

ORDINANCE NO. 937

AN ORDINANCE ESTABLISHING NOISE CONTROL PROCEDURES, PROHIBITING CERTAIN ACTS, CREATING EXCESSIVE NOISE LEVELS, ESTABLISHING MAXIMUM SOUND LEVELS, CREATING EXCEPTIONS AND VARIANCES, ESTABLISHING PENALTIES; AND DECLARING AN EMERGENCY

Whereas, the City Council has determined that excessive sound is a serious hazard to the public health, welfare, and the quality of life, and it shall be the policy of the City of Canby to prevent excessive sound which may jeopardize the health, welfare, and safety of citizens or degrade the quality of life.

THE CANBY CITY COUNCIL HEREBY ORDAINS:

Section 1. Standards and Definitions.

- A. Terminology and Standards:** All terminology used in this ordinance that is not defined below shall be in accordance with the American National Standards Institute (ANSI).
- B. Measurement of Sound Level:**
1. Measurements shall be made with a calibrated sound level meter in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standards 1.4-1971. For purposes of this ordinance, a sound level meter shall contain at least an "A" weighting network, and both fast and slow meter response capability.
 2. Persons conducting sound level measurements shall have received training in the techniques of sound measurement and the operation of sound measuring instruments from the Department of Environmental Quality or other competent body prior to engaging in any enforcement activity.

3. Procedures and tests required by this ordinance and not specified herein shall be placed on file with the City Recorder.

C. **Definitions:**

1. **Ambient Noise:** All-encompassing noise associated with a given environment, being usually a composite of sounds from any sources near or far.
2. **Amplifying Equipment:** Public address systems, musical instruments, and other similar devices which are electronically amplified.
3. **City:** The City of Canby, Oregon, or the area within the territorial City limits of the City of Canby, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of ownership or any Constitutional or Charter provision, or any law.
4. **Commercial Land Use:** Includes land uses zoned C-1, C-2, and C-M, or any use of an office, service establishment, retail store, park, amusement or recreation facility, or other use of the same general type, whether publicly or privately owned.
5. **Construction:** Any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair, or equipping of buildings, roadways and utilities. It shall include land clearing, grading, excavating, and filling, before, during or following such activity.
6. **Continuous Sound:** Any steady sound with a deviation no greater than plus or minus 2 dBA of its mean, or total fluctuation of 4 dBA, during the period of observation when measured with a sound level meter set on fast response.
7. **Day Time Period:** 7:00 A.M. until 10:00 P.M. of the same day, local time.

8. **Domestic Power Tools:** Any mechanical powered nail gun, stapler, saw, drill, sander, grinder, lawn or garden tool, lawn mowers, generators, or similar devices generally used out of doors in residential area.
9. **Emergency Work:** Work made necessary to restore property to a safe condition following severe inclement weather and natural disasters, work required to restore public utilities or work required to protect persons or property from imminent exposure to danger.
10. **Industrial Land Use:** Includes land uses zoned M-1 and M-2 or any use of a warehouse, factory, mine, wholesale trade establishment, or other use of the same general type, whether publicly or privately owned.
11. **Night Time Period:** 10:00 P.M. of one day until 7:00 A.M. the following day, local time.
12. **Noise Sensitive Land Use:** Includes property on which residential housing, apartment buildings, schools, churches, hospital, and nursing homes are located.
13. **Off-Road Recreational Vehicle:** Any self-propelled land vehicle designed for or capable of traversing over natural terrain, including but not limited to racing vehicles, mini-bikes, motorcycles, go-karts, and dune buggies, when operated off the public right-of-way for non-commercial purposes.
14. **Persons:** A person, persons, firm, association, co-partnership, joint venture, corporation, or any entity public or private in nature.
15. **Plainly Audible:** Unambiguously communicated sounds which disturb the comfort, repose, or health of the listener. Plainly audible sounds include, but are not limited to understandable musical rhythms, understandable spoken words, and vocal sounds other than speech, which are distinguishable as raised or normal.

16. **Powered Model Vehicle:** Any self-propelled airborne, waterborne, or land borne plane, vessel or vehicle, which is not designated to carry persons, including, but not limited to any model airplane, boat, car, or rocket.
17. **Recreational Park:** A facility open to the public for the operation of off-road recreational vehicles.
18. **Warning Devices:** Electronic devices used to protect persons or property from imminent danger, including but not limited to fire arms, civil defense warning systems, and safety alarms required by law.

Section 2. Responsibility and Authority.

- A. **Responsibility:** The responsibility for enforcement of this ordinance shall reside with the City Administrator or his designee.
- B. **Authority:** In order to implement this ordinance and for the general purpose of sound abatement and control, the City Administrator or his designee shall have, in addition to any other authority vested with him, the following powers:
 1. **Planning:** Implement a noise control strategy in consonance with the City's Zoning Ordinance and Comprehensive Plan to assure public and private enterprises do not adversely impact existing noise sensitive properties and properties designated for noise sensitive use and to prevent the encroachment of noise sensitive uses into high impact areas such as industrial zones and immediately adjacent to major highways or arterial which are incompatible for such uses by virtue of existing projected noise impacts.
 2. **Inspection:** Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or record at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. Such inspection may include administration of any necessary tests.

3. **Issue Summons:** Issue summons, notices of violations or other legal orders to any person in alleged violation of any provision of this ordinance.
4. **Investigate Violations:** In accordance with other provisions of this ordinance, investigate and document violations and take necessary actions preparatory to enforcement.
5. **Amendments and Modifications:** Develop and recommend amendments and modifications to this ordinance so as to maintain or enhance the effectiveness of the noise control program.
6. **Education:** Develop programs for public education regarding the requirement and remedies available through the noise control ordinance.

Section 3. Prohibited Acts.

- A. No person shall knowingly continue, cause or permit to be made or continue to make any excessive or unnecessary sounds which are listed in Section 3(B) or Section 4.
- B. The following acts are declared to create excessive and unnecessary sounds in violation of the ordinance without regard to the maximum sound levels of Section 4.
 1. **Radios, Phonographs, Tape Players, Television Sets, Stereo Systems:** The playing, using or operating of any radio, tape player, television set, or stereo system, including those installed in a vehicle, in such a manner so as to be plainly audible at any time between 10:00 P.M. and 7:00 A.M. the following day, local time (a) within a noise-sensitive unit which is not the source of the sound, or (b) at a distance of one hundred (100) feet or more from the source of the sound.

2. **Revsing Engines:** Operating any motor vehicle engine above idling speed on or off the public right-of-way, so as to create excessive or unnecessary sounds within a noise-sensitive area.
3. **Compression Braking Devices:** Using compression brakes, commonly referred to as "jake brakes," on any motor vehicle, except to avoid imminent danger to persons or property.
4. **Exhausts:** Discharging into the open air the exhaust of any steam engine, internal combustion engine, or any mechanical device operated by compressed air or steam without a muffler, or with a sound control device less effective than that provided on the original engine or mechanical device.
5. **Idling Engines on Motor Vehicles or Compressors on Refrigerated Trailers:** Idling more than fifteen (15) consecutive minutes between the hours of 10:00 P.M. and 7:00 A.M. the following day, local time, any motor vehicle with a Gross Vehicle Weight Rating (GVWR) of 8,000 pounds or greater which exceeds 50 dBA on the nearest occupied noise-sensitive property.
6. **Vehicle Tires:** Squealing tires by excessive speed or acceleration on or off public right-of-way except when necessary to avoid imminent danger to persons or property.
7. **Motorcycles, Go-Karts, Dune Buggies:** Operating motorcycles, go-karts, dune buggies and other off-road recreational vehicles off the public right-of-way on property not specifically designated as a recreational park for off-road recreational use in such a manner as to exceed 75 dBA at fifty (50) feet or more.

8. **Powered Model Vehicles:** Operating or permitting the operation of powered model vehicles, with the exception of gliders and aircraft propelled by electric motors, in areas not designated by the City Administrator or City Council for such use, in such a manner as not to exceed 75 dBA at 50 feet or more.
9. **Explosives:** The discharge of fireworks and other explosive devices unless pursuant to a locally permitted display or program.
10. **Tampering:** The removal or rendering inoperative for purposes other than maintenance, repair, or replacement of any noise control device.
11. **Animals:** Owning, possessing or harboring any bird or other animal, for reasons other than being provoked by a person trespassing or threatening to trespass, which barks, bays, cries, howls, or makes any other noise continuously for a period of ten (10) minutes or more.
12. **Steam Whistles:** Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work.
13. **Horns:** The sound of a horn or signaling device on a vehicle on a street, or public or private place, except as a necessary warning of danger.
14. **Compressed Air Devices:** The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled.
15. **Warning Devices:** The sound created by warning devices that are not reset within five (5) minutes after being triggered.

Section 4. Maximum Permissible Sound Levels.

- A. No person shall cause or permit sound(s) to intrude onto the property of another person which exceeds the maximum permissible sound levels set forth below in this section.
- B. The sound limitation established herein, as measured at or within the property boundary of the receiving land use, are as set forth in Table 1 after any applicable adjustments provided for herein are applied. When said sound limitations are exceeded, it shall constitute excessive and unnecessary sound(s) and shall be violations in their own right as well as being prima facie evidence of noise.
- C. This section is violated if any of the following occur:
 - 1. Any continuous sound that exceeds the limits of Table 1 for a cumulative total of greater than five (5) minutes in any ten (10) minute period; or
 - 2. Any sound that exceeds the limits of Table 1 by 5 dBA for a cumulative total of greater than one (1) minute, but less than five (5) minutes in any ten (10) minute period; or
 - 3. Any sound that exceeds the limits of Table 1 by 10 dBA at any point in time.
 - 4. Any sound that exceeds the ambient noise levels existing by 10 dBA created by a new industrial or commercial noise source on a previously unused industrial or commercial site.

**TABLE 1
TABLE OF ALLOWABLE SOUND LEVELS (in dBA)
IN ANY TEN (10) MINUTE PERIOD**

Type of Source by Use	Type of Noise Received by Use					
	Noise Sensitive		Commercial*		Industrial*	
	Day	Night	Day	Night	Day	Night
Noise Sensitive	55	45	70	65	75	70
Commercial	55	50	70	65	75	70
Industrial	55	50	70	65	75	70

* Sounds caused by lawful business activity or manufacturing are exempt.
See Section 5A.10

Section 5. Exceptions and Variances.

A. **Exceptions:** The following sounds are exempted from the provisions of this ordinance:

1. Sounds caused by the performance of emergency work, vehicles and/or equipment.
2. Aircraft operations in compliance with applicable Federal laws or regulations.
3. Railroad activities as defined in Subpart A, Part 201 of Title 40, CFR of the Environmental Protection Agency's railroad emission standards, incorporated herein by reference.
4. Sounds produced by sound amplifying equipment at activities sponsored by Canby School District between 7:00 A.M. and 12:00 midnight, local time.
5. Sounds created by refuse pickup operations during the period of 6:00 A.M. to 10:00 P.M., local time.
6. Sounds created by domestic power tools during the period 7:00 A.M. to 10:00 P.M., local time, provided sound dissipating devices on tools so equipped, are maintained in good repair.

7. Sounds made by warning devices operating continuously for five (5) minutes or less.
8. Idling motor vehicles, including compressors on refrigerated trailers, within a Gross Vehicle Weight Rating (GVWR) of 8,000 pounds or greater between the hours of 7:00 A.M. to 10:00 P.M., local time, provided they are equipped with an exhaust system which is in good working order and in constant operation.
9. Sounds created at the Clackamas County Fairgrounds as a result of events sanctioned by the Clackamas County Fair Board.
10. Sounds caused by business operations in the commercial and industrial zones, provided such sounds result from lawful commercial business activity or manufacturing operations.
11. Construction activities during the period of 7:00 A.M. to 10:00 P.M., local time, provided equipment is maintained in good repair and equipped with sound dissipating devices in good working order.
12. Sounds caused by City maintenance equipment between the hours of 7:00 A.M. and 10:00 P.M.

B. **Variances.** Any person who owns, control, or operates any sound source which violates any of the provisions of this ordinance may apply, in writing, to the City Council for a variance from such provisions. Any person who is planning a noise source which is expected to violate any provision of this ordinance may apply to the City Council for a variance from such provisions. Any person granted a variance under this ordinance may apply for renewal of that variance upon its expiration. Such renewal application shall be processed just as if it was an initial application.

1. **Application.** The written application shall state the

provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought, and any other supporting information which the City Council may reasonably require.

2. **Review Standards.** In establishing exceptions or granting variances, the City Council shall consider:

- a. The protection of health, safety, and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The past, present, and future patterns of land use;
- c. The relative timing of land use changes;
- d. The acoustical nature of the sound emitted;
- e. Whether compliance with the provision would produce a benefit to the public.

3. **Time Duration of Variance.** Any variance shall be granted for a specific time interval, not to exceed one (1) year.

4. **Public Notification and Public Hearing.**

- a. Public notice shall be given in the manner provided for by City ordinance for all variance applications.
- b. A public hearing shall be held before the granting of a variance if such hearing is requested by any affected party.

5. **Variances:**

- a. **Conditions for Granting:** The City Council may grant specific variances from the particular requirements of any rule, regulation, or order, to such specific persons or class of persons or such specific noise source upon such conditions as it may deem

necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulations, or order, is inappropriate because of conditions beyond the control of the persons requesting such variance or because of special circumstances which would render strict compliance unreasonable, or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Granting of the variance shall not be materially detrimental to other property within the same vicinity and the variance requested shall be the minimum which will alleviate the hardship.

b. **Revocation or Modification:** A variance granted may be revoked or modified by the City Council after a public hearing held upon not less than twenty (20) days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the City Council a written request for such notification.

6. **Emergency and Safety Hazard:** In the case of an emergency or safety hazard, the City Administrator or his designee, may revoke a variance immediately, by setting forth the nature of the emergency or hazard in a letter mailed or hand delivered to the holder of the variance. A public hearing before the City Council shall be held at the next regularly scheduled City Council meeting following the revocation to reverse, affirm, or modify the revocation action.

Section 6. Ordinance Additional to Other Law.

The provisions of this ordinance shall be cumulative and non-exclusive and shall not affect any other claim, cause of action or remedy; not, 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.

Section 7. Penalties.

A violation of any provision of this ordinance is a civil infraction, punishable upon conviction of a fine of not more than \$500.00. Each and every day during which any provision of this ordinance is violated shall constitute a separate offense. The City Council, acting in the name of the City, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this ordinance as additional remedy.


Section 8. Severability Provision.

If any provision of this ordinance, or its application to any person or circumstances, is held to be invalid, the remainder of this ordinance or the application of the provision to their persons or circumstances, shall not be effected.

Section 9. Emergency Declared.

In order to best serve the citizens of the City of Canby, an emergency is hereby declared and this ordinance shall take effect immediately upon final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, April 19, 1995, ordered posted as provided by the Canby City Charter, and scheduled for second reading and action of the Canby City Council at a regular meeting thereof on Wednesday, May 3, 1995, commencing after the hour of 7:30 P.M., in the Council Meeting Chambers at Canby City Hall, in Canby, Oregon.

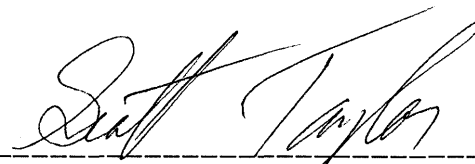


Marilyn K. Perkett
City Recorder

ENACTED by the Canby City Council at a regular meeting thereof on Wednesday, May 3, 1995, by the following vote:

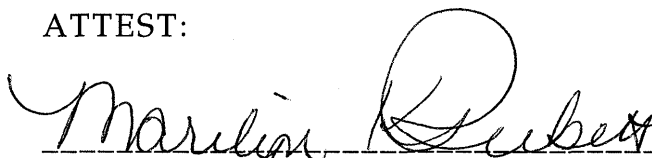
YEAS: 5

NAYS: 1



Scott Taylor, Mayor
City of Canby

ATTEST:



Marilyn K. Perkett
City Recorder