

FOREWORD

The following ordinance is drafted by the League of Oregon Cities through its Legal Services Program. The Legal Services Program, in addition to drafting ordinances which may be of use to Oregon cities, addresses inquiries from city officials, elected or appointed, regarding public records, open meetings, voting and quorum requirements, ethics, authority under city charters and state statutes and other legal issues facing Oregon cities. For more information on this program or how to utilize these services, contact the League of Oregon Cities, 1201 Court Street NE, Suite 200, Salem, Oregon 97301-4194, Phone: 503-588-6550 or 1-800-452-0338, www.orcities.org.

This noise ordinance draws extensively from the Model Noise Ordinance developed by the International Municipal Lawyer's Association (IMLA) Model Ordinance Service. The IMLA Model Ordinance Service is a comprehensive collection of model ordinances, editor's comments, annotations, and drafting guidelines covering a variety of current local government topics.¹

These regulations approach the problem of noise control through the enforcement of "reasonable person" standards. "Reasonable person" standards are more subjective than those based on maximum decibel readings.² The subjective nature of enforcement is the major drawback of the reasonable person noise ordinances. Ordinances based on the reasonable person standard, however, are more easily enforced, less costly, require no specialized equipment or training and can be enforced on credible citizen complaints without the necessity of a specially trained officer or other expert being present at the time of the offense or in court.

Both decibel level and reasonable person noise provisions raise some constitutional issues, though the reasonable person ordinance is more susceptible to challenge. The issues center around violations of due process and freedom of speech. Due process issues arise if ordinance provisions are not sufficiently detailed to place a person on notice of violations and free speech issues arise if prohibitions are drafted or enforced so broadly as to encompass communication. Full protection of civil liberties can be assured, however, through careful ordinance drafting while eliminating or limiting unwanted noises. The authority of Oregon cities to enact these provisions is clear.³

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November 2006*

Noise Ordinance: Reasonable Person Standard

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{Insert here your City's Ordaining Clause, e.g., "The People of the City of _____ ordain as follows:"}

Section 1. Purpose. This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of {City} through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

Section 2. Findings. The City Council of {City} finds:

- A. Loud and raucous noise degrades the environment of the City to a degree that:
 - (1) is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) interferes with the comfortable enjoyment of life and property;
 - (3) interferes with the well being, tranquility, and privacy of the home; and
 - (4) both causes and aggravates health problems.
- B. Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

- C. The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City.
- D. Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- E. The obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article I, section 8, of the Oregon Constitution and the First Amendment of the United States Constitution. This ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

Section 3. Scope. This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

Section 4. Definitions⁴.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

Emergency Work means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

City means the City of _____.

City Manager means the City Manager of City or the City Manager's designee⁵.

Noise Sensitive Area includes, but is not limited to, real property normally used for sleeping, or normally used as a school, church, hospital or public library.

Person means any individual, firm, association, partnership, joint venture, or corporation.

Plainly audible means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.⁶

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

Public space means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Residential area means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

Section 5. General Prohibition.

- A. No person shall make, continue, or cause to be made or continued:
 - (1) any unreasonably loud or raucous noise; or
 - (2) any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
 - (3) any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, 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 detrimentally or adversely affect such residences or places of business.

- B. Factors for determining whether a sound is unreasonably loud and raucous 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; and
 - (5) whether the sound is recurrent, intermittent, or constant.

Section 6. Noises Prohibited. The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

- A. Unreasonable Noises⁷: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous

or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

- B. Vehicle Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.⁸
- C. Non-Emergency Signaling Devices: Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the City for traffic control purposes are exempt from the operation of this provision.
- D. Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (1) and (2), below.
- (1) Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
 - (2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Ordinance.
- E. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any

person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.

F. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices:

The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound 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 residential or noise-sensitive areas;
- (2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City.

G. Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing or other factors not based on content.⁹

H. Animals and Birds: Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

I. Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

J. Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00

a.m. and 7:00 p.m., on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the City Manager¹⁰ may issue a permit, upon application, if the City Manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the City Manager further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

- K. Noise Sensitive Areas - Schools, Courts, Churches, Hospitals, and Similar Institutions: The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.
- L. Blowers, and Similar Devices: In residential or noise sensitive areas, between the hours of 7:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.
- M. Commercial Establishments Adjacent to Residential Property: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential property.

Alternate provision: N. Train Whistles:¹¹ (No provision regarding train whistles is proposed at this time due to preemption by the federal government. See the recently published federal rule set forth in the endnotes.)

Section 7. Exemptions. Sounds caused by the following are exempt from the prohibitions set out in Section 6 and are in addition to the exemptions specifically set forth in Section 6:

- A. Motor vehicles on traffic ways of the City, provided that the prohibition of Section 6.B continues to apply.

- B. Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.
- C. Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 6.D continues to apply.
- D. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- E. Repairs or excavations of bridges, streets or highways by or on behalf of the City, the State, or the federal government, between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- F. Outdoor School and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.
- G. Other Outdoor Events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.¹²

Section 8. Enforcement.¹³ The following individuals¹⁴ shall enforce this Ordinance: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this Ordinance. Nothing in this Ordinance shall prevent the City Manager or Police Chief from obtaining voluntary compliance by way of warning, notice or education.

Section 9. Penalties.

- A. A person who violates a provision of this Ordinance is guilty of an infraction which is punishable by a fine not to exceed \$500.00.
- B. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

Section 10. Severability Clause. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this Ordinance shall not affect the validity of the remaining parts to this Ordinance.

Section 11. Savings Clause. A prosecution which is pending on the effective date of this Ordinance and which arose from a violation of an ordinance repealed by this Ordinance, or a prosecution which is started within one year after the effective date of this Ordinance arising from a violation of an ordinance repealed by this Ordinance, shall be tried and determined exactly as if the Ordinance had not been repealed.

Section 12. Effective Date. This Ordinance is effective on _____.