

ORDINANCE NO. [1255]

AN ORDINANCE OF THE CITY OF FERNDALE ESTABLISHING A NUISANCE CONTROL REGULATION BY ADDING TO AND CORRECTING ALL OF CHAPTER 8.08 OF THE FERNDALE MUNICIPAL CODE, AND REPEALING ALL OF CHAPTER 8.12 OF THE FERNDALE MUNICIPAL CODE.

The City of Ferndale does hereby ordain as follows:

Section 8.08.010 NUISANCE CONTROL

It is the purpose of this nuisance control regulation to prevent and prohibit safety and health hazards that create a menace to the health and welfare of the public and to prevent and prohibit those conditions and activities which interfere with the enjoyment of public and private property. Accordingly, any act or omission that unreasonably interferes with another's use of their land or property; that injures or endangers the health or safety of others; that poses a threat or harm to the life of another or in the use of their property is hereby declared unlawful and in violation of this nuisance control. Nuisance includes (a) a nuisance defined by statute; (b) a nuisance at common law, either public or private; and (c) those specific actions or omissions defined herein; provided, reference to specific acts or omissions is not intended as a limitation on the definition of a nuisance.

Section 8.08.020 NUISANCE AND DISTURBANCE NOISE

The purpose of noise control is to minimize the exposure of citizens to the physiological and psychological damages of excessive noise and to protect, promote and preserve the public health, safety and welfare and to control the level of noise in a manner which promotes the use, value and enjoyment of property, sleep and repose, and the quality of the environment. The following sounds are determined to be nuisance and disturbance noises, provided, that the following enumeration of acts and noises not be construed as excluding other acts and noises which offend the public peace:

A. Any noise or sound that intrudes into the property of another person that exceeds the maximum permissible noise levels in this section or as established in WAC 173-60-040, as amended. The maximum permissible noise levels are as set forth in the following table:

Source of Noise by Zone District	Receiving Property by Zone District		
	(1) Residential single & multi-family	(2) Business and Commercial	(3) Light Industrial
(1) Residential single & multi-family	55dBA reduced by 10dBA between hours of 10 p.m. and 7 a.m.	57dbBA	60dBA
(2) Business and Commercial	57 dBA	60 dBA	65dBA
(3) Light Industrial	60 dBA	65 dBA	70 dBA

The applicable noise levels for (2) and (3) may be adjusted by no more than:

- (a) 5dBA for a total of 15 minutes in any one-hour period; or
- (b) 10 dBA for a total of 10 minutes in any one-hour period; or
- (c) 15 dBA for a total of 1.5 minutes in any one-hour period.

For purposes of the above table, the following definitions pursuant to WAC 173-60-020 apply:

1. “Noise” means the intensity, duration and character of sounds from any source;

2. “dBA” means the sound pressure in decibels measured using the “A” weighting network on a sound level meter;

3. “Receiving Property” means real property within which the maximum permissible noise levels specified herein shall not be exceeded from sources outside the property; and

4. “Sound Level Meter” means a device which measures sound pressure levels and conforms to Type 1 or Type 2 as specified in the American National Standards Institute Specifications 51.4 - 1971.

B. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.

C. The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property.

D. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property.

E. Frequent, repetitive or continuous sound plainly audible within any dwelling unit which is located within the Single Family Dwelling, Multi-Family Dwelling, Residential Office or Central Business zones established pursuant to Chapter 18 of the Ferndale Municipal Code, which sound is of such loudness as to unreasonably disturb the peace, comfort and repose of the owners or possessors of such dwelling units living or residing therein, and which emanates from any source including without limitation from any device designed for sound production or reproduction or sound that emanates from any manufacturing, commercial or industrial operation or from the use of any tools or equipment.

F. The noisy operation of any automobile, truck, motorcycle or other vehicle in such a non-emergency manner to cause the squealing of tires by the rapid and careless acceleration of a vehicle; the loud and continuous grinding, bumping or grading noises from trucks or other commercial vehicles; the engine compression noise from the unmuffled or poorly muffled compression braking of trucks; the sound from any motor vehicle audio sound system such as tape players, radios, and compact disc players at volumes so as to be audible greater than fifty (50) feet from the vehicle itself; and, loud, excessive engine or exhaust noise from unmuffled vehicles or vehicles operating with inadequate muffler systems to prevent unreasonable loud noises.

G. Sound from portable audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator.

H. The playing or causing to be played in front of any building where any show, moving picture exhibition, or theatrical performance is given or in the open vestibule or area of any building, any automatic or mechanical musical instrument for the attraction of customers.

I. The following are exempt from Sections A through H herein:

1. Sounds originating from temporary construction sites; or
2. Sounds from regularly scheduled events at any of the parks, school district band or music events, officially sanctioned parades, sporting or other public events; or
3. Sounds created by safety and protective devices, emergency equipment or created by law enforcement or for the health, safety and welfare of the community.

Section 8.08.030 EMISSION OF OBNOXIOUS ODORS, FUMES OR SMOKE; BLOWING OR SCATTERING OF DUST; SPREADING OF DIRT OR SOIL

It is the purpose of this air quality control regulation to minimize and eliminate the release and escape of obnoxious and offensive emissions into the air which are injurious to health or unreasonably interfere with the enjoyment of life and property. The following are determined to be a nuisance:

A. Except as to any odors arising out of any reasonable and lawful use of property for farm or agricultural purposes, including dairy farming and the permitted or allowed disposal of manure on property that is part of the dairy farm operation, all dangerous, unwholesome, nauseous or offensive odors, gases or fumes arising from or incidental to any business or uses of property where such odors, gases or fumes are allowed to escape in the open air in such amounts as to be at any time detrimental to the health of any individuals or the public or that is so noticeable, discomforting or disagreeable so as to offend the sensibilities of any reasonable individuals or the public at a distance of two hundred feet from the building or the source of such odors, gases or fumes or at the property boundary where the same are generated and released. The use of property for farm and agricultural purposes shall mean actual dairy farming operation or the growing of crops, and not the ancillary handling or processing of farm products, waste or manure where the actual farm or agricultural activity is not conducted.

B. Any open burning, including burning barrels, of any materials, including without limitation, plastics, rubber, refuse, petroleum or hydrocarbon products, sawdust, yard or construction waste.

C. The blowing and scattering of dust or the scattering or spreading of dirt or soil or other dust causing materials on public streets or rights-of-way creating dust that affects the health, comfort or repose of individuals or the public.

Section 8.08.040 PARKING AND REPAIRING VEHICLES IN RESIDENTIAL AREAS

It is the purpose of this section to prevent significant and major automobile repair in streets and yards as provided herein and to eliminate the parking of vehicles in front yards other than driveways where it becomes an annoyance to neighbors and affects the residential character of a neighborhood. It is not the purpose of this section to eliminate, prevent or restrict property owners from the day to day maintenance and minor repairs of their vehicles in their yards and driveways that is specifically prohibited herein. Accordingly, the following is determined to be a nuisance:

A. Except the parking of a vehicle in a prepared sideyard parking area that is screened from view, the parking of a vehicle within the area designated as a front yard or side yard within a residentially zoned area, when the required minimum front or side yard abuts any sidewalk or curb, or within the actual front yard area of the residence that is not

part of the designated street parking area. Parking shall be permitted in and upon designated driveways as provided in this section. The designated driveway is defined as the surfaced roadway leading from the street to the garage, covered parking area, or other permitted off street parking area. A designated driveway is defined as a clearly defined roadway leading from the street which is surfaced by asphalt, concrete, gravel or similar material not to exceed 24 feet in width or such width as may be allowed in any other development standards adopted by the City of Ferndale.

B. Major servicing, repairing, assembling, wrecking, modifying, restoring or otherwise working on any vehicle at any residential premises where (1) the vehicle is not owned by the occupant of the residence, or (2) the total of all such servicing, repairing, assembling, wrecking, modifying or restoring of said vehicles exceeds a one-time five (5) day maximum time frame unless such work shall be conducted within an enclosed permanent structure or a garage. Such work shall only be done between the hours of 8:00 a.m. and 9:00 p.m.; and such work shall not be undertaken or the vehicle parked in the area designated as the front yard or side yard as provided in Subsection A above.

C. Except as to the occasional or temporary visitor, guest or recreational use, the living or residing in any motorhome, tent, trailer, camper or other vehicle that is not a permanent residential structure or housing unit anywhere within the City of Ferndale, except in designated and approved camping or trailer parks with necessary water, sanitary facilities and electrical connections. For purposes of this section, the occasional or temporary visitor shall mean a non-resident family member or guest who has an established residence elsewhere who is visiting for not more than thirty (30) days in a twelve (12) month period; provided, if the visitor intends a longer than thirty (30) day visit, the owner and visitor may apply for one thirty (30) day extension with the City Council Planning and Judicial Committee, and the one thirty (30) day extension may be granted where the visitor satisfactorily demonstrates that the motorhome, tent, trailer, camper or other vehicle is not being used as a permanent residence.

Section 8.08.050 PLACING VEHICLES, BOATS AND TRAILERS ON PROPERTY FOR SALE

It is the purpose of this section to eliminate and minimize the risk to vehicles and pedestrian traffic and to the public in general where vehicles, boats, trailers or other recreational vehicles or equipment are placed on private or public property along the streets and arterials for sale. The following is determined to be a nuisance:

A. The placing or parking along street and road rights-of-way or in direct and plain view thereof of any vehicle, licensed or unlicensed, boat, trailer, motorhome, mobilized equipment or machinery, recreational vehicle and equipment placed or parked on property that is owned by someone other than the owner of the vehicle, trailer, motorhome, etc. for the purpose of selling the same. The placing or parking of any vehicle, etc. on property owned by another includes business and commercial property so

long as the business is not regularly engaged and licensed pursuant to Chapter 46.70 RCW, in selling the particular vehicle, equipment, etc.

Section 8.08.060 ATTRACTIVE NUISANCE

It is the purpose of this section to protect the public and particularly children of any age from injury or death from conditions that may otherwise attract them or that have existed where the public or children are known to frequent and present a hazardous situation or condition. The following are determined to be an attractive nuisance:

A. Open excavations, ditches or trenches that an adult or child could reasonably be expected to injure themselves if such adult or child were to fall or slip into the same or any open excavation, ditch or trench, other than designed and approved storm detention facilities that may collect standing water for any period of time, where such open excavation, ditch or trench remains open and exposed or where adequate precautions reasonably designed to prevent access by an adult or child such as fencing, warnings, brightly colored warning tape, patrolling or monitoring of the immediate area in question are missing or not in place. If active construction has ceased for a period of seven days or more, open excavations, ditches or trenches shall be properly covered or secured.

B. Machinery and equipment accessible to an adult or child of any age that may be potentially dangerous if the public or children were to be exposed to or playing on or about the same. Machinery and equipment includes all motorized construction equipment; electrical, gas operated and air pressure tools and equipment and potentially dangerous hand tools left in such a condition where adequate precautions reasonably designed to prevent access by an adult or child such as fencing, warnings, red or orange warning tape, patrolling or monitoring of the immediate area in question are missing or not in place.

C. The improper handling, storage or keeping of any chemical substances, mixtures or wastes as defined in the Toxic Substances Control Act, 15 U.S.C. Section 2601 – 2692; hazardous substances, materials or wastes as defined under the Washington Model Toxics Control Act, RCW 70.105D, or other substances, materials or wastes that could reasonably be expected to be harmful or injurious to the public or children of any age that are used, stored or kept on private property or at a construction site or any commercial property in such a manner that it could reasonably be expected that children or the public could access the same. Improper use, handling, storage or keeping means such substances, materials, wastes or chemicals are left in an unsecure and unlocked storage facility or left accessible by the intruding public or children around commercial, business or construction sites. Also, construction materials that could reasonably be expected to be harmful to children that are not specifically defined or referred to herein are a potential nuisance.

D. Abandoned, used or unused, discarded or stored icebox, refrigerator, freezer or other containers having a door with a latch or lock that is not opened from the inside or any structure or building of any nature that is not regularly occupied or that may be

abandoned that any person or child could enter and may not reasonably be expected to remove themselves therefrom or it may reasonably be expected that such person or child could be injured thereon.

E. The existence of any open or unsecure well, pit, shaft, storage tank, cistern or any similar situation that is not securely closed and made inaccessible to the general public or children. Abandoned, uncompleted construction or construction materials not covered, marked or secured in an appropriate manner.

Section 8.08.070 TREES, PLANTS, SHRUBS OR VEGETATION

It is the purpose of this section to eliminate and remove uncultivated vegetation that presents a menace to the public health, safety and welfare of the community and to prevent and exterminate to the extent possible noxious weeds. The following is determined to be a nuisance:

A. Trees, plants, shrubs or vegetation, or parts thereof which so overhang any sidewalk or street, or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public or obstruct the view of pedestrians or users of vehicles thereon or interfere with the wires, poles or fixtures lawfully maintained thereon.

B. Grass, weeds, shrubs, bushes, refuse, trees or other types of plants or vegetation that is left growing in an unmaintained or uncontrolled manner or which left in a pile or piles or scattered about on any property and becomes a fire hazard or a gathering place for rodents, skunks, wasps, or other animals, pests or insects.

C. Noxious weeds, meaning a plant or plants that when established are highly destructive, competitive or difficult to control by cultural or chemical practices or that may be listed in the "Washington State Noxious Weeds List" established pursuant to Chapter 17.10, RCW, that are left growing uncontrolled or left growing where no action is taken to eliminate or eradicate the same, and as a result thereof, the noxious weeds have spread or are reasonably expected to spread to residential properties in the immediate vicinity.

D. Rapidly growing deciduous shrubs and trees, including alder, birch, poplar and cottonwood, left unattended and not maintained or pruned on vacant property that exceed 20 feet in height that potentially shade, eliminate view corridors, and scatter leaves and debris on adjoining property.

E. The disposal, dumping or placing of grass or lawn clippings, leaves, shrub and tree pruning or debris and other yard waste or debris on neighboring or adjacent property owned by another without the consent or permission of such neighboring or adjacent property owner.

Section 8.08.080 UNHEALTHY OR UNSIGHTLY CONDITIONS

A. The keeping or maintenance in any area on private property which is clearly visible from a public street, sidewalk, park or other public area any accumulation, collection or untidy storage of any of the following: old appliances or parts thereof; old iron, steel, aluminum or other metal; inoperable junk vehicles, vehicle parts, machinery or equipment; mattresses, bedding, clothing, rags or cloth; straw, packing material, cardboard or paper; tin cans, wire, bottles, glass, cans, barrels, bins, boxes, containers, ashes, plaster or cement; wood or lumber not neatly stacked or piled; or, in addition to the above articles, any condition judicially determined to be unhealthy after written complaint from a local health official, a fire hazard after written complaint from a local fire official or an unsightly condition after written complaint from two (2) or more residents within the neighborhood or general vicinity of the condition.

B. Throwing or depositing or causing to be deposited in any street, alley or other public place in the City any garbage, refuse, filth, debris, offal, the carcass of any animal, or other offensive matter, or causing or permitting such or any offensive matter to collect or remain in any place in the City to the prejudice or annoyance of others.

Section 8.08.090 UNLAWFUL TO PERMIT OR MAINTAIN NUISANCE

It is unlawful and a misdemeanor for any person, by himself or by his agents or employees, or as the agent or employee of another person, firm or corporation, to do or permit to be done upon any premises over which he has control, or maintain, carry on, suffer or allow any of the acts or things declared to be nuisances herein; or to do or cause or permit, or suffer to be done, or to maintain any act or thing which is detrimental or injurious to public health, or offensive to the senses, or contrary to public decency or morality. If the owner or agent of any premises has actual or constructive knowledge of the maintenance on or in his premises of any nuisance, as defined herein, he shall be deemed one of the persons in control of the premises.

Section 8.08.100 ENFORCEMENT PERSON

The Chief of Police or any City police officer, the City Administrator and the City's designated building and code enforcement officer are authorized to enforce this Ordinance and issue civil or criminal notice or citations as provided herein or take appropriate abatement procedures. Such enforcement action or actions may be taken by either of the City officers or officials mentioned herein upon observation of the acts or things declared to be a nuisance or upon citizen complaints of the occurrence of such acts or things declared to be a nuisance.

Section 8.08.110 VOLUNTARY CORRECTION

Whenever the enforcement person for the City as authorized herein determines a nuisance has occurred or is occurring, and further determines that issuing a citation as a civil or criminal infraction is not necessary to rectify the nuisance, or that an emergency does not exist or that the act or thing declared to be a nuisance is not a repeated violation with knowledge by the person that such act or thing is a violation of this Ordinance, thence the enforcement person may seek voluntary correction by contacting the person responsible for the nuisance, explaining the violation and requesting correction. The enforcement officer and the person responsible for the nuisance may enter into a voluntary correction agreement that identifies the acts or things constituting the nuisance, reference to the specific code provision violated, the necessary corrective action to be taken and the time by which the correction must be completed. The enforcement person may require such additional terms and conditions reasonably necessary to accomplish the corrective action, including without limitation the assessment of reasonable costs and monetary penalties if the terms of the voluntary correction agreement are not met by the person entering into the agreement.

Section 8.08.120 ADMINISTRATIVE ENFORCEMENT

A. The enforcement person may issue a notice of civil violation to any person responsible for permitting or maintaining a nuisance in violation of this Ordinance. The notice of civil violation shall include: (a) name and address of the person found to be the owner or the owner's agent or the occupant responsible for correcting the violation, (b) address or sufficient description of the property at which the nuisance exists, (c) a brief description of the violation and reference to the applicable code provision violated, (d) statement of the required corrective action and (e) statement of the time by which correction must be completed, which shall not be less than ten (10) days unless the enforcement person has found that an imminent hazard exists to the health or safety of the public, (f) a statement of office address and office phone number of the enforcement person or his/her agent. It shall also contain a statement that if the person responsible does not complete correction of the violation by the date required that the City may abate the condition and recover costs and penalties as provided herein. Such notice of violation shall also advise that the person responsible may appeal such notice by filing a written appeal with the Clerk of the City. Such notice of appeal shall be so filed within seven (7) calendar days of the date of the personal service or mailing of the notice of violation and such notice of appeal shall specify what portion of the violation notice is being challenged and grounds for such challenge.

B. The enforcement person or his or her agent shall serve the notice of civil violation either personally upon the person responsible or by mailing it to him or her by regular and certified mail, return receipt requested, at his/her last known address. Service by mail shall be deemed effective the third day following the day the notice was placed in the mail, excluding Sundays and holidays. If neither personal nor mailed service can be

accomplished, a copy of the notice shall be posted conspicuously on the affected property or structure.

C. If a notice of appeal is filed, the matter shall be promptly set for a hearing to be held in not more than twenty-one (21) days. The hearing shall be before the Planning and Judicial Committee of the City Council at a regular or special committee meeting.

D. At the hearing, the person appealing may introduce evidence to show that there is no violation of this Ordinance, or that the City's conditions or timeline as to compliance are not reasonable, or that he/she is not responsible under the terms of this Ordinance to abate such nuisance. The enforcement person may introduce evidence that there is a violation and that the timeline is reasonable and to rebut evidence. Each party may call witnesses. Technical rules of evidence need not be followed. The burden of proof shall be upon the enforcement person to show by a preponderance of the evidence that there is a violation as claimed and that the time given for correction and the method or extent of correction required are reasonable.

E. After receiving evidence and argument the Planning and Judicial Committee shall either (a) authorize the enforcement person to proceed to abate the violation, unless the person responsible does so within the next five (5) days or (b) if the Committee finds there is not a violation of this Ordinance, or that the City has not proceeded according to this Ordinance, the Committee shall direct the City not to proceed under such notice. The Committee may authorize the enforcement person to proceed but may order a delay where the Committee has found that the property owner can abate the nuisance and the delay will not have any adverse effect upon other property or upon the safety of any person. The Committee shall also compute and assess the monetary penalty, if any, as provided herein. The Committee in each case shall enter a written decision and shall mail a copy to the person appealing as well as to the enforcement person no later than three (3) working days after the hearing. The person appealing shall have thirty (30) days from the date of mailing of the written decision to petition to the Superior Court for injunctive relief seeking to restrain the City from proceeding with the abatement of the violation, and the Court is authorized to affirm, reverse or modify such enforcement action and any such hearing or trial shall be de novo meaning the Court shall be directly reviewing the action by the City as a new matter.

F. If the person responsible has not appealed the notice of violation as provided for in this Ordinance, or if the property owner has appealed but the Planning and Judicial Committee has found for the enforcement person and has not authorized a delay and there has been no appeal to Superior Court, and correction has not been made within the specified time, the City is authorized by this Ordinance to proceed with its own personnel or with a contractor to abate the nuisance in any reasonable manner.

G. Civil monetary penalties shall accrue at the rate of \$100 per day after the date the correction of the nuisance was to be completed as provided in Subsection A above until completion of the correction unless a different date of completion is established by

the Planning and Judicial Committee; provided that the Committee may assess a lesser penalty if the person showed diligence in correcting the violation or whether good faith interpretation of code interpretation existed. No penalties shall accrue while an appeal is pending unless the Committee finds the appeal was frivolous or for delay only. The monetary penalty and the cost of abatement accomplished by the City constitute a personal obligation of the responsible person and the City Attorney may, by use of appropriate legal remedies including without restricting the City's remedies foreclosing against the real property of the responsible person in the manner of foreclosing mechanic's liens pursuant to Chapter 60.04, RCW, recover such penalties and abatement costs together with interest and reasonable attorney's fee, and to enter into compromises.

Section 8.08.130 EMERGENCY ENFORCEMENT

Whenever the enforcement person finds as a result of a declared nuisance that an emergency condition results therefrom or it reasonably appears to cause or constitute an imminent or immediate danger to the health and safety of the public, and the responsible person cannot be contacted or refuses to immediately abate the same, the enforcement person shall have authority to summarily and without notice abate the same. Notice of the abatement action shall be given to the responsible party as soon thereafter as possible and the City shall be entitled to recover the abatement costs as provided in Section 8.08.120.F. above.

Section 8.08.140 ABATEMENT SUIT

Whenever the enforcement person determines a nuisance to exist, the City may proceed in addition to any other remedy provided herein to enjoin and abate the same pursuant to Chapter 7.48, RCW.

Section 8.08.150 MISDEMEANOR CITATION

In addition to all other enforcement remedies, the enforcement person may issue a misdemeanor citation for each nuisance violation with a fine of not more than \$250 per violation. Each separate nuisance act constitutes a separate violation and each day that the act or thing that constitutes a nuisance continues constitutes a separate violation.

PASSED this the _____ day of _____, 2001.

CAROLYN JENSEN, Mayor

ATTEST:

APPROVED AS TO FORM:

ROLAND SIGNETT, Administrator

RICHARD J. LANGABEER, City Attorney