

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** 11/10/20    **Approx. Start Time:** 2:30pm    **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 County Code related to the process associated with granting variances to the noise standards.

**SUMMARY OF 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. The amendments will become 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 previous policy sessions and two public hearings prior to the adoption described above. While the majority of the policy changes to the Code were adopted on October 1<sup>st</sup>, 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.

### **Variance Process**

Chapter 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 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 is set forth as follows:

#### **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.

- 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.

According to current County Code requirements, 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 Chapter 6.05.060(E).

In light of recent activities, the Board identified specific concerns regarding the notice associated with these variance requests. Nothing currently 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 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. 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.

### **Proposed Changes**

Since the October 1<sup>st</sup> adoption, the County Administrator along with representatives from the Sheriff's Office, the Department of Transportation and Development (DTD), and County Counsel have met to discuss issues around noise variances and to formulate a proposal for the Board's consideration. As a result of this meeting and follow up discussions, the group identified the need to amend three aspects of our current provisions:

- 1) The designation of the Sheriff's Office as the department in charge of evaluating noise variance requests;
- 2) Notice associated with noise variance approvals, and;

- 3) Updating the criteria to reflect that variances would be approved primarily in circumstances that benefitted the general public.

In response to these issues, the group reached consensus on a proposal that would implement certain administrative changes to how variances will be processed. This group also recommends changes to the Code that would address issues related to notice and would clarify certain criteria related to the review of variances.

### **The designation of the Sheriff's Office as the department in charge of evaluating noise variance requests**

Most notably, the group recommends that beginning July 1, 2021, DTD should assume review authority over noise variance requests. DTD staff have specific expertise working with permit applicants, applying decisional criteria to a permit request, and providing notice. Furthermore, many variance requests are in response to construction activities and DTD has the expertise to evaluate the reasonableness of these particular requests. According to the Sheriff's Office, 32 variances were processed in 2017, 24 in 2018, and 8 in the first half of 2019. Variance requests have been virtually nonexistent in 2020, likely due to the impacts of COVID. While the overall volume of noise variances 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 could look like moving forward once DTD assumes responsibility of this program.

In order to implement this change, the County needs to 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.

### **Notice associated with noise variance approvals**

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 County Commissioners. This is not traditional notice so much as it is an application for an appeal.

The Board expressed a desire to see some level of notice provided to the public in conjunction with an approved variance. To address this, the group proposes incorporating a posted notice provision in the Code. Specifically, it 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 must be in a location on the site reasonably anticipated to provide the public notice of the variance approval. This provision would address an omission in our current process and is an approach that has been used with relative success in other jurisdictions.

There was also some discussion in prior Board policy sessions about the appropriate level of internal notice to other County departments that should be provided in response to these variance requests. Self-imposing this type of notice requirement is not something that the County has traditionally incorporated into the code. If anything, it is something that has been addressed through internal policy if there is a desire for some level of formality with respect to notifying other County departments and the Board's office. While these provisions could be built

into the Code, which would likely ensure the highest level of compliance, any changes to these notice provisions would require subsequent amendments to the Code and any violation of these provisions would be a procedural error that could undermine the review of the noise variance appeal. It is for those reasons that the group proposes to leave out any reference to internal notice. With DTD assuming control over noise variances, the group feels that internal notice can be effectively provided through policy and administration.

Along these lines, DTD has already implemented some improvements to the notice it provides its customers with regards to the construction hours specified in the Code as it relates to noise, and information on how to apply for a variance. These updates have been in place for over a year. This updated information is now provided on the back of the permit receipt and includes the construction noise requirements. Additionally, DTD has made available a separate handout at the building codes front counter that discusses construction noise and the variance process, and the same information is available in the FAQ section on the website (this handout and the website will be updated once the code changes are effective).

### **Updating the criteria to reflect that variances would be approved primarily in circumstances that benefitted the public**

The current policy 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 the current variance 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 those proposals that produce a benefit to the general public are the types of requests that should receive the most favorable reviews, there may be circumstances where a variance might be warranted, even where the activity purely benefits a private party. 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 to strengthen the guidance in the Code in terms of how the criteria are to be applied. Along those lines, we propose language in the introduction setting an expectation for variances generally, and more specific language under subsection (B) clearly setting out a preference that noise variances that are 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 the case 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.

### **Fees**

The County may charge a fee associated with the review of these noise variances. 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. DTD has indicated that they would like to have the Board adopt fees to cover the cost of this review work. Fees are not a part of the proposed ordinance change. Fees are adopted by resolution and staff proposes that Counsel's Office work with DTD next spring to come up with a fee proposal that DTD can present to the Board at the time that the Board considers its annual update to its fee and fine schedule. Adoption of a fee as part of that process would align with the transition of variances to DTD beginning July 1, 2021. In anticipation of this potential fee, the proposed ordinance revision

contains language that provides specific authorization for the Board to adopt a fee in the future, if it wishes to do so.

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

- 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. This could be covered by permits fees, as described below.
- DTD is likely to advance a fee proposal for consideration by the Board, to take effect at the beginning of next fiscal year. Permit fees may be established at levels that are a reasonable estimate of the average cost to the County to process these variances.

The one requirement we are proposing to add is a notice component to the variance procedure. There may be a nominal cost associated with this additional requirement. The text of the requirement is intentionally flexible to allow the County to administer this requirement as it sees fit. If the County 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, the requirement can be administered for virtually no cost at all if the posting requirement is put on the applicant. If the Board adopts a fee related to noise variances, the cost of any notice may be included.

The County may establish a fee for the review of variance requests. The biggest impediment to the County not accepting a fee for this review currently 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 DTD has already expressed interest in putting together a fee proposal for the Board's consideration to ensure the County is recovering the costs associated with these reviews.

**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.

**RECOMMENDATION:**

Option 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.

**ATTACHMENTS:**

Proposed revisions to Chapter 6.05

**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.

Exhibit 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

## Exhibit A

- 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

Exhibit A

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 (30-45) 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

## Exhibit 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]