

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 06/29/21 **Approx. Start Time:** 2 pm **Approx. Length:** 30 min

Presentation Title: Noise Ordinance Variances

Department: Transportation and Development; Clackamas County Sheriff; County Counsel

Presenters: Nate Boderman, Assistant County Counsel; Cheryl Bell, DTD Assistant Director

Other Invitees: Brad O'Neil, Patrol Captain, Sheriff's Office; Matt Rozzell, Building Codes Administrator; Michelle Amend, Code Enforcement Supervisor

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Clarity on how to proceed with revisions to the County Code related to noise variances.

EXECUTIVE SUMMARY:

Previous Board Action

ORS 203.065 and 467.100 grant counties the ability to adopt and enforce noise regulations. On October 1, 2020, the Board adopted comprehensive amendments to the County's noise control regulations, which are codified in Chapter 6.05 of the County Code and became effective on December 30, 2020.

This adoption was the latest step in an ongoing project to update the County's noise control ordinance. The Board held three policy sessions and two public hearings prior to the adoption. While the majority of the Code changes were adopted October 1st, the Board deferred further discussion around the process for granting variances to allow staff to continue to work on a proposal to address the Board's concerns.

At a policy session on November 10, 2020, the Board directed DTD staff to develop a noise variance review and issuance process, with the assumption that DTD would recover its costs by implementing a new fee charged to those seeking a variance. With the change in the Board, staff felt it was appropriate to see if the current Board concurs with or would like to revise the prior direction.

Variance Process

County Code Chapter 6.05.040 sets forth the general standards for what constitutes a noise violation. Persons planning to operate a sound source which may violate the standards in Chapter 6.05.040 may apply to the Sheriff for a variance from such standards under Chapter 6.05.060.

The current standards and process for approving variances, outlined in County Code, require that an 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, if the variance request is denied, the applicant may appeal to the Board of County Commissioners according to the procedures set out in Chapter 6.05.060(E).

Notice Concerns

While adopting comprehensive amendments to the County's noise control regulations in 2020, the Board identified the following concerns about the notice for these variance requests.

- Nothing in the 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 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. The Sheriff's Office has indicated that it provides a copy of the variance approvals or denials to the Board's Office, even without a specific obligation in the Code to do so.

Previous Action to Revise the Noise Variance Provisions

Since the October 1st adoption, the County Administrator along with representatives from the Sheriff's Office, the Department of Transportation and Development (DTD), and County Counsel discussed issues around noise variances and formulated a proposal for Board consideration. The group identified the need to amend three aspects of our current provisions, and developed recommended proposals to:

1. Implement administrative changes to how variances will be processed.
2. Address issues related to notice, and
3. Clarify certain criteria related to the review of variances.

These recommendations, described below, were presented to the Board in the November 10, 2020 policy session.

Recommendation 1: *Designate Transportation and Development as the Department in charge of evaluating noise variance requests*

This transfer is recommended due to DTD's specific expertise working with permit applicants and applying decisional criteria to a permit request. Furthermore, many variance requests are in response to construction activities. Recent variance history, and a breakdown of types of requests, is presented below.

Year	Total Variances	Construction Variances	Non-Construction Variances
2017	30	13	17
2018	24	2	22
2019	16	7	9
2020	15	14	1
2021	2	2	0

While the overall volume of noise variance requests remains relatively low, the proposal does represent a reallocation of work from one County department to another and there is no indication of what the volume of requests will be moving forward.

In November 2020, staff noted two actions required to implement this change:

1. Eliminate the specific reference to the Sheriff's Office in the Code. The proposed revision identifies the County Administrator as the responsible "entity" for taking jurisdiction of noise variances and specifically notes that the Administrator may appoint a designee to assume noise variance responsibilities. This allows for a transition of work at some point in the future without the need for a subsequent code amendment.
2. Adopt a fee to charge for these noise variance requests to cover the cost of this review work. In research staff found many jurisdictions charge "cost recovery" fees to process similar variances. The County's fee would reflect the cost to the County for staff time to process the variance and to provide customers with materials to satisfy the notice requirements. (Currently, the Sheriff's Office does not charge a fee and the Patrol Division has no ability at this time to accept payments.) Any fee the County charges must be based on a reasonable estimate of the average cost to the County to process these variances.

Fees would not be part of the proposed ordinance change, but would be presented to the Board when the Board considers its annual update to the fee and fine schedule. In anticipation of this potential fee, the proposed ordinance revision would contain language that specifically authorizes the Board to adopt a fee in the future, if it wishes to do so.

Recommendation 2: *Include a posted notice provision in the Code*

Currently, the only notice required by the Code is notice to be provided by an appellant when it wishes to appeal an initial decision of the Sheriff's Office to the Board of Commissioners. This is not traditional notice so much as it is an application for an appeal.

Public notice: To address this, the group proposes incorporating a posted notice provision in the Code that would require an applicant to post notice on the site, adjacent to the right of way where possible, and to provide contact information for someone associated with the project if anyone wishes to inquire about the variance. Where the site is not adjacent to public right of way, the posting would have to be in a location on the site reasonably anticipated to provide the public notice of the variance approval. Validation that the posting occurred would be through affidavit. This notice provision would address an omission in our current process and is an approach that has been used with relative success in other jurisdictions.

The group does not recommend requiring a mailed notice because of the high costs to the customer or DTD that would be incurred. Additionally, for noise variances related to construction, mailed notices would increase the length of the overall variance application process, which could result in challenging delays when considering construction schedules.

Internal Notice: The group does not recommend including a required internal notice in the Code. This is not something that the County has traditionally incorporated into the Code; if anything, internal policy has been used if there is a desire to formalize notification of other County departments and the Board Office. While this could be built into the Code, any changes would require Code amendments and any violation would be a procedural error that could undermine the review of the noise variance appeal. With DTD assuming control over noise variances, internal notice can be provided through policy and administration, with DTD suggesting to provide notice to the Board's Office and CCSO as part of variance administration.

Recommendation 3: *Maintain criteria to reflect that variances would be approved primarily in circumstances that benefitted the public, and strengthen guidance on how criteria are to be applied*

The current practice of the Sheriff’s Office is to only approve those proposals that are associated with construction projects and permitted events, and to deny variances associated with other private events, parties, etc. While current criteria requires the County to evaluate the public benefits associated with the request, the Code does not dictate that any particular factor carry more weight than any of the other criteria. While the group agreed that proposals that benefit the general public should receive the most favorable reviews, there may be circumstances where a variance might be warranted. In light of these considerations, the group proposes to leave the criteria as-is, clarify that the evaluator’s task is to balance the criteria, and strengthen guidance in the Code on how the criteria are to be applied.

We propose language in the introduction setting an expectation for variances generally, and more specific language under subsection (B) clearly stating that noise variances not associated with an activity benefitting the general public should only be approved in the most extraordinary circumstances. As DTD assumes responsibility of processing noise variances and applying these criteria, it may be that DTD will want to revisit the specific language to provide more guidance around how the criteria are to be applied because as it is, approval or denial of variances can be justified for a wide range of reasons. For now, the group agreed that retaining more flexibility is preferable to trying to lock the County into a more rigid approval formula.

Additional Recommendation: *Expand Exemption for Construction Activities*

In working on the proposed revisions summarized above, staff have identified an additional exemption for the Board’s consideration.

In looking at data from 2017 through early March 2021 the following table details the types of construction work that were issued variances through the Sheriff’s Office.

Type of Work	2017	2018	2019	2020	2021	Total
Paving, curb or ADA ramp installation	7		3	6	1	17
Signage / paint / bike / pedestrian lane installation	1			1	1	3
Drilling, boring, or machine noise	2		1	2		5
Sandblasting, air compressor, generators or other power tools	2		2	5		9
Guardrail or bridge installation	1	1	1			3
Not specified		1				1

Currently, “sounds caused by construction activity or by tools, including drills, chain saws, lawn mowers, saws, hammers, and similar tools, between the hours of 7 a.m. to 10 p.m. of the same day” are already a category of noise that is exempt under Section 6.05.060 of the County Code.

The exemption could be expanded to allow the largest category of work that seeks variances, which is installation of *paving, curbs or ADA ramps*. As this work occurs adjacent to the right of way there is a clear advantage to working during non-peak hours. As work related to two other categories: *signage / paint / bike / pedestrian lane installation* and *guardrail or bridge installation* also takes place adjacent to the right of way, it makes sense to consider these uses as well.

Exempting these activities would eliminate the number of potential variance requests the County would need to process. For work on public property or in the right of way, in most cases the County already requires a separate permit related to the construction activity and retains the ability to impose construction activity conditions through those permits. Therefore, staff proposes that the exemption be applied to construction projects that involve work in, or adjacent to, public right of way and that are either managed by a governmental entity or subject to a separate permit covering the construction-related activities. By eliminating these categories of

variance requests, DTD would be left to administer a relatively limited program for other categories of variance requests.

Furthermore, assuming the Board agrees with the revision to the criteria, as summarized above, most other non-construction variances would fail to meet the applicable criteria which would reduce the substantive work needed to process most of the remaining variance requests. While a fee would still be needed to administer those remaining variance requests in order to make such a review function truly cost-neutral, the fee could be reduced from what it would otherwise be to administer a full variance review program.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

- **What is the cost?**
 - This proposal represents a reallocation of work from one County department to another. DTD anticipates that it can assume the increased work with existing staff.
 - Staff anticipates that imposing a posting requirement for variance requests would add some nominal administrative expense to the process (e.g., cost of notice boards). This could be covered by permit fees, as described below.
 - Based upon the option chosen by the Board, if DTD administers the program, DTD proposes to advance a fee proposal for consideration by the Board in order to cover staff time to administer the program and costs for providing customers with notice materials. Permit fees may be established at levels that are a reasonable estimate of the average cost to the County to process these variances.

- **What is the funding source?** If DTD assumes the variance program, the funding source would be a new fee. The biggest impediment to the County not currently accepting a fee appears to be that the patrol division is not set up to accept payments. DTD is accustomed to establishing fees and charging customers for permits and reviews, and has already expressed interest in putting together a fee proposal for Board consideration to ensure the County recovers the costs associated with these reviews.

STRATEGIC PLAN ALIGNMENT:

- **How does this item align with your Department's Strategic Business Plan goals?**
Providing efficient noise variance processing is in alignment with the purpose of our Livable Communities line of business, so residents, property owners and businesses experience a safe and healthy community.

- **How does this item align with the County's Performance Clackamas goals?**
The County's Noise Ordinance, and the variance process ***builds public trust through good government*** and ***ensures safe, healthy and secure communities***.

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

PUBLIC/GOVERNMENTAL PARTICIPATION: To make sure the community is aware of the County's noise standards, DTD provides information on construction noise requirements via several touchpoints with their customers:

- On the back of the permit receipt,
- Through a separate handout available at the Building Codes front counter, and
- In the FAQ section on the Building Codes website.

If changes are made to the variance process, DTD will coordinate with PGA to provide notice to the community. If it administers the program, DTD intends to use a web-based form to intake and process applications, and include this change in procedure in community outreach.

OPTIONS:

1. Direct staff to retain the current noise ordinance variance policy and procedures.
2. Direct staff to implement the BCC recommendations from November 2020, transferring processing of noise variance requests from CCSO to DTD, retaining current construction exemptions, implementing posted notification, and developing a fee proposal for future BCC consideration.
3. Direct staff to implement the BCC recommendations from November 2020, transferring processing of noise variance requests from CCSO to DTD, incorporating new construction exceptions, implementing posted notification, and developing a fee proposal for future BCC consideration.
4. Direct staff to implement programmatic adjustments to the noise ordinance variance policy and procedures as recommended by the Board.

RECOMMENDATION:

Staff respectfully recommends Option 3: Direct staff to implement the BCC recommendations from November 2020, transferring processing of noise variance requests from CCSO to DTD, incorporating new construction exceptions, implementing posted notification, and developing a fee proposal for future BCC consideration.

ATTACHMENTS:

Attachment A: Proposed revisions to Chapter 6.05

Attachment B: Presentation slides

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval *Dan Johnson*

County Administrator Approval _____

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.

Attachment A

- 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 County Administrator for a variance from such provision. It is the policy of the Board of Commissioners for Clackamas County to allow variances only under extraordinary circumstances or where extraordinary hardship would result from strict compliance with these regulations.

- 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 County Administrator may reasonably require.
- B. Review Considerations. The Sheriff County Administrator shall consider and balance the following criteria:
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.

Noise variances for activities that do not produce a benefit to the general public shall be approved only in the most extraordinary circumstances.

- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The Sheriff County Administrator shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The Sheriff's County Administrator'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 County Administrator's decision. The Board shall review the application de novo and within fifteen-thirty (30+5) 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.
- H. The County Administrator may appoint a designee to assume the County Administrator's responsibilities under this section.
- ~~F.I.~~ The Board of County Commissioners may set, by resolution, fees associated with the review and appeal of an application for a variance under this section.

[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 associated 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

Attachment A

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]

NOISE ORDINANCE VARIANCES



Board of County Commissioners Policy Session
June 29, 2021

POLICY SESSION PURPOSE

- Provide background on the noise ordinance variance program,
- Update the work done to date, and;
- Ask for clarity on how to proceed with revisions to the County Code related to noise variances.

COUNTY CODE

- ORS 203.065 and 467.100 grant counties the ability to adopt and enforce noise regulations
 - County Code Chapter 6.05 addresses County noise control
 - Oct. 1, 2020: Board adopts amendments to noise control regulations
 - Dec. 30, 2020: Amendments become effective

CURRENT VARIANCE PROCESS

Someone planning to operate a sound source which may violate noise standards may apply to Sheriff for a variance

County Code Section 6.05.070 outlines the process for the granting variances from the noise standards

Variations Issued from 2017 to March 2021

Year	Total Variations	Construction Variations	Non-Construction Variations
2017	30	13	17
2018	24	2	22
2019	16	7	9
2020	15	14	1
2021	2	2	0

RECOMMENDED AMENDMENT 1:

Transfer to DTD

Eliminate specific reference to the Sheriff's Office as program administrators.

Allow the County Administrator to transfer this work to DTD.



**Transportation
and Development**

RECOMMENDED AMENDMENT 2:

Add required public notice



Require applicant to:

- ❑ Post notice on site, adjacent to the right of way
- ❑ Provide contact information if anyone wishes to ask questions
- ❑ Validate the posting occurred through affidavit

RECOMMENDED AMENDMENT 3:

Keep approval criteria; add guidelines

Set expectation that noise variances not associated with an activity benefitting the general public should only be approved in the most extraordinary circumstances





ADDITIONAL RECOMMENDATION: Expand construction variances

Construction variances from 2017 to March 2021

Type of Work	2017	2018	2019	2020	2021	Total
Paving, curb or ADA ramp installation	7		3	6	1	17
Signage / Paint / Bike / Pedestrian Lane Installation	1			1	1	3
Drilling, boring, or machine noise	2		1	2		5
Sandblasting, air compressor, generators or other power tools	2		2	5		9
Guardrail or bridge installation	1	1	1			3
Not specified		1				1

Expand construction variances



- County Code already exempts sounds caused by construction between 7 a.m. and 10 p.m.
- Expand exemption to allow **work adjacent to the right of way** -- the largest category of work that seeks variances.
 - ▣ Paving
 - ▣ Installing curbs or ADA ramps
 - ▣ Signs / paint / bike / pedestrian lane installation
 - ▣ Guardrail or bridge installation
- Clear advantage for work adjacent to right-of-way to occur during non-peak hours

ESTABLISHING A FEE

Nov. 10, 2020 Policy Session:

Direction to transfer variances to DTD, including DTD developing a fee proposal that would recover costs of providing variances services to those seeking exemption to the noise standards

BOARD OPTIONS

1. Retain current noise ordinance variance policy and procedures.
2. Implement BCC recommendations from November 2020 -- transfer processing of noise variance requests from CCSO to DTD, retain current construction exemptions, implement posted notification, and developing a fee proposal for future BCC consideration.
3. Implement BCC recommendations from November 2020 -- transfer processing of noise variance requests from CCSO to DTD, incorporate new construction exceptions, implement posted notification, and developing a fee proposal for future BCC consideration.
4. Adjust the noise ordinance variance policy and procedures as discussed during this Policy Session.

STAFF RECOMMENDATION

Option 3:

Direct staff to implement the BCC recommendations from November 2020:

- transferring processing of noise variance requests from CCSO to DTD,
- incorporating new construction exceptions,
- implementing posted notification, and
- developing a fee proposal for future BCC consideration.

THANK YOU

