

AN ORDINANCE REPEALING CHAPTER 8.24 (NOISE CONTROL) AND ADOPTING A NEW CHAPTER 8.24 (NOISE CONTROL), OF THE TROUTDALE MUNICIPAL CODE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Chapter 8.24 of the Troutdale Municipal Code defines noise offenses and sets forth the abatement procedure. It has been some time since the City adopted or amended Chapter 8.24. Troutdale Police Department has become aware of noise offenses that are not specifically or adequately addressed in Chapter 8.24. It will be easier and more efficient to abate noise complaints and enforce compliance with Chapter 8.24 if the existing ordinance is repealed and a new ordinance is adopted.
2. The ordinance is in the best interest of the public because it will expedite abatement of noise violations, which pose risks to the quality of life, health and the general welfare of the community.
3. The ordinance is intended to regulate unreasonable noise. It is not intended to prohibit constitutionally protected speech. If language in the ordinance is interpreted as applying to constitutionally protected speech, our intent is to regulate the time and manner of that speech. Thus, any unreasonable noise that is also constitutionally protected speech, should not occur during the hours of 10 p.m. and 7 a.m. nor should it be plainly audible within a noise sensitive unit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Chapter 8.24, Noise Control, is repealed and the following Chapter 8.24, Noise Control, is adopted to read as follows:

Chapter 8.24

NOISE CONTROL

Sections:

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| 8.24.010 | Title. |
| 8.24.020 | Definitions. |
| 8.24.030 | Purpose. |
| 8.24.035 | Unreasonable noises prohibited. |
| 8.24.040 | Specific noises prohibited. |
| 8.24.050 | General exceptions. |

- 8.24.060 Exception due to emergency situation.
- 8.24.070 Application for variance.
- 8.24.080 Chapter provisions not exclusive.
- 8.24.090 Each incident deemed separate violation.
- 8.24.100 Violation – Penalty.

8.24.010 Title.

This chapter shall be known as “The City of Troutdale Noise Control Ordinance.”

8.24.020 Definitions.

- A. “Chief of Police” means the Troutdale Chief of Police, or the Chief’s designee.
- B. “Construction, street work, street repair, drilling or demolition tools or equipment” means machines or mechanically powered items that are typically used on commercial construction projects and involve more than routine repairs or work on residential property for residential occupants.
- C. “Community event” means any event the City of Troutdale has approved prior to its occurrence and that is sponsored or attended by a local organization or group of people.
- D. “Domestic power tool” means a mechanically powered saw, sander, drill, grinder, lawn or garden tool, snow blower, leaf blower or similar device that is used in residential areas for work that is typically done by or for residential occupants.
- E. “Noise sensitive unit” means any building, structure, or portion thereof that has the doors and windows closed and that is used as a church, day care center, hospital, nursing care center or school, or place of overnight accommodation, including, but not limited to, individual homes, apartments and mobile homes.
- F. “Outdoor activity” means an athletic, entertainment or similar activity.
- G. “Person” means an individual person, association, trust, partnership, firm or corporation.
- H. “Permit, permitting or permission” means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- I. “Plainly audible” means any sound, the content of which can be clearly heard by a listener of ordinary hearing capabilities.

8.24.030 Purpose.

The council has determined it necessary to control and abate noises which unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace, safety and welfare of the people of the city, and this chapter shall be construed to effectuate that purpose.

8.24.035 Unreasonable noises prohibited.

No person shall make, assist in making, permit or allow to continue any unreasonable noise in the City of Troutdale. A noise is unreasonable when two or more of the following circumstances exist: the noise is made between the hours of 10 p.m. and 7 a.m.; the noise is plainly audible within a noise sensitive unit that is not the source of the noise; the noise is amplified by a machine or object; the tone of the noise is abnormally high or low according to the perception of a listener with normal hearing capabilities; the noise remains constant for at least five minutes; the noise is repeated at least 3 times during a thirty minute time period.

8.24.040 Specific noises prohibited.

A. The following acts are presumed unreasonable noises in violation of this chapter:

1. The use, operation or playing of any radio, television, phonograph, compact disc player, tape player, loudspeaker, musical instrument, or other similar machine or device that is used for the production of noise between the hours of 10 p.m. and 7 a.m. when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
2. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10 p.m. and 7 a.m. when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
3. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle, except as a danger signal.
4. The use of any automobile, motorcycle or other kind of vehicle in a manner that creates loud grating, grinding, revving, rattling or other similar noise.
5. The use of exhaust brakes, except when used in an emergency to stop or slow a vehicle so as to avoid a collision.
6. The discharging of exhaust from any steam engine, stationary internal combustion engine, motor boat, motorcycle or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises.
7. The making of, or assisting with the making of, noise on a public beach or in a public park when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
8. The use of construction, street work, street repair, drilling or demolition tools or equipment during the following hours: Monday through Friday before 7 a.m. or after 9 p.m., Saturdays before 8 a.m. or after 7 p.m. and Sundays before 10 a.m. or after 7 p.m.
9. The use of domestic power tools during the hours of 10 p.m. and 7 a.m.

10. Noise created by animals when it violates the standards adopted by Multnomah County in Chapter 8.10 of the Multnomah County Code. *See* Chapter 6.04 of the Troutdale Municipal Code. Enforcement of this subsection shall be the responsibility of Multnomah County Animal Control, unless otherwise designated by the council.

- B. The enumeration of unreasonable noises in subsection A of this section shall not limit the city from investigating and declaring other noises unreasonable as provided for in Section 8.24.035 of this chapter.

8.24.050 General Exceptions.

A. The following acts are exceptions to the prohibition in 8.24.035:

1. Noise emanating from aircraft and aircraft operations, railway locomotives and non-stationary farming equipment.
2. Noise created by the normal operation of construction, street work, street repair, drilling or demolition tools or equipment provided the construction, street work, street repair, drilling or demolition work occurs during the following hours: Monday through Friday 7 a.m. to 9 p.m., Saturday 8 a.m. to 7 p.m., or Sunday 10 a.m. to 7 p.m.
3. Noise created by the operation of any domestic power tool provided that operation of the domestic power tool occurs during the hours of 7 a.m. and 10 p.m.
4. Noise created by an outdoor activity or community event conducted on public parks, playgrounds, and public or private school grounds.
5. Noise created by an animal that does not violate Section 8.24.040(A)(10).
6. Noise that constitutes constitutionally protected speech when the noise occurs during the hours of 7 a.m. and 10 p.m. and is not so loud that it is plainly audible within a noise sensitive unit that is not the source of the sound.

8.24.060 Exception due to emergency situation.

It shall be a defense to violation of Section 8.24.035 of this chapter that at the time of the violation there existed an emergency which compelled the person to cause the noise or sound in question.

8.24.070 Application for Variance.

Provisions of this chapter are subject to a variance in accordance with the following:

- A. The chief of police shall decide whether to approve, approve with conditions, or deny an application for a variance.
- B. The application for a variance shall be in writing on a form provided by the city and shall include an application fee in the amount determined by council resolution. The applicant shall submit information regarding the date, time and location of the activity or event that will generate the noise for which a variance is being sought, the reasons the variance is being requested and any other information requested by the chief of police. The application shall not be received until all the requested information and application fee has been submitted.
- C. No more than 14 calendar days after the date an application is received, the chief of police shall mail a written notice to occupants of the properties that are within 300 feet of the potential source of the noise, notify in writing any officially recognized neighborhood organizations within whose geographical boundaries the involved sound is likely to be heard and post a notice on the property that is the potential source of the noise. The notice shall inform occupants and interested parties that a variance application has been filed and that they may submit written comments to the chief of police for consideration in deciding whether to approve or deny the application. The notice shall inform occupants and interested parties that their written comments must be submitted within 7 calendar days of the date the notice was mailed or they may not be considered.
- D. No more than 7 calendar days after the date the written comments are due, the chief of police shall make a decision to approve or deny the application. The decision shall be based on the information provided in the application and written comments. The variance application shall be approved if the chief of police finds that the following standards will be met:
 - 1. The benefits of allowing the activity or event that will cause unreasonable noise outweigh the disruption or harm caused by the unreasonable noise;
 - 2. The duration and volume of the noise is the minimum amount necessary to achieve the purpose of engaging in the activity or event that will cause the noise; and
 - 3. The applicant will minimize the noise that is produced between the hours of 10 p.m. and 7 a.m.
- E. The chief of police shall mail a copy of the decision to the applicant and any party who provided written comments.
- F. An applicant, or any party who provided written comments, may appeal the chief of police's decision to the city council. The appeal must be in writing and filed with the city administrator no more than 7 calendar days after the date the decision was mailed. Any party filing a written appeal shall:
 - 1. Identify themselves as the applicant or a party that submitted written comments;

2. Include a copy of the decision that is being appealed and the application or written comments they submitted;
 3. State with specificity the reasons why the decision is being appealed; and
 4. Explain why they believe the decision is inconsistent with the standards in Section 8.24.070(D).
- G. Upon receipt of a timely and complete appeal, the city administrator shall place the appeal on a city council meeting agenda and shall mail written notice to applicant and any person who submitted written comments informing them of the date the city council will consider the appeal.
- H. At the appeal hearing, the city council shall review the application, written comments, and written appeal, and decide whether to affirm, reverse or modify the chief of police's decision. The city council's decision shall be reduced to writing and mailed to the appellant and any party who participated in the hearing on appeal.

8.24.080 Chapter provisions not exclusive.

This chapter shall not affect the validity or enforceability of any other state law or county ordinance, which is or may in the future be in effect and which relates to the activities regulated by this chapter.

8.24.090 Each incident deemed separate violation.

Each incident constituting a violation of Section 8.24.040 or 8.24.050 of this chapter shall constitute a separate offense. Upon citation for violation of this Section 8.24.040 or 8.24.050 of this chapter the failure of the person to abate the noise shall result in issuance of further citations.

8.24.100 Violation – Penalty.

Any person who is convicted of a violation of this chapter shall be fined not more than five hundred dollars.

Section 2. The repeal of the current provisions of TMC ch. 8.24 shall not affect the prosecution or disposition of any violations of those code provisions pending at the effective date of this ordinance.

YEAS 6
NAYS 0
ABSTAINED 0



Mayor Paul Thalhoffer

9-29-99

Dated



Debbie Stickney, City Recorder

9/28/99

Adopted

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