



ORDINANCE 2016-005

AMENDING TITLE 9 OF THE MUNICIPAL CODE RELATING TO PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.52 PROHIBITING OF NOISE; DECLARING AN EMERGENCY

WHEREAS, loud and raucous noise degrades the environment of the City to a degree that is harmful to the health, welfare, and safety of its inhabitants and visitors; interferes with the comfortable enjoyment of life and property; interferes with the well-being, tranquility, and privacy of the home; and both causes and aggravates health problems; and

WHEREAS, both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication; and

WHEREAS, the use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City; and

WHEREAS, certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City; and

WHEREAS, the obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article I, section 8, of the Oregon Constitution and the First Amendment of the United States Constitution; and this ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights; and

WHEREAS, the City wants to begin to bring its noise ordinance more closely into alignment with the League of Oregon Cities Model Noise Ordinance and to amend its noise ordinance to address developments in the law since its current noise ordinance was enacted in 2001; and

WHEREAS, this ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Sherwood 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.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings.

After full and due consideration of the information presented, the Council finds that the text of the Sherwood Municipal Code relating to the prohibiting of noise in chapter 9.52 in the Public Peace, Morals and Welfare title shall be amended.

Section 2. Approval.

The proposed amendments for the Municipal Code identified in the attached Exhibit 1, are hereby **APPROVED** and replace the existing chapter 9.52 in its entirety.

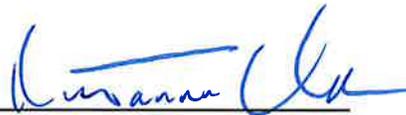
Section 3. Manager Authorized

The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this ordinance, including necessary updates to the Municipal Code.

Section 4. Emergency

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on the date of its passage.

Duly passed by the City Council this 2nd day of February, 2016.


Krisanna Clark, Mayor

2/2/16
Date

Attest:


Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Brouse	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kuiper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
King	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>

EXHIBIT 1

9.52 Prohibiting of Noise

9.52.010 Purpose

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Sherwood 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.

9.52.020 Scope

This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

9.52.030 Definitions

As used in this chapter, unless the context requires otherwise:

"City" means the City of Sherwood.

"City Manager" means the City Manager of City or the City Manager's designee.

"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.

"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.

"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.

"Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

"Emergency Work" means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

"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.

"Motor vehicle" means any land vehicle, which is designed to be self-propelled.

"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

"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.

"Person" means any individual, firm, association, partnership, joint venture, or corporation.

"Plainly audible" means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

"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.

"Residential area" means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

9.52.040 General Prohibition

1. No person shall make, continue, or cause to be made or continued:
 - a. any unreasonably loud or raucous noise; or
 - b. any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
 - c. any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, 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 residences or places of business.
2. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
 - a. the proximity of the sound to sleeping facilities, whether residential or commercial;
 - b. the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
 - c. the time of day or night the sound occurs;
 - d. the duration of the sound; and
 - e. whether the sound is recurrent, intermittent, or constant.

9.52.050 Noises Prohibited

The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

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 fifteen (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.
5. Sound producing, amplifying, or reproducing equipment. Causing or permitting 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.
6. Domestic power equipment. During night hours, operating domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.
7. Off-highway vehicles. Operating 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.
8. Auxiliary equipment on motor vehicles. Causing, allowing, permitting, or failing to control the operation of any auxiliary equipment on a motor vehicle or trailer for more than thirty (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.

9.52.060 Exemptions

Sounds caused by the following are exempt from the prohibitions set out in Section 9.52.050 and are in addition to the exemptions specifically set forth in Section 9.52.050:

1. 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.
2. 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 fifteen (15) minutes. Sounds made by the Tualatin Valley fire and rescue district sirens during use and testing.
3. 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.

4. Sounds made by activities by or on direction of the City in maintenance, construction, or repair of public improvements in public rights-of-way or easements.
5. Sounds produced pursuant to a specific variance granted by the Oregon environmental quality commission, or under Section 9.52.080 of this chapter.
6. 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.
7. 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 9.52.050(2) of this chapter.
8. Commercial construction. The day period does not apply to any sounds produced in commercial construction activity.

9.52.070 Enforcement responsibility and authority

1. The following individuals shall enforce this chapter: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this chapter. Nothing in this chapter shall prevent the City Manager or Police Chief from obtaining voluntary compliance by way of warning, notice, or education.
2. Enforcement of this chapter may include seizure of the sound producing equipment.

9.52.080 Variances

1. Generally. Any person who owns, controls, or operates any sound source which does not comply with a provision of this chapter may apply for:
 - a. A Class A variance for an event that does not exceed seventy-two (72) hours in duration; or
 - b. A Class B variance for an event or activity or series of related events, or activities that are seventy-two (72) hours or more in duration.
2. The City Manager 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 chapter.

9.52.090 Variance application

1. An applicant for a variance shall submit in writing:
 - a. A reference to the provision from which the variance is sought;
 - b. The reason or reasons why the variance is necessary;
 - c. The physical characteristics of the involved sound;
 - d. The times when the involved sound will be emitted and the anticipated duration of the sound;

- e. 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 four hundred (400) feet of the source of the involved sound are commercial, industrial, or noise sensitive as defined in Section 9.52.030, or a combination thereof;
 - f. Any other supporting information which the City Manager or council may reasonably require to allow consideration of the conditions set forth in Section 9.52.110.
2. The applicant for a Class A variance shall submit the application to the City Manager. 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.

9.52.100 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 days before the public hearing, and notice shall be published at least four 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.

9.52.110 Variance review

The City Manager or council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in Section 9.52.100, when it appears that the following conditions exist:

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

9.52.120 Variance decision

1. The City Manager shall grant or deny a Class A variance within three days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
2. The council shall grant or deny a Class B or Class C variance within thirty (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.
3. The City Manager or council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of this chapter will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this chapter.

4. 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.

9.52.130 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 thirty (30) days after the hearing, and may impose conditions on the granting of the variances as set forth in Section 9.52.120.

9.52.140 Penalties

1. Violation of any provision of this chapter constitutes a Class C violation for the first offense. Subsequent violations of this chapter constitute a Class B violation.
2. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.