

COPY

**CITY OF SHERWOOD
ORDINANCE NO. 2001-1116**

AN ORDINANCE PROHIBITING NOISE AND PROVIDING FOR VARIANCES

NOW, THEREFORE, THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1 **PURPOSE.** It is hereby found and declared that:

- A.** The making and creation of excessive, unnecessary or unusually loud noises within the limits of the City of Sherwood is a condition which has existed for some time and the extent in volume of such noises is increasing;
- B.** The making, creation, or maintenance of such excessive, unnecessary, unnatural, or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect, and are a detriment to public health, comfort, convenience, safety, welfare, and prosperity of the residents of the City of Sherwood, and
- C.** The necessity in the public interest for provisions and prohibitions hereinafter contained in this Ordinance, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and prosperity and the peace and quiet of the City of Sherwood and its inhabitants.

Section 2 **DEFINITIONS.** As used in this Ordinance:

- 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.** "Domestic Power Equipment" means power tools or equipment used for home or building repair, maintenance, alteration or other home manual arts projects, including but not limited to powered hand tools, lawn mowers and garden equipment.
- 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.** "Motor Vehicle" means any land vehicle, which is designed to be self-propelled.
- E.** "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.

- F. "Plainly Audible" means unambiguously communicated to 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.

Section 3 NOISE DISTURBANCE PROHIBITED.

- A. Generally. In addition to the specific prohibitions in subsection B) of this section and Section 4, it shall be unlawful for any person to knowingly create, assist in creating, permit, continue, or permit the continuance of any noise disturbance.

A noise disturbance is any sound, including sound produced by animals, which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the limits of the City.

- B. Specific Prohibitions. Unless exempted by Section 5, the following acts are declared to be noise disturbances within the meaning of § 3 A) provided, however, that this enumeration shall not be deemed to be exclusive:

1. Dynamic braking devices (Jake Brakes). 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 using the wheel brakes.
2. 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 the hours of 10:00 p.m. and 7:00 a.m.
3. 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 the hours of 10:00 p.m. and 7:00 a.m.
4. Lawn mowing equipment. Operating lawn-mowing equipment (to include powered landscaping tools/equipment) with a combustion engine between 10:00 p.m. and 7:00 a.m.

Section 4 PERMISSIBLE SOUND LEVELS.

- A. Except as specifically provided elsewhere in this Ordinance, "day" hours are between 7:00 a.m. and 10:00 p.m. Monday through Friday; and 8:00 a.m. to 7:00 p.m. Saturday and Sunday.

B. Except as otherwise provided elsewhere in this Ordinance, "night" hours are between 10:00 p.m. and 7:00 a.m. Monday through Friday, and 7:00 p.m. and 8:00 a.m. Saturday and Sunday.

1. Sound producing, amplifying, or reproducing equipment. During day and night hours, no person shall 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.
2. Domestic power equipment. The day period does not apply to sounds produced by domestic power equipment.
3. 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.
4. Commercial construction. The day period does not apply to any sounds produced in commercial construction activity.
5. Off-highway vehicles. No person shall operate any self-propelling motor vehicle, designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, mini-bikes, motor scooters, dune buggies, and jeeps, off a public right-of-way in such a manner that the sound level is plainly audible within any dwelling unit outside the boundary of the noise-producing property during day or night hours.
6. 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 or trailer for more than 30 minutes when the sound level produced by such equipment is plainly audible within any dwelling unit outside the boundary of the noise-producing property during night hours. Auxiliary equipment means a mechanical device that is built in or attached to a motor vehicle or trailer, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.

Section 5

EXEMPTIONS.

The following sounds are exempted from the provisions

of this Ordinance:

- A. 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.
- B. Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that intrusion or fire alarms shall not sound continuously for more than 15 minutes. Sounds made by the Tualatin Valley Fire and Rescue District sirens during use and testing.
- C. Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when in pursuit of an actual or suspected violator of the law.

- D. Sounds made by activities by or on direction of the City of Sherwood in maintenance construction, or repair of public improvements in public rights-of-way or easements.
- E. Sounds produced pursuant to a specific variance granted by the Oregon Environmental Quality Commission, or under Section 7 of this Ordinance.
- F. Sounds produced by the audience, participants and sound amplifying equipment at athletic events on public property and sponsored or sanctioned or otherwise approved by the City or the Sherwood School District.
- G. Sounds made by motor vehicle exhaust systems that comply with the provisions of ORS 815.250, but this exemption does not apply to violation of Section 3 (B) (2) of this Ordinance.

Section 6 ENFORCEMENT RESPONSIBILITY AND AUTHORITY.

- A. The Sherwood Police Department and the City Manager's designee shall jointly enforce this Ordinance.
- B. Enforcement of the Ordinance may include seizure of the sound producing equipment.

Section 7 VARIANCES.

- A. Generally. Any person who owns, controls, or operates any sound source which does not comply with a provision of this Ordinance may apply for:
 - 1. A Class A Variance for an event that does not exceed 72 hours in duration; or
 - 2. A Class B Variance for an event or activity or series of related events, or activities that are 72 hours or more in duration.
- B. The City Manager or the City Manager's designee may file application for a Class C Variance for a community event or activity of any duration that does not comply with a provision of this Ordinance.

Section 8 VARIANCE APPLICATION.

- A. An applicant for a variance shall submit in writing:
 - 1. A reference to the provision from which the variance is sought;
 - 2. The reason or reasons why the variance is necessary;
 - 3. The physical characteristics of the involved sound;

4. The times when the involved sound will be emitted and the anticipated duration of the sound;
5. Where the sound will not be generated by a mobile source which moves beyond the boundaries of one block, a site plan sketch which shows the area of sound generation and designates whether the uses in the area within 400 feet of the source of the involved sound are commercial, industrial, or noise sensitive as defined in Section 2, or a combination thereof;
6. Any other supporting information which the City Manager or Council may reasonably require to allow consideration of the conditions set forth in Section 10.

B. The applicant for a Class A Variance shall submit the application to the City Manager's designee. The applicant for a Class B or Class C Variance shall submit the application to the City Recorder, who shall place the matter on the agenda for the forthcoming Council meeting.

Section 9 PUBLIC NOTIFICATION FOR CLASS B OR C VARIANCE.

The applicant for a Class B Variance or the City for a Class C Variance shall post notice along the nearest public road at the boundaries of the property containing the sound source so that the notice is visible from the public road, and publish notice in a newspaper of general circulation in the City. Notice shall be posted on the property at least seven (7) days before the public hearing, and notice shall be published at least four (4) days before the public hearing. Notice under this section shall state the date the Council will consider the application, the nature and substance of the variance to be considered, and that recipients of the notification may file written comments on the application with the City Recorder before the Council meeting at which the application will be considered.

Section 10 VARIANCE REVIEW.

The City Manager or the City Manager's designee or Council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in Section 9, when it appears that the following conditions exist:

- A. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance, and;
- B. That granting the application will not be unreasonably detrimental to the public welfare.

Section 11 VARIANCE DECISION.

- A. The City Manager or the City Manager's designee shall grant or deny a Class A Variance within 3 days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
- B. The Council shall grant or deny a Class B or Class C Variance within 30 days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.
- C. The City Manager or Council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of the Ordinance will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this Ordinance.
- D. A decision to grant or deny the variance shall be in writing and shall state the reasons for such decision. The Council or City Manager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.

Section 12 REVIEW.

The decision of the Council to grant or deny a variance is final. The City Manager shall file his or her written decision with the City Recorder, who shall place the matter on the agenda for the forthcoming Council meeting. The decision of the City Manager is final on the date of that Council meeting, unless the Council, on its own motion, decides to reverse or modify the decision of the City Manager or to schedule a public hearing on the application. If a public hearing is held, the Council shall grant or deny the variance within 30 days after the hearing, and may impose conditions on the granting of the variances as set forth in Section 11.

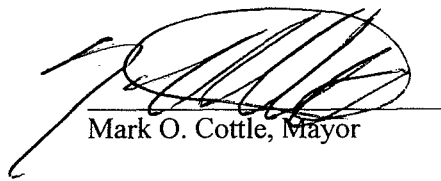
Section 13 PENALTIES.

Violation of any provision of this Ordinance constitutes a Class C Violation (City of Sherwood Municipal Code 9.12.030) for the first offense. Subsequent violations of this Ordinance constitute a Class B Violation (City of Sherwood Municipal Code 9.12.030).

Section 14 EMERGENCY.

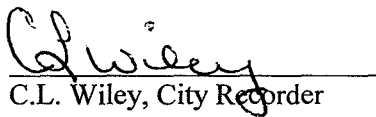
This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist and this Ordinance shall take effect immediately upon its passage.

DULY PASSED BY THE CITY COUNCIL THIS 8TH DAY OF MAY 2001.



Mark O. Cottle, Mayor

ATTEST



C.L. Wiley, City Recorder

Heironimus
Durrell
Claus
Weeks
Mays
Fox
Cottle

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