity with the intent to disturb and or harm another. We do not want to see our already taxed law/code enforcement officers caught up in a vendetta.
We ask that local communities are allowed to explore and identify appropriate language that targets their issues i.e. commerce/business related versus personal/individual creating an understandable and enforceable law.
- General concerns about Chapter 9.30: there is not a clear definition of the reporting process. It states that a Nye County Code Compliance Officer may issue a citation. How does a resident outside the PRPD file a complaint? There are no Compliance Officers located in any community outside of the PRPD. Is the reader to infer that a Nye County Sheriff's Deputy can also issue a citation?
We ask that you consider modifying the law to clearly state that a citation can be issued by NCSO and or NCC Compliance Officer.
- 9.30.040 General Prohibitions B number 6 "other relevant factors which may assist in determining if a sound is prohibited" is extremely vague. How is the individual making the determination qualified to make that decision?

Because of the questions and concerns we have we are asking that the Board of County Commissioners table this item until the Planning Department and Nye County Communities have the chance to review and understand the types of complaints that have moved the County to consider creating and passing a law. Through that process, we have the opportunity to discern how best to address the current issues and explore potential future issues.

Thank you again for this opportunity to comment and for your consideration.

Sincerely,


Dick Gardner
Chair
Beatty Town Advisory Board

Melissa Godfrey

From: Diane Jacobson <djacobson@premiermagnesia.com>
Sent: Monday, January 14, 2019 10:31 AM
To: Brett Waggoner
Cc: Celeste Sandoval; Amanda VanHouten; Steve Osborne
Subject: RE: Nye County Code 9.30 - Noise Control

Thank you, Brett.

My comments are based on the area I currently live in, and upon my past working experience. Gabbs seems respectful of the needs of others, and we can usually express concerns in a positive manner. Not having so many rules and regulations seems to be one of rural Nevada's treasures!

The Cities of Cambridge and Mora in Kanabec County, MN, each had their own ordinances to govern curfew, noise, etc. I assisted with charging documents in the juvenile court setting, and the ordinances were helpful in reducing noise and curfew problems. The population was much greater however!

I respect the fact that the Commissioners have a broader view of the needs for Nye County as a whole. I appreciate the opportunity to comment.

Sincerely,
Diane Jacobson
Gabbs Town Advisory Board

From: Brett Waggoner <bwaggoner@co.nye.nv.us>
Sent: Monday, January 14, 2019 9:55 AM
To: Diane Jacobson <djacobson@premiermagnesia.com>
Cc: Celeste Sandoval <csandoval@co.nye.nv.us>; Amanda VanHouten <avanhouten@co.nye.nv.us>; Steve Osborne <sosborne@co.nye.nv.us>
Subject: RE: Nye County Code 9.30 - Noise Control

Hello Diane,

Thank you for your comments. We will certainly include your comments in the backup for this item for the commissioners consideration during the public hearing.

Respectfully,

Brett Waggoner

Director of Planning
Nye County
775-751-4244

From: Celeste Sandoval
Sent: Monday, January 14, 2019 9:11 AM
To: Brett Waggoner <bwaggoner@co.nye.nv.us>; Amanda VanHouten <avanhouten@co.nye.nv.us>; Steve Osborne <sosborne@co.nye.nv.us>
Subject: FW: Nye County Code 9.30 - Noise Control

From: Diane Jacobson <djacobson@premiermagnesia.com>

Sent: Monday, January 14, 2019 8:55 AM

To: Celeste Sandoval <csandoval@co.nye.nv.us>

Cc: Reyna Martin <rmartin@co.nye.nv.us>

Subject: Nye County Code 9.30 - Noise Control

Good Morning,

Thank you for the copy of the proposed amendment to the Nye County Code 9.30.

The proposed provision seems excessive in my opinion. Each unincorporated area of Nye County should be able to address any concerns in a common sense manner without these county-wide prohibitions, which don't address decibel levels, and would be difficult to enforce.

While the attempt is to protect the citizens of Nye County, I do not feel this amendment is necessary or even helpful in accomplishing the intended purpose.

Thank you for allowing me to comment.

Sincerely,

Diane Jacobson
504 E Avenue
P O Box 222
Gabbs, NV 89409-0222
Cell: 320-272-4911