

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 7/2/19 **Approx. Start Time:** 11:00am **Approx. Length:** 30 min

Presentation Title: Noise Ordinance Amendments

Department: County Counsel

Presenters: Nathan Boderman, Assistant County Counsel.

Other Invitees: Cheryl Bell, Assistant Director, DTD; Shane Strangfield, Captain, Sheriff's Office; Dan Johnson, Director, DTD.

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

- Decision whether to proceed with revisions to the standards currently in Code related to enforcement of the County's noise ordinance, fines associated with violation of the noise ordinance, and the process associated with granting variances to the noise standards.

EXECUTIVE SUMMARY: ORS 203.065 and 467.100 grant counties the ability to adopt and enforce noise regulations, and to define what a nuisance is. The County has adopted comprehensive noise control regulations, which have been codified in Chapter 6.05 of the County Code. Under 6.05.080, the Clackamas County Sheriff is vested with authority to administer, supervise and perform all acts necessary to enforce the County's noise ordinance.

Last fall, the Board held a policy session to review the County's current noise ordinance and to discuss potential policy changes to the Code. Discussions narrowed the focus of review to two areas in particular: the use of a subjective standard to determine noise violations, as opposed to the current objective standard currently utilized in the Code, and the process for granting variances. The Board directed staff to draft language for consideration incorporating a subjective standard to determine noise violations, and to provide increased notice in the variance process.

Objective Standard vs. Subjective Standard

The County's noise ordinance is currently based on a decibel standard. The methods and equipment used for sound measurement are strictly prescribed in 6.05.030, and the specific decibel limits are set forth in 6.05.040. The primary advantage of this approach is that it provides an objective method for determining whether excessive noise is a violation under the County's Code. On the other hand, sound level meters are expensive, require maintenance and calibration, and require operation by trained staff. Additionally, while the use of sound level meters may be useful when measuring ongoing noise created by such things as mechanical equipment or loudspeakers, it often is not a practical way to measure intermittent noise created by such things as parties or vehicle engines.

Jurisdictions that want to address the shortcomings of the objective standard, such as the one currently utilized by Clackamas County and many others, may instead opt for a more subjective approach which relies on a reasonableness standard to determine whether excessive noise is a violation. Language implementing such an approach relies on standards such as whether noise

is “unreasonably loud” or “plainly audible” in lieu of a precise measurement made by a sound level meter.

The advantages are apparent in that this eliminates issues around the cost, availability and expertise associated with operating the sound level meter. Adopting a “reasonableness” standard would also provide the Sheriff’s office more flexibility to determine what should constitute a noise violation depending on the context of the situation. Some might actually characterize this additional flexibility as a disadvantage, in the sense that there is increased ambiguity and potentially inconsistent enforcement in terms of what would be considered to be a noise violation. Additionally, in the event a citation is challenged, it is more difficult for a court or hearings officer to determine whether the alleged noise should be considered unreasonable. This is because there is no specifically prescribed evidence that is required to support a citation, and because individuals’ perception of what may or may not be “reasonable” often varies. Finally, regulation of noise may involve free speech issues when the subject of the excessive noise is protected speech. The County may regulate such aspects of the speech, such as volume, duration, location and timing, so long as the regulation is unrelated the content or message expressed by the noise. While the use of a decibel standard mostly avoids these First Amendment issues, additional care must be taken where enforcement officials are given discretion to decide what noise may be unreasonable under the circumstances.

Based on the prior direction from the Board, staff review of relevant case law, and a survey of noise ordinances from other jurisdictions, staff is recommending amendments to Chapter 6.05 with the expressed purpose of providing more flexibility in in the enforcement of the County’s noise regulations. A redlined version of the amendments has been prepared and is attached to this report to show the proposed changes to the current noise ordinance.

The primary policy change in the proposed amendments would effectively make “unreasonably loud or raucous noise” a violation of the County’s noise regulations. Section 6.05.030 defines in greater detail what is meant by these terms, and provides factors for determining when noise will be considered loud or raucous. This amendment represents a departure from the existing standard, which strictly limits violations to those noises that exceed the defined decibel thresholds.

In addition to the proposed general prohibition against loud and raucous noise, staff is proposing that the County define certain categories of noise that would be *per se* violations of the noise ordinance. The full list of the proposed categories are found in Section 6.05.040. Most notably, the existing decibel thresholds would be retained such that any noise that would be a violation of our current noise ordinance would continue to be a violation so long as the noise was properly captured with a decibel meter. Other categories of noises that would be defined as *per se* violations are as follows:

- Vehicle horns and signaling devices when used for more than 10 seconds in a non-emergency situation;
- Radios, tv’s, etc., that are plainly audible from a distance of 50 feet;
- Loudspeakers, amplifiers, yelling, shouting, etc., producing unreasonable noise between the hours of 10pm and 7am;
- Unreasonably loud noise from animals;
- Noise from barking dogs that would otherwise violate Chapter 5.01 (Animal Licensing, Services and Enforcement);
- Unreasonably loud noise from loading or unloading merchandise, materials, or equipment;

- The construction or repair of buildings or excavation of streets and highways other than between the hours of 7 a.m. and 10 p.m.;
- Unreasonably loud noise from noise-creating blowers, power fans, or internal combustion engines between the hours of 10 p.m. and 7 a.m.; and
- Unreasonably loud noise from commercial establishments between the hours of 10 p.m. and 7 a.m. that is plainly audible at a distance of five feet from a dwelling.

The County already exempts certain noises under the existing noise ordinance. These exemptions generally cover the following:

- Sounds caused by organized athletic, religious, educational, civic or racing activities on property generally used for such purposes between the hours of 7 a.m. and 11 p.m.;
- Sounds caused by emergency work, or by the ordinary and accepted use of equipment, vehicles and apparatus;
- 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;
- Sounds caused by bona fide use of emergency warning devices and alarm systems;
- Sounds caused by blasting activities when performed under a permit between the hours of 9 a.m. and 4 p.m.;
- Sounds caused by industrial, commercial, timber-harvesting, or utility organizations or workers during their normal operations;
- Sounds caused by animals associated with agricultural operations, animal husbandry, or agricultural operations;
- Sounds caused by motor vehicles on public roads;
- Sounds caused by construction activity or by tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, between the hours of 6 a.m. to 10 p.m. of the same day; and
- Certain noise created by the operation of a motorboat on a public waterway.

Staff recommends retaining these exceptions. In addition, staff would recommend adding to the exemption list as follows:

- Sounds caused by excavations associated with 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.;
- 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; and
- 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.

Variance

As noted above, 6.05.040 sets forth the general standards for what constitutes a noise violation under County Code. Persons who are planning to operate a sound source which may violate the standards in 6.05.040 may apply to the Sheriff for a variance from such standards under 6.05.060. According to the Sheriff's Office, 32 variances were processed in 2017, 24 in 2018, and 8 so far in 2019. The applicant must identify the standard 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 may reasonably require. The Code then requires the Sheriff to consider the following factors:

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

Once a decision is made, the decision may be appealed to the Board of County Commissioners according to the procedures set out in 6.05.060(E).

In light of recent activities, specific concerns regarding the notice associated with these variance requests has been raised. Nothing currently in code requires the Sheriff to provide notice to other County departments, or to neighboring property owners or others that may be impacted by the noise variance. The only notice required under this section of the Code is triggered when an appeal of a citation is made to the Board of County Commissioners. There is no restriction on the County's ability to impose a notice requirement on itself when processing variances.

Staff is proposing to add language to the code that would require the applicant, for the time an approved variance will be in effect, to post on the site adjacent to the public right of way a copy of the variance approval and the phone number for the primary contact. Where the site is not adjacent to public right of way, the posting must be in a location on the site reasonably anticipated to provide the public notice of the variance approval.

After discussions with the Sheriff's Office and the Department of Transportation and Development, staff is not recommending any requirements in the Code to mandate interdepartmental coordination. Rather, staff believes sufficient coordination can be achieved through training and simply by providing correct contact information to the respective departments.

Currently, the Sheriff's Office does not charge a fee to process variance requests. Charging a fee for such a request is permitted under state law and is something the Sheriff's Office is currently considering. Data is being collected at this time to help develop a fee proposal. In the future, the Board may be asked to adopt a specific fee to help defray those costs associated with processing variance requests.

Fines

In addition to any changes the Board may consider to the noise ordinance in Chapter 6.05, the Board has also discretion to set the amount of a fine for violation of the noise ordinance. The current fine for a noise violation is an amount not to exceed \$500. ORS 203.065 classifies violations of county ordinance as a Class A violation which can carry with it a maximum fine of up to \$2,000 under ORS 153.018(2)(a). Increased fines obviously act as an additional deterrent and may help mitigate excessive noise issues prior to issuance of a citation, and serves to discourage repeat offenders.

Concern have been raised that our current fines are not sufficient to discourage violations of our noise ordinance. Staff believes that there may have been some confusion with administering the current fine schedule, since there is a separately prescribed fine of \$55 for noise violations that occur within parks.

The Sheriff's Office has offered the following adjustments to the fine schedule to help clarify:

1st Offense: \$150

2nd Offense: \$300

3rd Offense and every offense thereafter: \$500

Staff believes the penalties above are appropriate and commensurate with the type of violation at issue. If the Board agrees, the fine schedule will be revised in the future at the same time the Board updates all other fines and fees, which takes place annually.

Other Noise Related Issues

Staff has identified a number of housekeeping amendments and minor changes that could improve consistency within the existing ordinance and assist with enforcement. These proposed changes are generally summarized as follows:

- Staff proposes an adjustment of certain definitions for consistency with other County Code sections.
- In response to questions from a concerned citizen and the Sheriff's Office, staff proposes to clarify the location from which sound measurements must be taken. The proposed change would conform to the current practice by the Sheriff's Office.
- Staff proposes that all references to those times from which reduced noise is mandated under the code be standardized to 10 p.m. and 7 a.m. the following day, except for the blasting activity exemption, which would remain unchanged and allow permitted blasting activities between the hours of 9 a.m. and 4 p.m.. While the existing code establishes general quiet hours as 10 p.m. and 7 a.m. the following day, there are a few references to 6 a.m. and 11 p.m. for different categories of noise. Standardizing these references would assist in enforcement and administration.
- Finally, staff proposes to remove specific provisions related to the notice and procedure associated with compliance hearings, and instead, utilize the generally applicable hearings officer procedures in Chapter 2.07.

Since staff last met with the Board to discuss this proposal, a concerned citizen has asked staff to consider whether it would be appropriate to add additional regulations for the express purpose of protecting livestock. Certain jurisdictions that have adopted such regulations will regulate certain categories of noise, most typically noise caused by firearms or explosions, and will set either an objective decibel threshold, or will regulate those noise making activities through a distance setback from areas used directly by livestock, such as barns, corrals, paddocks, feed lots, etc. If the Board is interested in adopting regulations for the purpose of protecting livestock, it may do so by either adding it to the existing noise ordinance regulation, or by creating a new section of County Code. Alternatively, the Board may decline to adopt such specific protection, as staff is not aware of any state or federal regulations that would mandate the adoption of such regulation.

FINANCIAL IMPLICATIONS (current year and ongoing):

- Elimination of the decibel meters would save costs associated with the purchase and maintenance of this equipment.

- Additional training would be advisable for those in the Sheriff's Office charged with enforcing any amended rules, particularly with regards to any amendment which provides more discretion when determining noise violations.
- We would anticipate an increase in the number of hearings associated with noise violations where violations are determined through the use of subjective standards.
- Staff anticipates that imposing a posting requirement for variance requests would add some nominal administrative expense to the process.
- Increases in the fine amounts associated with noise violations could provide more revenue to offset any of the other costs identified above.

It is not anticipated that the current proposal will have discernable impact on the budget. The main change to the ordinance provides additional tools to enforce the noise ordinance and does not impose any real mandate above and beyond what is already provided in code. By providing more flexibility, in theory, you could see an increase in citations and by extension, hearings. In reality, these are low priority violations and I assume the level of enforcement by the Sheriff's Office will fluctuate depending on existing personnel levels and competing priorities.

The Sheriff's Office may explore whether it wants to increase enforcement. From the beginning, the purpose of this change has been to provide additional flexibility in the enforcement of the existing ordinances.

The one requirement we are proposing is to add a notice component to the variance procedure. There may be a nominal cost associated with this additional requirement. In discussions with the Sheriff's Office, it was suggested that the applicant provide its own notice posting. The text of the requirement is intentionally flexible to allow the Sheriff's Office to administer this requirement as it sees fit. If it wants to produce its own notice signs, for instance, it is free to do so and there will obviously be a cost associated with that. As drafted, it can be administered for virtually no cost at all if the job of posting is put on the applicant.

The Sheriff's Office is also exploring whether it wants to adopt a fee to process these noise variances. It is currently collecting data from other jurisdictions as to what others charge. The Sheriff's Office estimates it takes about an hour of staff time to process these. However, at this time, the biggest impediment seemed to be that the patrol division was not set up to accept payments.

It is uncertain that a proposed change to the fine schedule will have much impact on what is actually collected from noise violations. The existing ordinance provides for a fine up to \$500 per violations. As explained in the report, the actual citation amounts have been lower, perhaps due to some confusion in our fine schedule which has a \$55 fine for noise violations in County parks. If anything, the proposed fine schedule likely will increase the amount of fine revenue that is collected.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with the County's Performance Clackamas goals?
 - Build public trust through good government.
 - Ensure safe, healthy and secure communities.

LEGAL/POLICY REQUIREMENTS: County Code Chapter 6.05. ORS 203.065 and ORS 467.100.

PUBLIC/GOVERNMENTAL PARTICIPATION: None.

OPTIONS:

1. Direct staff to finalize the proposed code amendments attached to this report and advance the ordinance to first reading at a future business meeting.
2. Direct staff to finalize the proposed code amendments attached to this report, with amendments, and advance the ordinance to first reading at a future business meeting.
3. Decline to amend Section 6.05 of the County Code or the fine schedule associated with noise violations.

RECOMMENDATION:

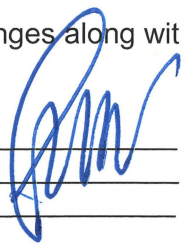
Staff recommends the Board pursue Option #1.

ATTACHMENTS:

Attached are the County Code draft changes along with the code language as currently written.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____



For information on this issue or copies of attachments, please contact Nathan Boderman @ 503-655-8364

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]

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 any 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 7 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]

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.

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 passer-bys, 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.

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]

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, animal husbandry, or agricultural operations;
- 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]

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 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, a primary contact person that will be onsite and accessible during the time the variance will be in effect, and any other supporting information which the Sheriff may reasonably require.
- B. Review Considerations. The Sheriff shall consider:
 - 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.
- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The Sheriff shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of Appeal must be delivered to the Board of County Commissioners within thirty (30) days from the date of the Sheriff's decision. The Board shall review the application *de novo* and within fifteen (15) days, deny the application, approve it, or approve it subject to conditions.
- F. During the time the variance will be in effect, a copy of the variance approval and the phone number for the primary contact identified in the variance application shall be posted on the site in a location adjacent to the public right of way, or where the site is not adjacent to public right of way, in a location on the site reasonably anticipated to provide the public notice of the variance approval.
- G. The authority granting the variance may at any time before or during the operation of any variance revoke the variance for good cause, including but not limited to failure to post the notice required in subsection F.

[Codified by Ord. 05-2000, 7/13/00]

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]

6.05.090 Administration And Enforcement

- A. 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 associate with the compliance hearing is subject to those provisions of County Code Section 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]

6.05.0100 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]

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, OR 97015.

[Codified by Ord. 05-2000, 7/13/00]

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. ~~prevent and regulate excessive sound wherever it is deemed to be harmful to the health, safety, welfare, and quality of life of citizens of Clackamas County. This chapter shall be liberally construed to effectuate that purpose.~~

[Codified by Ord. 05-2000, 7/13/00]

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~~EMERGENCY” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.
~~“Emergency work~~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.
~~“Industrial and Commercial Districts”~~ means any real property that is used for commercial and industrial activities provided that it is properly zoned, or is legally nonconforming, for commercial or industrial use in accordance with the terms and maps of the Clackamas County Zoning and Development Chapter.
- C. _____
- A.D. INDUSTRIAL or COMMERCIAL ORGANIZATIONS or WORKERS those industrial or commercial sound sources of sound which are subject to noise regulation by the State of Oregon Department of Environmental Quality;
- B.E. NOISE SENSITIVE”~~Noise Sensitive UNIT Area~~NOISE SENSITIVE AREA” any building or portion thereof, currently and regularly used for the overnight accommodation of persons, ~~including,~~includes, but is not limited to, dwellings and real property normally

- ~~used for sleeping or normally used as a school, church, hospital, nursing home or public library, individual residential units, individual apartments, hospitals, and nursing homes;~~
- 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~~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~~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~~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~~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.~~
- C. ~~“Residential district” means any real property that 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 Clackamas County Zoning and Development Chapter.~~
- D.J. SHERIFF the Sheriff of Clackamas County or the Sheriff’s designee; and
- E.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 7~~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.
- F.L. URBAN RESIDENTIAL ZONING DISTRICTS means that those zoning districts defined in the Clackamas County Zoning and Development Chapter: ~~-The 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 (HJDR), 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.~~
- ~~“Utility Service” means the normal operation of utilities within the County, whether provided by the County or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications and garbage hauling.~~
- G.M. VEHICLE means automobiles, motorcycles, motorbikes, go-karts, trucks, buses, and snowmobiles.

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.

6.05.040 Noises Specifically Prohibited

~~X.XX.XXX Noises Prohibited in Noise Sensitive Areas and Residential Areas.~~ 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..

~~—The following acts are declared per se violations of this ordinance chapter based upon a reasonable person standard. The enumeration does not constitute an exclusive list:~~

- B.
 - 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 streetright of way, parkpublic 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.
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 or except as provided by the following:

— The testing of any emergency signaling device shall occur between 7 a.m. and 7 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.

4. Sounding or permitting the sound of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 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.

5. 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, 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 and/or passer-bys, or is plainly audible at a distance of 50 feet from any person in a noise sensitive area. 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 sensitive areas, including multi family or single family dwellings.

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. on weekdays the following day, and 10 p.m. and 10 a.m. on weekends and recognized County holidays in the following areas:
a. Within or adjacent in proximity to residential 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.

— This provision shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the County or for with the County is hosting.

7. Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling or singing received or perceived in residential dwellings, or 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.

~~—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.~~

10.

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. on weekdays.

~~—In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the County Administrator/Manager may issue a permit upon application if the County Administrator/Manager determines that the public health and safety, as affected by loud and raucous noise is caused by construction or repair of buildings or excavation of streets and highways between the hours of 7 p.m. and 7 a.m. will not be impaired, and if the County Administrator/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 thirty days. The permit may be renewed once for a period of thirty days or less.~~

12. Blowers, and Similar Devices: In residential or noise sensitive areas, 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 raucous and can be heard across the property line of the property from which it emanates.

13. Commercial Establishments Adjacent to Residential Property 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 residential property dwelling.

6.05.0306.05.050 Sound Measurement

A. Any dBA mMeasurements 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 of a noise sensitive unit, occupied by a person making a complaint under this chapter.
- D. All measurements made pursuant to this chapter shall comply with the provisions of this section.

[Codified by Ord. 05-2000, 7/13/00]

6.05.040 — Prohibitions

- A. ~~It shall be a 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, when measured at or within three feet of a window or door of a noise sensitive unit occupied by a person making a complaint under this chapter, exceeds:~~
 - 1. ~~50 dBA at any time between 10 p.m. and 7 a.m. the following day; or,~~
 - 1. ~~60 dBA at any time between 7 a.m. and 10 p.m. the same day.~~
- B. ~~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]

~~6.05.050~~6.05.060 Exceptions

Notwithstanding ~~6.05~~8.040, 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 emergency 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 Burglary and Robbery Alarm Permit Chapter 6.098.07 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, animal husbandry, or agricultural operations, ~~when the source of such sound is located outside of urban residential zoning districts as defined by the Clackamas County Zoning and Development Chapter;~~
 - H. Sounds caused by motor vehicles operated on a public road/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); or;
 - 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]

6.05.0606.05.070 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 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, a primary contact person that will be onsite and accessible during the time the variance will be in effect,† and any other supporting information which the Sheriff may reasonably require.
- B. Review Considerations. The Sheriff shall consider:

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.
- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The Sheriff shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of Appeal must be delivered to the Board of County Commissioners within thirty (30) days from the date of the Sheriff's decision. The Board shall review the application de novo and within fifteen (15) days, deny the application, approve it, or approve it subject to conditions.
- F. During the time the variance will be in effect, a copy of the variance approval and the phone number for the primary contact identified in the variance application shall be posted on the site in a location adjacent to the public right of way, or where the site is not adjacent to public right of way, in a location on the site reasonably anticipated to provide the public notice of the variance approval.
- F.G. The authority granting the variance may at any time before or during the operation of any variance revoke the variance for good cause, including but not limited to failure to post the notice required in subsection F.

[Codified by Ord. 05-2000, 7/13/00]

6.05.0706.05.080 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]

6.05.0806.05.090 Administration And Enforcement

- A. 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.
1. — 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 ~~subsections G and H of this section~~ County Code Section 2.07.040.

F. — ~~The n~~ Notice of h ~~Hearing and the procedure associate with the compliance hearing is subject to those provisions of County Code Section 2.07. : a person who receives a citation for violation of this chapter may deny all or part of the alleged violation by completing an appropriate response form, attached to the citation, and mailing or delivering it to the Sheriff's office, as indicated on the citation. Upon receipt, the Sheriff's office shall forward the form to the office of the hearing officer, who shall establish a time and place for the hearing and provide notice of it to the person who received the citation. Notice of the time and place of the hearing shall be made by mailing the notice to the address designated by the person who received the citation. The notice shall be sent by regular first class mail.~~

- G. — ~~Hearings Officer: the Board of County Commissioners shall appoint a quasi-judicial hearing officer or officers to hear and determine cases of alleged violations of this chapter. The hearing officer may establish a schedule of the amounts of forfeiture for violations with the approval of the Board of County Commissioners.~~
2. — ~~Every hearing to determine whether this chapter has been violated shall be held before a hearing officer. The hearing officer may prescribe procedures for the conduct of such hearings.~~
3. — ~~Evidence, including rebuttal evidence, may be presented at the hearing and shall be limited to that which is relevant to the violation alleged.~~
4. — ~~The hearing officer has the authority to administer oaths and take the testimony of witnesses. The hearings officer may issue subpoenas in accordance with Oregon Rule of Civil Procedure 55, provided that if the person who receives a citation desires that witnesses be ordered to appear by subpoena, he must so request in writing either at the time response is made to the citation or subsequently by mail at any time before five (5) days prior to the scheduled hearing. A deposit for each witness in an amount set by resolution of the Board of County Commissioners shall accompany the request, such deposit to be refunded if no forfeiture is assessed or if the total witness cost is less than the amount deposited. Witnesses appearing by subpoena shall be allowed the same fees and mileage as allowed in civil cases in district court. If a forfeiture is declared, the person ordered to forfeit shall also be ordered to pay all witness fees.~~

5. ~~The parties shall have the right to cross-examine witnesses who testify.~~
- 6.G. ~~After due consideration of the evidence and arguments, the hearings officer shall determine whether the violation as alleged in the complaint the complaint has been established. If the violation has been established, the hearings officer shall issue a decision including a brief statement of the findings of fact necessary to establish a violation and ordering the person to pay an appropriate forfeiture and witness costs, to be paid into the County General Fund. The decision and order may be oral and issued at the conclusion of the hearing, but in all cases must be recorded in the record of the hearing.~~
- 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]

~~6.05.090~~6.05.0100 **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]

~~6.05.100~~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 ~~2223 5. Kaen Road, Oregon City, Oregon 97045~~9101 SE Sunnybrook Blvd, Clackamas, OR 97015.

[Codified by Ord. 05-2000, 7/13/00]