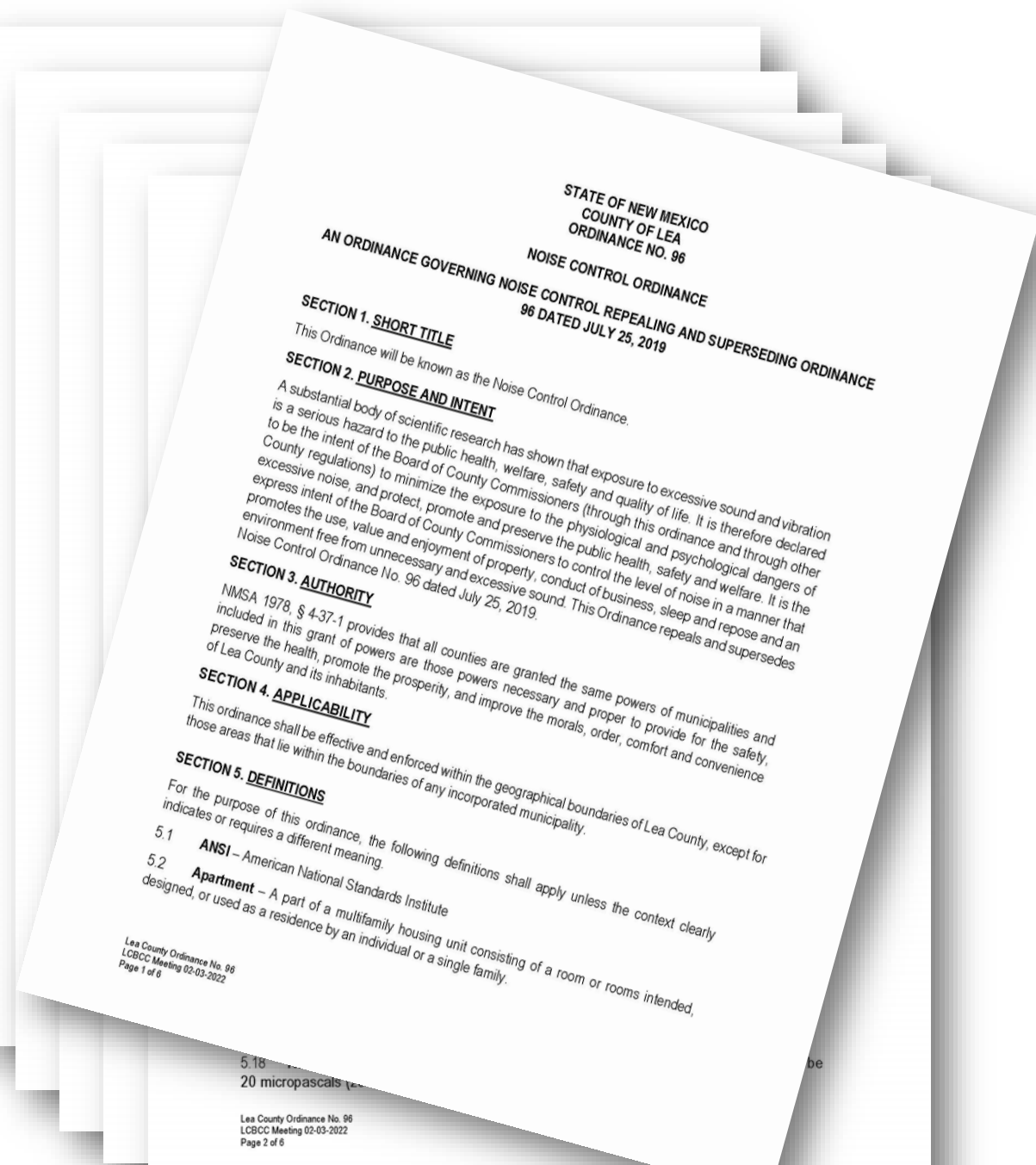




# Consideration to Adopt Lea County Ordinance No. 96 An Ordinance Governing Noise Control Repealing and Superseding Ordinance No. 96 Dated July 25, 2019





**LEA COUNTY BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY FORM**

**LCBCC Meeting Date: Thursday, February 3, 2022**

Submit this summary form & all attachments to the Finance Director [clow@leacounty.net](mailto:clow@leacounty.net) & cc the Executive Coordinator [sstout@leacounty.net](mailto:sstout@leacounty.net) by: **Monday, January 24, 2022**

County Manager Approval [mgallagher@leacounty.net](mailto:mgallagher@leacounty.net) required for all time sensitive issues that do not meet the above deadline.

<b>DATE SUBMITTED</b> mm-dd-yyyy: 01/25/2022	<b>SUBMITTED BY</b> Name, Title, Dept: John Caldwell, County Attorney, Legal Department
<b>SUBJECT:</b> Hearing: Noise Control Ordinance No. 96, Repealing and Superseding Ordinance No. 96 Dated July 25, 2019	<b>ATTACHMENT(S):</b> Proposed Noise Ordinance No. 96
<b>NO. OF ORIGINALS FOR SIGNATURE:</b> 1 Ordinance	<b>ACTION REQUESTED:</b> Action Item
<b>BUDGET LINE ITEM NUMBER:</b> N/A	<b>FISCAL BUDGET YEAR:</b> N/A
<b>STRATEGIC PLAN</b> Implementation of 5 Year Strategic Plan: 3.4 Quality of Life	
<b>SUMMARY:</b> The proposed ordinance repeals and supersedes the current noise ordinance. The most significant difference is applicability. The current ordinance applies only to the Lea County/Hobbs Extra-Territorial Area. The new noise ordinance will apply to all Lea County, except those areas that lie within incorporated municipal boundaries.	
<b>Requested Items Needed for Presentation</b> Easels/Laptop/Projector/Etc.: Easel <input type="checkbox"/> Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: <input type="checkbox"/> <small>If checked, how many:</small>	<b>See Additional Summary Attached</b> <input type="checkbox"/>
<b>SUBMITTER'S RECOMMENDATION(S):</b>	<b>Submitter's Signature</b> Department Director, Etc. John Caldwell <small>Digitally signed by John Caldwell Date: 2022.01.25 13:57:25 -07'00'</small>
<b>FINANCE REVIEW</b> Fiscal Impact/Cost:	<b>Reviewed by Finance Director</b>
<b>LEGAL REVIEW:</b> (Note: Travel does not need legal review)	<b>Reviewed by County Attorney</b> John Caldwell <small>Digitally signed by John Caldwell Date: 2022.01.25 13:57:37 -07'00'</small>
<b>COUNTY MANAGER REVIEW:</b>	<b>Approved by County Manager</b> to be Placed on Agenda 
<b>Item No.</b> <u>0302</u> <b>RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN</b>	
Approved: _____ Resolution No. _____ Continued To: _____	Denied: _____ Policy No. _____ Referred To: _____ Other: _____ Ordinance No. <u>96</u> Comments: <u>Repeals &amp; Supersedes</u> <u>Ordinance No. 96</u> <u>Dated July 25, 2019</u>

STATE OF NEW MEXICO  
COUNTY OF LEA  
ORDINANCE NO. 96

NOISE CONTROL ORDINANCE

AN ORDINANCE GOVERNING NOISE CONTROL REPEALING AND SUPERSEDING ORDINANCE  
96 DATED JULY 25, 2019

**SECTION 1. SHORT TITLE**

This Ordinance will be known as the Noise Control Ordinance.

**SECTION 2. PURPOSE AND INTENT**

A substantial body of scientific research has shown that exposure to excessive sound and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is therefore declared to be the intent of the Board of County Commissioners (through this ordinance and through other County regulations) to minimize the exposure to the physiological and psychological dangers of excessive noise, and protect, promote and preserve the public health, safety and welfare. It is the express intent of the Board of County Commissioners to control the level of noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep and repose and an environment free from unnecessary and excessive sound. This Ordinance repeals and supersedes Noise Control Ordinance No. 96 dated July 25, 2019.

**SECTION 3. AUTHORITY**

NMSA 1978, § 4-37-1 provides that all counties are granted the same powers of municipalities and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of Lea County and its inhabitants.

**SECTION 4. APPLICABILITY**

This ordinance shall be effective and enforced within the geographical boundaries of Lea County, except for those areas that lie within the boundaries of any incorporated municipality.

**SECTION 5. DEFINITIONS**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

5.1     **ANSI** – American National Standards Institute

5.2     **Apartment** – A part of a multifamily housing unit consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family.

- 5.3 **Approved Sound-Level Meter** – An instrument sensitive to pressure fluctuations and meeting the standards of the ANSI 51.4-1983 Type or Type 2 or those of IEC Publication 651 or those of the latest respective revisions thereof.
- 5.4 **A-Weighted Sound Pressure Level** - The sound pressure level as measured on an approved sound-level meter using the A-weighting network. Instrument response shall be "fast" for motor vehicle measurements and "slow" for all other measurements.
- 5.5 **Board** - The Board of County Commissioners.
- 5.6 **Commercial/Industrial** – Any land use or activity conducted for financial gain through the sale of goods and services, including industrial uses.
- 5.7 **Daytime** - From 6:00 a.m. (0600 hours) to 10:00 p.m. (2200 hours) (Sunday through Thursday) and from 6:00 a.m. (0600 hours) to 11:00 p.m. (2300 hours) (Friday, Saturday and holidays).
- 5.8 **Department** – The Lea County Sheriff's Office.
- 5.9 **Emergency Work** - Work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from an imminent exposure to danger.
- 5.10 **EPA** – The United States Environmental Protection Agency.
- 5.11 **Holidays** - Those days established by the federal government as official holidays.
- 5.12 **IEC** - The International Electrotechnical Commission.
- 5.13 **Motor Vehicle** – Every vehicle that is self-propelled, but excluding off-highway construction equipment, unlicensed construction equipment, or equipment operated upon rails.
- 5.14 **Nighttime** - From 10:00 p.m. (2200 hours) to 6:00 a.m. (0600 hours) (Sunday night/Monday morning through Thursday night/Friday morning) and from 11:00 p.m. (2300 hours) through 6:00 a.m. (0600 hours) Friday night/Saturday morning and Saturday night/Sunday morning). On holidays, nighttime runs from 11:00 p.m. (2300) hours) until 6:00 (0600 hours) and does not commence again until 11:00 p.m. (2300 hours).
- 5.15 **Persistently or Continuously** - A ten-minute period during which animal noise is discerned in each of the 10 one-minute intervals therein.
- 5.16 **Person** - A person, firm, association, copartnership, joint venture, corporation, or any other entity, public or private in nature.
- 5.17 **Public roadway** – Any road, street, avenue, boulevard, highway, alley or similar place that is controlled by a public governmental entity and is located within the geographical boundaries of Lea County, outside the jurisdiction of duly incorporated municipalities.
- 5.18 **Reference Pressure** - The reference pressure for all sound level measurements shall be 20 micropascals (20 uPa). This shall be further defined as 0 dB(A).

- 5.19 **Residential** – Land areas used predominantly for housing.
- 5.20 **SAE** - The Society of Automotive Engineers.
- 5.21 **Sheriff** - The Lea County Sheriff or Sheriffs designated representative.
- 5.22 **Sound Amplifying Equipment** - Any machine or device for the sound amplification of the human voice, music, or any other sound. "Sound amplifying equipment" shall not include horns or warning devices on authorized emergency vehicles or on any motor vehicles that are used only for traffic safety purposes.

## **SECTION 6. DECIBEL MEASUREMENT CRITERIA**

Unless otherwise indicated, any decibel (dB) measurement made pursuant to the provisions of this ordinance shall be based on the reference sound pressure and measured with a sound-level meter using the A-weighting network. In this ordinance, the terms dB and dBA are synonymous unless otherwise stated.

## **SECTION 7. PROHIBITED NOISE**

7.1 Regardless of any other section of this ordinance, it shall be unlawful for any person during nighttime to make, continue, or cause to be made any unreasonably loud or unusual noise that either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of another person or persons.

7.2 Upon a complaint of a violation of Section 7.1, it shall be prima facia evidence of a violation of this article if any unreasonably loud or unusual noise is audible during nighttime to any person positioned at the boundary of the property immediately adjacent to the property from which the sound emanates or causes a person so positioned to be aware of the vibration accompanying the sound.

7.3 Except as otherwise provided in this ordinance, no person during nighttime shall make or continue, cause to be made or continued, or allow to be made or continued, any sound exceeding 50 dB.

7.4 Sound projecting from property shall not exceed the limits onto the property which it is projected.

7.5 Noise originating from sources of any kind engaged in agricultural, ranching, military operations, or new oil/gas exploration site are exempt from the provisions of this ordinance.

7.6 **Horns and signaling devices.** The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle during nighttime on any public street or public place except as a danger warning; the creation by means of any such signaling devices of any unreasonable, loud or harsh sound; the sounding of such devices for any unnecessary and unreasonable period of time other than by accident or mechanical, electrical or other difficulty or failure; and the use of any such signaling device where traffic is held up shall be

deemed a violation of this article. The provisions of this section do not apply to an authorized emergency vehicle as defined in NMSA 1978, §§ 66-1-4.1 and 66-7-6.

## **7.7 Sound amplifying equipment.**

**7.7.1** No person during nighttime shall practice, play, or conduct live music activities using sound amplifying equipment or operate a radio, television, stereo or other sound amplifying equipment resulting in sound levels exceeding the level set in Sections 7.1, 7.2 or 7.3 when measured on any receiving property or, if an apartment, within any dwelling unit or common area to residents of the apartment, or to conduct such activities or operate any such device so as to be audible within any dwelling unit that is not the source of the sound.

**7.7.2** During nighttime, such amplified sound shall not be allowed to cause or contribute to exceeding the limits set forth for the receiving property as established in Sections 7.1, 7.2 or 7.3.

**7.8 Outdoor sound amplifiers.** If any outdoor sound amplifier, loudspeaker system or similar broadcasting device is audible at nighttime at any residence and is otherwise in violation of this article, the use of the outdoor sound amplifier, loudspeaker system or similar broadcasting device at that facility shall thereafter be prohibited as provided herein. If the user of a facility is determined to have violated any requirement in this subsection on two or more occasions in any six-month period, then the user of the outdoor sound amplifier, loudspeaker system or similar broadcasting device shall thereafter immediately remove such device from use at that facility. A subsequent user of a facility at which use of an outdoor sound amplifier, loudspeaker system or similar broadcasting device has previously been prohibited pursuant to this subsection may not use such a device at that facility unless and until:

**7.8.1** The subsequent user establishes to the reasonable satisfaction of the Department that the device can be used in compliance with this section; and

**7.8.2** The subsequent user is not affiliated by common ownership or control with the user of the facility at the time use of the previous device was prohibited.

**7.9 Drums, bells, and other musical instruments.** No person shall use any drum, bell or other musical instrument resulting in sound levels exceeding the level set in Sections 7.1, 7.2 or 7.3 so as to be audible within any dwelling unit which is not the source of sound. At no time during nighttime shall such sound be allowed to cause or contribute to exceeding the limits set forth for the receiving property as established in sections 7.2 or 7.3 This section shall not apply to any person who is participating in a school band or duly licensed parade nor does this section apply in the daytime to bells or chimes used by schools or religious institutions.

**7.10 Animals.** No person shall allow an animal in the person's possession or control to persistently or continuously bark, howl or make noise common to its species, or otherwise to disturb the peace and quiet of any person, or otherwise endanger the health and welfare of any person.

**7.11 Motor vehicles.**

7.11.1 The nighttime use of defective mufflers and other exhaust devices that effectively bypass mufflers while any motor vehicle is in operation that disturbs the peace and quiet of an area shall be deemed a violation of this ordinance.

7.11.2 All motor vehicles shall have a ninety-day grace period from the effective date of this ordinance to comply with the vehicle noise emission regulations herein.

**7.13 Refuse collection.** No person shall collect refuse with a refuse collection vehicle except during daytime.

**7.14 Machinery, equipment, fans, and air conditioners.**

7.14.1 At nighttime, except for emergency work as defined in this article, no person shall operate or allow the operation of any stationary machinery, equipment, fan, air-conditioning apparatus, or similar permanently installed mechanical device in any manner so as to create noise which exceeds the limits specified in Sections 7.1, 7.2 or 7.3.

7.14.1 At nighttime, except for emergency work as defined in this article, no person shall operate or allow to be operated outdoors any power equipment, including but not limited to sweepers, power mowers, leaf blowers, rototillers, power saws or other power equipment used to sweep parking areas or other surfaces or perform gardening, property repair or other similar functions so as to create noise which exceeds the limits specified in Sections 7.1, 7.2 or 7.3.

**7.15 Construction, repair, demolition, or excavation and grading work.** At nighttime, except for emergency work as defined in this article, construction, repair, demolition or excavation and grading work to commercial or residential buildings, roadways, utility facilities or infrastructure, which work disturbs the comfort or repose of any person(s) or generates noise exceeding the limits specified in Sections 7.1, 7.2 or 7.3, shall be deemed a violation of this ordinance.

**SECTION 8. ENFORCEMENT**

The Sheriff shall be responsible for the administration of this article. The Sheriff, in coordination with the County Environmental Department and Legal Department, shall promulgate rules, regulations, and test and compliance procedures to implement the provisions of this Ordinance.

**SECTION 9. PENALTIES AND ADDITIONAL REMEDIES**

Any person found to be in violation of this ordinance is subject to the penalties as follows:

9.1 Upon the first or second violation of this ordinance, the offender shall be sentenced to a fine of not less than \$100 nor more than \$300. The minimum fine of \$100 may not be suspended, deferred or taken under advisement. The court may, in its discretion, suspend the remainder of the fine.

9.2 Upon the third or subsequent violation of this ordinance, the offender shall be sentenced to a fine of not less than \$300, which may not be suspended, deferred or taken under advisement.

9.3 Any person found to be in violation of this ordinance shall not be subject to a term of imprisonment.

9.4 Where the complaint alleges a violation of this ordinance, any plea of guilty or nolo contendere thereafter entered in satisfaction of the charges shall include at least a plea of guilty or nolo contendere to a violation of this ordinance and no other disposition by plea of guilty or nolo contendere to any other charge shall be authorized.

9.5 As an additional remedy to the penalties set forth in this ordinance, the violation of any provision of this article may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

**PASSED, APPROVED and ADOPTED** on this 3<sup>rd</sup> day of February, 2022, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

**LEA COUNTY BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Dean Jackson (District 1), Chair  
Voted: Yes No Abstain

\_\_\_\_\_  
Gary G. Eidson (District 3), Vice Chair  
Voted: Yes No Abstain

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Rebecca Long (District 2), Member  
Voted: Yes No Abstain

\_\_\_\_\_  
Jonathan Sena (District 4), Member  
Voted: Yes No Abstain

\_\_\_\_\_  
Pat Sims (District 5), Member  
Voted: Yes No Abstain

**ATTEST:** Keith Manes  
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:**

By: \_\_\_\_\_  
Teri Davis, Deputy Clerk

\_\_\_\_\_  
John W. Caldwell, County Attorney