

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 11/27/18 **Approx. Start Time:** 2:30pm **Approx. Length:** 60 min

Presentation Title: Noise Ordinance Amendments

Department: County Counsel

Presenter: Nathan Boderman, Assistant County Counsel

Other Invitees: Dan Johnson, Director, DTD; Cheryl Bell, Assistant Director, DTD; James Rhodes, Chief Deputy, Sheriff's Office

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

- Familiarize the Board with current standards related to the enforcement of the County's noise ordinance.
- Familiarize the Board with the current processes associated with granting variances to the noise standards.
- 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.

The Board has recently expressed interest in reviewing the County's current noise ordinance. Discussions over the last couple months have 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.

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 may rely 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 would 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.

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. The application 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 anticipates that requiring notice for variance requests would add some administrative expense to this process.

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.

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 notice requirement for variance requests would add some 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.

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 draft proposed code amendments to allow the use of subjective standards to determine noise violations.
2. Direct staff to draft proposed code amendments addressing variance procedures, subject to Board direction.
3. Direct staff to draft proposed code amendments implementing increased fines associated with noise violations, subject to Board direction.
4. Direct staff to draft code amendments consistent with Board direction related to any combination of Options 1, 2 and 3.

- 5. Decline to amend Section 6.05 of the County Code or the fine schedule associated with noise violations.

RECOMMENDATION:


County Counsel is seeking policy direction from the Board to incorporate into potential code amendments. Recommendations from the Sheriff's Office have been provided as an attachment to this worksheet.

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

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 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. INDUSTRIAL or COMMERCIAL ORGANIZATIONS or WORKERS those industrial or commercial sources of sound which are subject to noise regulation by the State of Oregon Department of Environmental Quality;
- B. NOISE SENSITIVE UNIT any building or portion thereof, currently and regularly used for the overnight accommodation of persons, including, but not limited to individual residential units, individual apartments, hospitals, and nursing homes;
- C. PERSON includes, in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity;
- D. SHERIFF the Sheriff of Clackamas County or the Sheriff's designee; and
- E. 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;

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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 and refrigeration units, including those mounted on vehicles; and,
 10. Animals located in urban residential zoning districts.
- F. URBAN RESIDENTIAL ZONING DISTRICTS means that those zoning districts defined in the Clackamas County Zoning and Development Chapter. The Urban Low Density Residential (R-7/R-30), Medium Density Residential (MR-1), High Density Residential (HJDR), Special High Density Residential (SHD), Planned Medium Density (PMD), Medium High Density Residential (MR-2), and any other similar urban residential zoning district defined after the enactment of this chapter.
- G. VEHICLE means automobiles, motorcycles, motorbikes, go-karts, trucks, buses, and snowmobiles.

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

6.05.030 Sound Measurement

- A. Measurements 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 at, or within, three (3) feet of a window or 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,
 2. 60 dBA at any time between 7 a.m. and 10 p.m. the same day.
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- 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 Exceptions

Notwithstanding 6.08.040, 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 11:00 p.m. the same day;
- B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not such work is performed 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 Chapter 6.09 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, animal husbandry, or agricultural operations, when the source of such sound is located outside of urban residential zoning districts;
- H. Sounds caused by motor vehicles operated on public roads, which are regulated by state law (ORS 815.250) which the Sheriff has a mandate to enforce; or,
- I. 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.

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

6.05.060 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.

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- 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 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. 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]

6.05.070 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]

6.05.080 Administration And Enforcement

- A. The Sheriff for Clackamas County shall administer, supervise, and perform all acts necessary to enforce this chapter.
 - 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.
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- 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 subsections G and H of this section.
- G. Notice of Hearing: 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.
- H. 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.
1. 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.
 2. Evidence, including rebuttal evidence, may be presented at the hearing and shall be limited to that which is relevant to the violation alleged.
 3. 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.
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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.

4. The parties shall have the right to cross-examine witnesses who testify.
 5. 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.
- I. 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.
 - J. 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.
 - K. 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 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 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.

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

APPENDIX B - FINES

DEPARTMENT/DIVISION	AUTHORIZING LEGISLATION	Fine set by ORS	ORS auth. fine	Code auth. fine	FINE AMOUNT
PGR					
Cable TV franchise violations	Code §10.02.090.A			x	
non-continuing offense					not to exceed \$500
continuing offense					not to exceed \$1,000
PLANNING					
RECORDING					
RECORDS MANAGEMENT					
SHERIFF					
Prohibited touching, nudity and massage	Code §6.02.060			x	\$250 per violation
Emergency regulations violation	Code §6.03.080.A			x	\$500 per offense
Noise control violation	Code §6.05.090			x	Not to exceed \$500
Chronic nuisance civil penalty	Code §6.08.040.D			x	\$100 each day
Parking Cite for Unattached Trailers	Code §7.01.050.A			x	\$45
Parking Cite for Handicapped Parking	Code §7.01.050.A			x	\$150
All Other Parking Citations	Code §7.01.050.A			x	\$40

Boderman, Nathan

To: DeSantis, Kimberlee
Subject: RE: Considering changes to the Noise Ordinance

From: Rhodes, James
Sent: Wednesday, August 22, 2018 12:58 PM
To: DeSantis, Kimberlee <KimberleeDeS@co.clackamas.or.us>
Cc: Hoy, Chris <choy@co.clackamas.or.us>; Roberts, Craig <craigrob@co.clackamas.or.us>
Subject: RE: Considering changes to the Noise Ordinance

We are grateful for including us in the discussion regarding your investment in the attention to and possible update of the current noise ordinance. If the board considers providing more authority and therefore more responsibility to Sheriff's Deputies we ask that you consider a few points to include in your discussion:

1. If you remove the requirement of a decibel measurement and empower the Deputy Sheriff to decide what is "unreasonably loud" or a "noise disturbance" please define that clearly and concisely in an objective manner. Noise regulation emanating from private property presents a very sensitive first amendment issue specifically regarding freedom of speech and the right to assemble. If you are asking a Deputy Sheriff to enter upon private property and inflict commands upon a property owner, temporarily limit their rights, fine them and seize their property, and potentially use force to do so; the definition must be very well written and objective. It will be challenged in a court and we will need good language to stand behind supported by County Counsel.
2. The fine should be increased to a higher level in order to effect compliance.
3. Please consider a provision to allow the Deputy Sheriff to seize any implement of noise amplification as evidence of the violation. The evidence may be seized and the owner provided a receipt, to be returned upon adjudication of the fine. The seizure of speakers, amplifiers, fireworks, firearms, etc., even if temporary, may be the only true relief to the nuisance being experienced by neighbors, albeit temporary.

Thank you again for reaching out to us.



James Rhodes, Chief Deputy
Clackamas County Sheriff's Office

Office: (503) 785-5002
JRhodes@clackamas.us

Honesty - Courage - Justice
Working Together to Make a Difference

From: DeSantis, Kimberlee
Sent: Wednesday, August 22, 2018 8:15 AM
To: Roberts, Craig <craigrob@co.clackamas.or.us>
Subject: Considering changes to the Noise Ordinance

Good morning Sheriff Roberts:

Earlier this year, Commissioner Humberston attended a POA meeting and heard concerns from Deputy Adam Peterson about the County's noise ordinance. Specifically, he felt the fines are too low to discourage behavior and he expressed concerns about the need to have a decibel reader present in order to issue a warning or citation. Apparently this is a problem when it comes to responding to loud parties in particular.

Commissioner Humberston would like to ask his fellow Commissioners if they would be interested in considering a change to the noise ordinance to address these matters. I have been discussing the possibility of changes with Nate Boderman in County Counsel. Before this matter is brought before the Board, however, I would like to get your thoughts – particularly in regards to being able to issue warnings or citations without the use of a decibel reader.

I appreciate your attention to this request and I look forward to hearing from you or a representative from your office at your convenience.

Sincerely,

Kimberlee DeSantis | Commission Policy Advisor
Clackamas County Board of Commissioners
2051 Kaen Road, Suite 450 | Oregon City, OR 97045
503.742.5913 | kimberleedes@clackamas.us