

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of an ordinance)
regulating noise, repealing)
Ordinance No. 1190, and)
declaring an emergency.)

ORDINANCE NO. 1273

The Marion County Board of Commissioners ordains as follows:

Section 1. TITLE.

This ordinance shall be known as the Marion County Noise Ordinance and may be so cited and pleaded.

Section 2. DEFINITIONS.

“A-scale (dBA)” means the sound level in decibels measured using the A-weighted network as specified in American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).

“Decibel (dB)” means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure. The reference pressure is 20 micropascals (20 micronewtons per square meter).

“Complainant” means an individual who has provided information to Marion County indicating that a violation of this ordinance is occurring or has occurred at a certain location. A complainant may be an owner, tenant, or lawful occupant, or the agent or licensee, of an owner, tenant or lawful occupant.

“Dwelling unit” means any day care center, hospital, rest home, retirement home, group home, single family dwelling, duplex, triplex, multifamily dwelling, or mobile home or other use of the same general type.

“Excessive noise disturbance” means sound from a sound producing device that is plainly audible within a complainant’s dwelling unit, that unreasonably disturbs a person of ordinary sensitivity, and that detrimentally affects the complainant’s ability to use the property. Factors for determining whether a sound is unreasonably disturbing include, but are not limited to, the following:

- (1) The duration and frequency of the sound;
- (2) The time of day or night that the sound occurs: unless special circumstances exist, the noise disturbance must occur between the hours of 10:00 p.m. and 7:00 a.m. the following day;
- (3) The type of noise and whether it is unusual in time or place; and
- (4) Whether the sound is recurrent, intermittent, or constant.

“Motor vehicle” means any vehicle that is or is designed to be self-propelled.

“Non-road area” means any area that is not a public road, but does not include areas commonly held open to vehicular use, such as parking lots and race tracks.

“Off-road vehicle” means any motor vehicle that is designed or capable of traversing natural terrain, including, but not limited to motorcycles, dirt bikes, four-wheel drive vehicles, all terrain vehicles, jeeps and halftracks, but does not include vehicles used for farming, logging, military exercises, fire prevention, emergency services, or law enforcement.

“Plainly audible” means unambiguously heard by the listener. Plainly audible sounds include, but are not limited to understandable spoken words, comprehensible musical rhythms or vocal sounds.

“Sound level” in dBA, means the weighted sound pressure level, measured by the use of an A-weighted sound level meter set at a fast meter response.

“Sound level meter” means a sound level measuring device, either Type 1 or Type 2, as defined by American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).

“Sound pressure level” in dB, is 20 times the logarithm to the base 10 of the ratio of the root-mean square of the pressure of a given sound to the reference pressure. The reference pressure is 20 micropascals (20 micronewtons per square meter).

“Sound producing device” means:

- (1) Loudspeakers and public address systems;
- (2) Radios, tape recorders or tape players, phonographs, compact disc players, television sets and stereo systems, including those installed in a vehicle;
- (3) Musical instruments that are amplified or unamplified;
- (4) Sirens and bells;
- (5) Motor vehicle engines or exhausts;
- (6) Domestic power tools and equipment used for home or building repair, maintenance, alteration or similar construction projects, including but not limited to powered hand tools, lawn mowers, garden equipment and snow removal equipment, but only between 10:00 p.m. and 7:00 a.m. of the following day;
- (7) Heat pumps, air-conditioning units, and refrigeration units, including those mounted on vehicles; and
- (8) Other similar sound producing devices.

Section 3. POLICY.

It is the policy of the Board to prevent and regulate excessive noise that is deemed harmful to the health, safety, welfare and quality of life of the citizens of the county.

Section 4. SOUND MEASUREMENT.

- (1) If measurements are made, they 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 ordinance, a sound level meter shall contain at least an A-weighted scale and both fast and slow meter response capability.
- (2) If measurements are made, personnel making those measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.

- (3) All measurements made pursuant to this ordinance shall comply with the provisions of this section.

Section 5. PROHIBITIONS.

- (1) It shall be unlawful for any person to produce or permit to be produced with a sound producing device, a sound that:
 - (a) When measured at a place on the complainant's property line that is closest to the noise source, or, within the complainant's dwelling unit if it is on the same property as the noise source but is not the source of the sound, exceeds:
 - (A) Fifty-five (55) dBA at any time between 10:00 p.m. and 7:00 a.m. the following day; or
 - (B) Sixty-five (65) dBA at any time between 7:00 a.m. and 10:00 p.m. the same day, except that if the sound producing device is an off-road vehicle operating in a non-road area, the sound level may not exceed eighty (80) dBA; or
 - (b) Is plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day within a dwelling unit that is not the source of the sound.
 - (c) If a measurement of the sound is made, subsection (a) of this section shall supersede subsection (b) of this section and shall be used to determine if a violation exists.
- (2) Subsection (1) of this section shall apply to all unincorporated areas within Marion County that are outside the Salem-Keizer Urban Growth Boundary.

Section 6. SALEM-KEIZER URBAN GROWTH BOUNDARY.

- (1) The provisions of this section shall apply to all unincorporated areas within Marion County that are located within the Salem-Keizer Urban Growth Boundary.
- (2) For the purposes of this section only, the following additional definitions shall apply:
 - (a) "Commercial" means any use of an office, service establishment, hotel, motel, retail store, park, amusement or recreation facility, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

- (b) “Impulse sound” means a single pressure peak or single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound level meter.
 - (c) “Industrial” means any use of a warehouse, factory, mine, wholesale trade establishment, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.
 - (d) “Noise sensitive” means any use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single family dwelling, duplex, triplex, multifamily dwelling, or mobile home), or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.
- (3) Generally. In addition to the specific prohibitions in subsections (4) and (5) of this section, it shall be unlawful for any person knowingly to create, assist in creating, permit, continue, or permit the continuance of any noise disturbance or to knowingly cause or permit sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source between 10:00 p.m. and 7:00 a.m. the following day. A noise disturbance is any unreasonable sound that annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the Salem-Keizer Urban Growth Boundary.
- (4) Specific Prohibitions. Unless exempted by Section 8, the following acts are declared to be noise disturbances, provided that this enumeration shall not be deemed to be exclusive:
- (a) Dynamic braking devices. Using any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device is one used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.
 - (b) Idling engines on motor vehicles. Operating for more than 15 consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between 10:00 p.m. and 7:00 a.m. the following day.
 - (c) Motor vehicle repair and testing. Repairing or testing any motor vehicle in such a manner as to be plainly audible within any dwelling unit between 10:00 p.m. and 7:00 a.m. the following day.
 - (d) Steam whistles. Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work.
 - (e) Sirens. Sounding a stationary siren.

(5) Maximum Permissible Sound Levels.

- (a) Except as specifically provided elsewhere in this section, no person shall cause or permit sound to be received on property used as specified herein if the sound exceeds the limits set forth in subsections (b) and (c). For purposes of this section, “day” hours are between 7:00 a.m. and 10:00 p.m., and “night” hours are between 10:00 p.m. and 7:00 a.m.
- (b) Table of Maximum Permissible Sound Levels (in dBA).

Type of Source by Use	Type of Receiver by Use					
	Noise Sensitive		Commercial		Industrial	
	<u>Day</u>	<u>Night</u>	<u>Day</u>	<u>Night</u>	<u>Day</u>	<u>Night</u>
Noise Sensitive	55	45	60	55	65	60
Commercial	55	50	70	65	70	65
Industrial	55	50	70	65	Not Applicable	

- (A) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels by 10 dBA.
- (B) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels by 5 dBA for a cumulative total of greater than one minute, but less than five minutes in any ten minute period.
- (C) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels for a cumulative total of five minutes or more in any ten minute period.
- (c) Exceptions.
- (A) Impulse sound. Notwithstanding any other sound levels in this section, no person shall operate or permit the operation of a noise source which emits an impulse sound which has a peak sound pressure level in excess of 100 dB in the day or 80 dB in the night.

- (B) Domestic power equipment. The day sound levels in the table in subsection (5)(b) of this section do not apply to sounds produced by domestic power equipment. During night hours, no person shall operate domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.
 - (C) Commercial construction. The day sound levels in the table in subsection (5)(b) of this section do not apply to sounds produced in commercial construction activity.
 - (D) Auxiliary equipment on motor vehicles. No person shall cause, allow, permit, or fail to control the operation of any auxiliary equipment on a motor vehicle for more than 30 minutes when the sound level generated thereby exceeds 55 dBA in the day or 50 dBA in the night as measured at or within the boundary of noise sensitive property. Auxiliary equipment means a mechanical device which is built in or attached to a motor vehicle, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.
- (d) Measurement of sound levels under this section shall be made at one of the following points, whichever is farther from the sound source:
- (A) 25 feet from that point on a receiver building nearest the sound source, or
 - (B) That point on the receiver property line nearest the sound source.

Section 7. EXCESSIVE NOISE DISTURBANCE – ADMINISTRATIVE HEARING.

- (1) It shall be a civil infraction for any person to produce, or permit to be produced, an excessive noise disturbance.
- (2) A Marion County code enforcement officer shall complete, but not sign, a notice of civil infraction for an excessive noise disturbance if a complaint meeting the requirements of subsection (5) of this section has been submitted and complies with the minimum requirements of this ordinance.
- (3) The notice of civil infraction shall be in a form and contain wording as designated by the county legal counsel. The notice of civil infraction shall be a multi-part form consisting of at least three parts. Additional parts may be inserted for administrative use. The required parts are:
 - (a) Notice of civil infraction;
 - (b) Citing agency's record of civil infraction; and
 - (c) Summons.

- (4) Each of the parts of the notice of civil infraction shall contain the following information:
- (a) The civil infraction number;
 - (b) The name of the person alleged to have committed the civil infraction;
 - (c) The ordinance section allegedly violated;
 - (d) A brief description of the alleged civil infraction;
 - (e) The date, time and place at which the civil infraction allegedly occurred;
 - (f) The date on which the notice of civil infraction was issued and the name of the signing complainant;
 - (g) The date, time and place at which a hearing will be held regarding the alleged civil infraction;
 - (h) A statement that the person must appear at the hearing or will waive the right to present evidence or make argument in the matter;
 - (i) The amount of the maximum monetary penalty; and
 - (j) That failure to appear at the scheduled hearing may result in an order and disposition that includes: an obligation to pay a monetary amount entered against the person up to the maximum amount of civil penalties, imposition of conditions and imposition of fees and other costs allowed under this ordinance for the civil infraction.
- (5) An excessive noise disturbance complaint must:
- (a) Identify and provide an address for the person who committed the excessive noise disturbance.
 - (b) State the date that the excessive noise disturbance occurred and identify the starting time and ending time of the disturbance.
 - (c) Identify where the disturbance occurred and describe that location.
 - (d) Identify the sound producing device used during the disturbance.
 - (e) Describe the excessive noise disturbance and explain why it was unreasonably disturbing.
 - (f) State whether a deputy or enforcement officer visited the sound producing property while the disturbance was occurring. If this did not occur, the

complaint must include a description of the complainant's efforts to contact enforcement authorities while the disturbance was occurring. The complainant must have made a good faith effort to contact enforcement authorities while the disturbance was occurring or the excessive noise disturbance complaint will be deemed insufficient.

- (g) Must be signed by at least two complainants who represent at least two properties within 500 yards of the sound producing property. Addresses of the complainants must be provided.
 - (h) Must identify one of the complainants as a contact person within the complaint.
- (6) If it is found that the complaint meets the requirements of subsection (5) of this section and complies with the minimum requirements of this ordinance, the enforcement officer shall send notice to the contact person. If the contact person does not sign the administrative notice of civil infraction within 30 days of the date of mailing of the notice, the administrative notice of civil infraction will be voided and complaints relating to any excessive noise disturbance on the same date alleged in the complaint will not be pursued. The administrative notice of civil infraction must indicate that by signing, the contact person certifies upon penalty of law that he or she has reasonable grounds to believe, and does believe, that the named person committed an excessive noise disturbance as set forth in the notice.
 - (7) The enforcement officer shall serve the signed administrative notice of civil infraction by personal service, substituted service or certified mail with return receipt requested.
 - (8) The complainant-signed notice of civil infraction shall initiate the administrative hearing process. Hearings shall be conducted by the Marion County Hearings Officer in accordance with the hearings officer procedural rules established by the Marion County Board of Commissioners.
 - (9) At the administrative hearing, the complainants must show by a preponderance of the evidence that the person named in the complaint has committed an excessive noise disturbance in relation to at least one complaint's dwelling unit.
 - (10) If after a hearing an excessive noise disturbance is found to have been committed, the hearings officer may impose a civil penalty and any condition the hearings officer deems appropriate. If a person is found to have committed an excessive noise disturbance, the person shall also be responsible to pay a hearing process fee. If after a hearing it is found that an excessive noise disturbance was not committed, then the complainants who signed the complaint shall be jointly and severally liable to pay a hearing process fee. The Board of Commissioners shall establish the amount of the hearing process fee.

- (11) The Board of Commissioners shall establish the maximum civil penalty for an excessive noise disturbance violation. All civil penalties and fees imposed must be paid to the county.
- (12) The decision of the hearings officer shall be the final county decision.

Section 8. EXEMPTIONS.

Notwithstanding Sections 5, 6 and 7 above, the following sounds are permitted:

- (1) Sounds generated by activities for which a mass gathering permit or conditional use permit has been granted if the activities are conducted in accordance with the terms and conditions of the permit.
- (2) Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.
- (3) Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that burglar or fire alarms shall not operate continuously for more than fifteen minutes.
- (4) Sounds made by an emergency vehicle when responding to or returning from an emergency or when in pursuit of an actual or suspected violator of the law.
- (5) Sounds made by current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, fur-bearing animals or honeybees, or the produce thereof, or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the preparation and storage of the products raised for human or animal use and disposal by marketing or otherwise by a farmer on the farm.
- (6) Sounds made by the normal and usual operation of equipment and machinery in connection with and on land being used for the growing and harvesting of timber and other forest products.
- (7) Sounds caused by organized athletic, religious, educational, civic or other group activities, when those activities are conducted between 7:00 a.m. and 10:00 p.m. on property generally used for those purposes, including stadia, athletic fields, parks, race tracks, schools, churches, airports and waterways.
- (8) Sounds made in conjunction with permitted industrial or commercial uses.
- (9) Sounds made by activities by or on direction of Marion County or the state of Oregon in maintenance, construction or repair of public improvements on public lands or in public rights of way or easements.

- (10) Sounds regulated by federal and state law, including but not limited to sounds caused by railroads and aircraft.
- (11) Sounds caused by motor vehicles operated on public roads, which are regulated by state law (ORS 815.250) except where a motor vehicle is idling for more than 15 consecutive minutes in such a manner as to be plainly audible within a dwelling unit between 10:00 p.m. and 7:00 a.m. the following day.

Section 9. VARIANCE.

- (1) Any person planning the use of a sound producing device that may violate any provision of this ordinance may apply for a variance from such provision.
- (2) The application shall be submitted at least 35 days before the event will occur and shall include the following:
 - (a) The name, address and telephone number of the person requesting the variance and the signature of an authorized representative;
 - (b) A processing fee in an amount to be established by the board;
 - (c) The provision of this ordinance from which a variance is sought;
 - (d) The period of time for which the variance is to apply;
 - (e) The nature of the noise, the reason the noise will be created, the location where the noise will be created, and the duration and time of the noise; and
 - (f) The extent and scope of measures that the applicant has taken or will take to reduce or diminish the disturbance.
- (3) No application for a noise ordinance variance shall be approved without review by the Board following a public hearing.
- (4) The Public Works Director shall develop a policy for notifying neighboring property owners that an application for a variance has been received and that a hearing before the Board of Commissioners has been scheduled.
- (5) The variance shall be granted only upon finding that:
 - (a) The variance will provide a substantial benefit to the public generally;
 - (b) Denial would significantly delay, increase the cost, or impact the utility of the project or event; and

(c) Effective measures will be implemented to mitigate, to the extent feasible, significant noise impacts.

(6) Violation of the terms of the variance shall be deemed a violation of this ordinance.

Section 10. ENFORCEMENT.

Except as provided in Section 7, this ordinance shall be enforced by the Marion County Sheriff's Office and any Marion County Enforcement Officer.

Section 11. VIOLATIONS.

Violation of the provisions of Section 5, 6 or 9 of this ordinance shall be considered a Class A violation as provided in ORS Chapter 153. Enforcement of violations of Sections 5, 6, or 9 of this ordinance shall be accomplished through the Marion County Enforcement Ordinance. An event may include multiple violations and each violation may be treated as a separate incident and enforced separately.

Section 12. REPEAL.

Marion County Ordinance No. 1190 is hereby repealed.

Section 13. EMERGENCY CLAUSE.

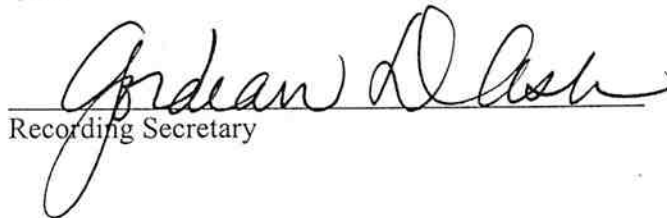
This ordinance being necessary for the immediate preservation of the public peace, health and welfare, an emergency is declared to exist, and this ordinance will take effect upon adoption.

Signed and finalized at Salem, Oregon, this 12th day of November 2008.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

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