

**CITY OF ARVADA
COUNCIL AGENDA INFORMATION SHEET
SECOND READING ORDINANCE**

Agenda No. 9.C

City Council Meeting Date: April 20, 2009

Title: CB09-013, An Ordinance Amending Section 38-62 of Article II, Noise Control, of Chapter 38, Environment, Pertaining to Motorcycle Noise

Initiated by (Department): City Attorney **(Division):**

Action Proposed: Final Reading and Public Hearing

Financial Impact: None **This project/request is:** One-time On-going Multi-year

Funding Source: N/A **Type** **Fund**

Future associated costs requiring Council actions: None Additional funds required

Information about the Project or Request:

Noise pollution has long been recognized as a problem. Among the most vexing noise issues in many communities is motorcycle noise. The federal government recognized this decades ago when it established noise emission standards for motorcycles. Nearly all motorcycles manufactured or imported into the United States must carry a noise label or stamp on its muffler exhaust system to show that it meets federal noise emission standard. These labels, often called "EPA noise labels," are generally embossed upon or otherwise affixed to a motorcycle's muffler pipes.

The proposed ordinance requires that every motorcycle that is required to carry an EPA noise label have that label while it is being operated in Arvada. Much like Colorado's proof of insurance law, this law states that if an officer testifies at trial that a motorcyclist was unable to show that the motorcycle had the appropriate EPA noise label at the time of the stop, that testimony will constitute a prima facie case of a noise violation.

Staff recommends approval of this ordinance.

Suggested Motion: Moved by _____

I move that CB09-013, An Ordinance Amending Section 38-62 of Article II, Noise Control, of Chapter 38, Environment, Pertaining to Motorcycle Noise, be (approved on final reading, numbered 4164 and ordered published by title only) (rejected).

YES

NO

ABSENT

COUNCIL BILL NO. 09-013
ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 38-62 OF ARTICLE II, NOISE CONTROL,
OF CHAPTER 38, ENVIRONMENT, PERTAINING TO MOTORCYCLE NOISE

WHEREAS, the City of Arvada is a political subdivision of the State of Colorado organized and existing as a home rule municipality pursuant to Section 6 of Article XX of the Colorado Constitution and the home rule charter of the City; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City possesses the authority to prevent and suppress noise and otherwise adopt regulations in furtherance of the public health, safety, and welfare; and

WHEREAS, the City Council finds that certain motorcycles that are not equipped with an exhaust muffler bearing a label required by the Environmental Protection Agency (“EPA”) create or emit noise that is unusually loud, excessive, and detrimental to the public health, safety, and welfare; and

WHEREAS, the Council therefore desires to amend Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code by the addition of a new subsection 38-62(12) to prohibit the operation within the City of any motorcycle not bearing a required EPA noise label, all in furtherance of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Subsection 38-62(12), Motorcycles, of section 38-62, Same-specific, of Division 2, Noises Regulated, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code is hereby added to read as follows:

- (12) *Motorcycles.* No person shall, nor shall the owner allow any person to operate a motorcycle manufactured after December 31, 1982, that is not equipped with an exhaust muffler bearing the federal Environmental Protection Agency required labeling applicable to the motorcycle’s model year, as set out in the Code of Federal Regulations, Title 40, Volume 24, Part 205, Subpart D and Subpart E, as may be from time to time amended. Said label shall be affixed to the exhaust muffler in such a manner as to be readily visible.
 - a. For purposes of enforcement of subsection (12), police officers may establish or determine reasonable suspicion to stop a motorcycle based on any relevant facts and circumstances concerning the unusually loud or excessive nature of the noise created or emitted by the motorcycle. This determination may be

based upon, but need not be limited to, a consideration of the following factors:

- (i) The time of day;
 - (ii) The proximity of the motorcycle creating or emitting the noise to any residential area, assisted living facility, nursing or care home, hospital, or public or private school;
 - (iii) Any unusual quality associated with the noise such as, but not limited to, a loud grating, grinding, rattling, or whining sound; or
 - (iv) Any other factors tending to show the magnitude or disruptive effect of the noise.
- b. Notwithstanding the language of subsection (12)a, a peace officer may enforce subsection (12) when an accident involving a motorcycle occurs, following any lawful traffic stop or contact, or during any traffic investigation.
- c. Testimony of the failure by any owner or operator of a motorcycle to immediately demonstrate the presence of an EPA noise label as required in subsection (12), when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (12), that the owner or operator of the motorcycle violated subsection (12).

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. This ordinance shall take effect five days after publication following passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 6th day of April, 2009.

MOTORCYCLE NOISE ORDINANCE

Definitions:

Motorcycle (C.R.S. § 42-1-102(55)) means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "farm tractor" and except a motorized bicycle....

Motorized bicycle (C.R.S. § 42-1-102(59)(b)) means a vehicle having two or three wheels, a cylinder capacity not exceeding 50 cc, and an automatic transmission which produces a maximum design speed of not more than thirty miles per hour on a flat surface.

EPA Noise Label Language:

Motorcycle Noise Emission Control Information

This ____ (model year) _____ (model specific code) motorcycle, _____ (serial number), meets EPA noise emission requirements of _____ (noise emission standard) dBA at ____ (closing rpm) rpm by the Federal test procedure. Modifications which cause this motorcycle to exceed Federal noise standards are prohibited by Federal law. See owner's manual.

Vehicles on EPA Noise Label List:

Motorcycles on EPA List		MOPEDS on EPA List		MOPEDS, continued	
BMW	BMW	AMF	AMF	Pack-A-Way	PAK
Bultaco	BUL	Benelli	BEL	Peugeot	PEU
Can-Am Bombardier	CAB	Califfo	CAL	Puch	PUC
Chaparral	CHA	Carabela	CAR	Riviera	RIV
Cheeta	CHE	Cimatti	CIM	Sachs	SAC
Ducati	DUC	Columbia	COL	Safari	SAF
Fox	FOX	E-Z Rider	EZR	Scorpion	SCO
Harley Davidson	HAR	Flying Dutchman	FLY	Smily	SMI
Heald	HEA	Foxi	FOI	Snark	SNA
Hercules	HER	Gadabout	GAD	Sori II	SON
Hodaka	HOD	Garelli	GAR	Speed Bird	SPE
Honda	HON	Gitane	GIT	Sprinter	SPR
Husqvarna	HUS	Honda	HON	SuVega	SUV
JAWA/CA	JAW	Indian	IND	Tomas	TOM
Kawasaki	KAW	Intramotor	INT	Vespa	VES
KTM	KTM	Italvelo	ITA	Yankee Peddler	YAN
Laverda	LAV	Kreidler	KRE		
Moto Benilli	BEN	Lazer	LAZ		
Moto Guzzi	GUZ	Malagati	MAL		
Moto Morini	MOR	Morini	MOI		
MV Agusta	MVA	Motobecane/Solex	MBE		
Norton Triumph	TRI	Moto Guzzi	GUZ		
Rokon	ROK	Negrini	NEG		
Suzuki	SUZ	Odyssey	ODY		
Yamaha	YAM	Pacer	PAC		

Other enforcement option:

C.R.S. § 42-4-225. Mufflers – prevention of noise. (1) Every motor vehicle subject to registration and operated on a highway 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 such muffler or exhaust system shall be equipped with a cut-off, bypass, or similar device. No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of such vehicle above that emitted by the muffler originally installed on the vehicle, and such original muffler shall comply with all of the requirements of this section.