

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** August 6, 2024      **Approx. Start Time:** 2:00 p.m.      **Approx. Length:** 30 minutes

**Presentation Title:** Noise Control Ordinance Amendments

**Department:** County Counsel

**Presenters:** Jane Vetto, County Counsel, Caleb Huegel, Assistant County Counsel

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting direction from the Board on how to amend the County's Noise Control Ordinance.

### EXECUTIVE SUMMARY:

Clackamas County Code (CCC) chapter 6.05, the County's Noise Control Ordinance, generally regulates noise to protect the health, safety, welfare, and quality of life for residents of the county. CCC 6.05.030 generally prohibits unreasonably loud or raucous noise. CCC 6.05.040 prohibits specific noises, including sound which exceeds 50 dBA between 10:00 p.m. and 7:00 a.m. CCC 6.05.060 exempts certain noises from those prohibitions.

CCC 6.05.070 allows persons to apply for a temporary variance from those prohibitions, *i.e.*, a "noise variance." CCC 6.05.070 provides that such applications must be made to the Sherriff. CCC 6.05.070(E) provides that the Sheriff's decision may be appealed to the Board of County Commissioners. CCC 6.05.070(B) sets out four considerations for granting a noise variance. Those considerations include:

- "1. The nature and duration of the sound emitted;
- "2. Whether the public health, safety or welfare is endangered;
- "3. If compliance with this chapter would produce a benefit to the public; and,
- "4. Whether previous permits have been issued and the applicant's record of compliance."

Although CCC 6.05.070 provides that applications for noise variances must be made to the Sheriff, they are in practice made to Code Enforcement. Code Enforcement's decisions are rarely appealed. However, when a decision was appealed earlier this year, the Board adopted Order No. 2024-028, delegating its quasi-judicial authority to decide the appeal to the County Administrator.

To better align the County Code with current practice, staff is proposing to amend CCC 6.05.070 to provide that applications for noise variances need not necessarily be made to the Sheriff, and to provide that the County's decisions may be appealed to the Compliance Hearings Officer, not the Board of County Commissioners. In addition, staff is proposing to amend the considerations at CCC 6.05.070(B) to make them more clear. The proposed amendments are attached.

### FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget?    YES       NO

What is the cost? Unknown

What is the funding source? N/A

**STRATEGIC PLAN ALIGNMENT:**

- How does this item align with your Department’s Strategic Business Plan goals?

This item aligns with County Counsel’s purpose of providing research, consultation, strategy, technical, regulatory, implementation, and compliance services to the County and its elected officials so they can conduct their operations in a manner that comports with local, state, and federal regulations and laws.

- How does this item align with the County’s Performance Clackamas goals?

This item aligns with the Performance Clackamas goal to “Build Public Trust through Good Government” by better aligning the County Code with current practice and by making the County Code more clear.

**LEGAL/POLICY REQUIREMENTS:**

The legal requirements associated with amending the Noise Control Ordinance are discussed below.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

If the Board wishes to amend the Noise Control Ordinance, then it must adopt an ordinance to that effect. Public notice will be provided and public hearings will be held, as required by law, prior to the adoption of any such ordinance.

**OPTIONS:**

- (1) Direct staff to schedule a public hearing on the attached amendments and draft a corresponding ordinance.
- (2) Direct staff to schedule a public hearing on the attached amendments, with certain changes, and draft a corresponding ordinance.
- (3) Direct staff to change the amendments in certain ways and schedule another policy session.
- (4) Take no action, and continue operating under the existing Noise Control Ordinance.

**RECOMMENDATION:**

Staff respectfully recommends Option 1, direct staff to schedule a public hearing on the attached amendments and draft a corresponding ordinance.

**ATTACHMENTS:**

Proposed Amendments to the County’s Noise Control Ordinance

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
 Department Director/Head Approval \_\_\_\_\_  
 County Administrator Approval \_\_\_\_\_

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| For information on this issue or copies of attachments, please contact Caleb Huegel @ 503-655-8362 |
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## Chapter 6.05

### 6.05 Noise Control

#### 6.05.010 Declaration Of Findings And Policy

The Board of Commissioners for Clackamas County finds that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the County. While certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the County necessarily require the production of sounds which may offend, disrupt, intrude or otherwise create hardship among the citizenry, the Board is obliged to impose some limitation and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.

Now, therefore, it is the policy of this Board to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Clackamas County 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.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]

#### 6.05.020 Definitions

The following terms and definitions shall apply herein unless the context requires otherwise:

- A. DWELLING means a building, or portion thereof, which contains one or more rooms designed for residential occupancy. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.
- B. EMERGENCY means an occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.
- C. EMERGENCY WORK means any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities in restoring service.
- D. INDUSTRIAL or COMMERCIAL ORGANIZATIONS or WORKERS those industrial or commercial sound sources which are subject to noise regulation by the State of Oregon Department of Environmental Quality;
- E. NOISE SENSITIVE AREA includes but is not limited to, dwellings and real property normally used as a school, church, hospital, nursing home or public library;
- F. PERSON includes, in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity;
- G. PLAINLY AUDIBLE means any sound that can be detected by a reasonable person of ordinary sensitivities using their unaided hearing faculties;
- H. PUBLIC RIGHT OF WAY means any legal use or right of passage, given to the public, over a strip of ground under the jurisdiction of county, state, or federal agencies.

- I. 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.
- J. SHERIFF the Sheriff of Clackamas County or the Sheriff's designee; and
- K. SOUND SOURCE includes, but is not limited to,
  - 1. Loudspeakers, public address systems;
  - 2. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle;
  - 3. Musical instruments, amplified or un-amplified;
  - 4. Sirens, bells;
  - 5. Vehicle engines or exhausts, when the vehicle is not on a public right-of-way;
  - 6. Motorboats;
  - 7. Vehicle tires, when caused to squeal by excessive speed or acceleration;
  - 8. Tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, but only between 10 p.m. and 6 a.m. of the following day;
  - 9. Heat pumps, air conditioning units, generators, blowers and refrigeration units, including those mounted on vehicles; and,
  - 10. Animals located in urban residential zoning districts.
- L. URBAN RESIDENTIAL ZONING DISTRICTS means that those zoning districts defined in the Clackamas County Zoning and Development Chapter. Urban Low Density Residential (R-2.5/R-5/R-7/R-8.5/R-10/R-15/R-20/R-30), Medium Density Residential (MR-1), High Density Residential (HDR), Special High Density Residential (SHD), Planned Medium Density Residential (PMD), Medium High Density Residential (MR-2), Village Small Lot Residential (VR-4/VR-5), Village Townhouse (VTH), Village Apartment (VA), Regional Center High Density Residential (RCHDR), and any other similar urban residential zoning district defined after the enactment of this chapter.
- M. VEHICLE means automobiles, motorcycles, motorbikes, go-karts, trucks, buses, and snowmobiles.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]

### **6.05.030 General Prohibition**

- A. No person shall make or continue to make:
  - 1. Any unreasonably loud or raucous noise;
  - 2. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; or
  - 3. Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity of the location from which that 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 detrimentally or adversely affect such dwellings or places of business.
- B. Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:
  - 1. The proximity of the sound to dwellings or noise sensitive areas;

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.

[Added by Ord. 08-2020, 10/1/20; Amended by Ord. 08-2020, 10/1/20]

#### **6.05.040 Noises Specifically Prohibited**

- A. It shall be a per se violation of this chapter for any person to produce or permit to be produced, from a sound source either owned and operated by them or under their control, sound which exceeds:
  1. 50 dBA at any time between 10 p.m. and 7 a.m. the following day; or,
  2. 60 dBA at any time between 7 a.m. and 10 p.m.
- B. The following acts are declared per se violations of this chapter based upon a reasonable person standard. The enumeration does not constitute an exclusive list;
  1. Unreasonable Noises: 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 right of way, public space 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 noise sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempt from this provision.
  2. Vehicle, Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device on any vehicle on any right of way or in the public space of the County, 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.
  3. Non-Emergency Signaling Devices: 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.
  4. Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, car alarm, siren, whistle, or similar emergency signaling device, except in an emergency.
  5. Radios, Televisions, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, stereo, musical instrument, or similar device, including but not limited to computers, mp3 players, and cellular phones, 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 as received or perceived in dwellings or noise sensitive areas or passers-by, or is plainly audible at a distance of 50 feet from any person in a noise sensitive area.

6. 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 p.m. and 7 a.m. the following day in the following areas:
  - a. Within or in proximity to dwellings or noise sensitive areas.
  - b. Within the 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.
7. Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling or singing received or perceived in dwellings, noise sensitive areas or in public places, between the hours of 10 p.m., and 7 a.m. the following day, 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.
8. Animals and Birds: Within urban residential zoning districts, 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.
9. Dogs: Any dog that unreasonably causes annoyance, alarm or noise disturbance in violation of the Clackamas County Animal Licensing, Services, and Enforcement Chapter 5.01.
10. Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous and excessive noise relating to the loading or unloading of any vehicle at a place of business or residence.
11. 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 a.m. and 10 p.m..
12. Blowers, and Similar Devices: Between the hours of 10 p.m. and 7 a.m. the following day, 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 is received or perceived in dwellings or noise sensitive areas.
13. Commercial Establishments Adjacent to Dwellings: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under control of the establishment, between the hours of 10 p.m. and 7 a.m. that is plainly audible at a distance of five feet from any dwelling.

[Amended by Ord. 08-2020, 10/1/20]

### **6.05.050 Sound Measurement**

- A. Any dBA measurements taken shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A weighted scale, and both fast and slow meter response capability.
- B. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.
- C. Measurements may only be made inside of a noise sensitive unit occupied by a person making a complaint under this chapter at, or within, three (3) feet of a closed window or closed door.
- D. All measurements made pursuant to this chapter shall comply with the provisions of this section.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]

### **6.05.060 Exceptions**

Notwithstanding 6.05.040, the following exceptions from this chapter are permitted when conditions therefor are met:

- A. Sounds caused by organized athletic, religious, educational, civic or racing activities on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways, between the hours of 7:00 a.m. and 10:00 p.m. the same day;
- B. Sounds caused by emergency work, or by the ordinary and accepted use of equipment, vehicles and apparatus in response to an emergency, whether or not such work is performed or equipment is used by a public or private agency, upon public or private property;
- C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations;
- D. Sounds caused by bona fide use of emergency warning devices and alarm systems authorized by the Clackamas County Alarm Permit Chapter 8.07 or successor provisions;
- E. Sounds caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m. excluding weekends, unless such permit expressly authorizes otherwise;
- F. Sounds caused by industrial, commercial, timber-harvesting, or utility organizations or workers during their normal operations;
- G. Sounds caused by animals associated with agricultural operations, or animal husbandry;
- H. Sounds caused by motor vehicles operated on a public right of way, which are regulated by state law (ORS 815.250) which the Sheriff has a mandate to enforce, and which are not otherwise prohibited by 6.05.040(B)(2) or (B)(4);
- I. Sounds caused by construction activity or by tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, between the hours of 7 a.m. to 10 p.m. of the same day;

- J. Repair or excavations of bridges, streets or highways by or on behalf of the County, the State or the federal government, between the hours of 10 p.m., and 7 a.m. the following day, when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 10 p.m.;
  - K. Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored or hosted by the County;
  - L. Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices from July 1 until July 5 of each year;
  - M. When the sound is emitted from a motorboat it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance close than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the County unless equipped with a functioning underwater exhaust, muffler, or system which continuously pipes water into the exhaust line, except as may be permitted under ORS 830.260.
- [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]

#### 6.05.070 Variances

Any person who is planning the operation of a sound source which may violate any provision of this chapter, may apply to the ~~Sheriff~~County for a variance from such provision.

- A. Application. The application shall state the provision from which a variance is being sought, the period of time for which the variance is to apply, the reason for which the variance is sought, and any other supporting information which the ~~Sheriff~~County may reasonably require.
- B. Review Considerations. The ~~Sheriff~~County shall consider:
  1. The nature and duration of the sound emitted;
  2. Whether ~~granting the variance would endanger~~ the public health, safety, or welfare ~~is endangered~~;
  3. ~~Whether granting the variance~~If compliance with this chapter would produce a benefit to the public; and,
  4. Whether previous ~~permits-variances~~ have been ~~issued-granted~~ and the applicant's record of compliance.
- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The ~~Sheriff~~County shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The ~~Sheriff's~~County's decision may be appealed to the ~~Board of County Commissioners~~Compliance Hearings Officer. Notice of Appeal must be delivered to the ~~Board of County Commissioners~~County within thirty (30) days from the date of the ~~Sheriff's~~County's decision. The ~~Board~~Compliance Hearings Officer shall review the application ~~de novo~~ and within fifteen (15) days, deny the application, approve it, or approve it subject to conditions.
- F. The authority granting the variance may at any time before or during the operation of any variance revoke the variance for good cause.



[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]

### **6.05.080 Chapter Is Additional To Other Law**

The provisions of this chapter shall be cumulative and non-exclusive. It shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject.

Such existing legislation includes exhaust system and sound emission standards for motor vehicles operated on public roads set forth by ORS 815.250 and OAR 340-35-030. Existing legislation also includes exhaust system standards for motorboats set forth by ORS 830.260. The Sheriff has a mandate to enforce ORS 815.250 and 830.260. [Codified by Ord. 05-2000, 7/13/00; Renumbered by Ord. 08-2020, 10/1/20]

### **6.05.090 Administration And Enforcement**

- A. Unless otherwise provided, ~~t~~The Sheriff for Clackamas County shall administer, supervise, and perform all acts necessary to enforce this chapter. As applicable, Code Section 2.07 shall govern the procedure associated with any compliance hearing.
- B. Citation: whenever a person produces or permits to be produced sound which is found in violation of, or contrary to, any provision of this chapter, that person may be issued a citation.
- C. Unsworn persons may be utilized, as the Sheriff deems necessary, to issue citations for violation of this chapter, under the provisions of ORS 204.635.
- D. Forms of Citation: the form for the citation to be issued under this chapter shall contain the following: a description of the specific violation alleged, the name and address of the person producing or permitting the violation, the description of the sound source, the time and place of the occurrence of the violation, the name and address of the office of the Sheriff, a form for admitting or denying the violation as provided by subsection F of this section, and a schedule of the forfeiture amounts for specific violations.
- E. Upon citation of a person for a violation of this chapter, the person issuing the citation may seize the offending sound source as evidence. It is the intent of this chapter to avoid such seizures except where the person being cited has received two previous citations within the previous six- (6) months for the same or similar sound source. The previous citations may, but need not, occur on the same date as the citation, which prompts the seizure.
- F. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in County Code Section 2.07.040.
- G. The notice of hearing and the procedure associated with the compliance hearing is subject to those provisions of County Code Chapter 2.07.
- H. In addition to any other enforcement procedures, the Board of County Commissioners may, upon its own motion, or upon receipt of a petition requesting hearing by the Board, issue its order to the person producing or permitting to be produced, the sound which

allegedly violates this chapter, to appear before the Board and show cause why the Board should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the Board referring the matter to the County Counsel for enforcement.

- I. An attorney at any hearing may represent a person who receives a citation or an order to show cause, provided that in the case of representation by an attorney, the person gives one (1) day of written notice to the hearings officer or Board of County Commissioners so that the County may, at its option, arrange for representation by an attorney on its behalf.
- J. County Counsel may prosecute or bring a civil action against violators of this chapter, or those who fail to comply with the hearing procedure, or an order of the Hearings Officer or Board. Such action shall be brought or pursued in the District or Circuit Court of the State of Oregon.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 08-2020, 10/1/20]

#### **6.05.100 Penalties**

Violation of this chapter shall be punishable by a penalty or fine in an amount set by resolution of the Board of County Commissioners.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3-13-03; Renumbered by Ord. 08-2020, 10/1/20]

#### **6.05.110 Payment**

Payment of all fines under this chapter shall be made by mailing or delivering the response form attached to the citation accompanied by a check or money order for the amount of the fine to the Sheriff's Office at 9101 SE Sunnybrook Blvd., Clackamas, Oregon 97015.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2020, 10/1/20]