



ORDINANCE 2016-007

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

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 previously amended its noise ordinance in February of 2016 to address a number of more immediate concerns, and subsequently conducted a comprehensive review of its noise ordinance, including specific violations, exemptions, and variance provisions, culminating in the attached proposed amendments; and

WHEREAS, the City Council conducted the first public hearing on this ordinance on May 3, 2016 and conducted the second public hearing on June 7, 2016; 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.

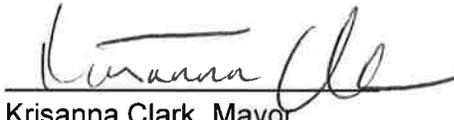
Section 3. Manager Authorized

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. Effective Date

This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 7th day of June, 2016.


Krisanna Clark, Mayor 6/7/16
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:

"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.

"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 9:00 p.m. Monday through Friday and 8:00 a.m. and 9:00 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.

"Dynamic braking device" means a device 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.

"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 all hours other than day hours as defined in this ordinance.

"Noise sensitive area" includes, but is not limited to, real property normally used as a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, library, 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.

"Police Chief" means the Police Chief of City or the Police Chief's designee.

"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 in the case of an emergency.
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 during night hours.
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 during night hours.
4. Lawn mowing equipment. Operating lawn-mowing equipment (to include powered landscaping tools/equipment) with a combustion engine during night hours.
5. Sound producing, amplifying, or reproducing equipment. Causing or permitting sound produced by a musical instrument, radio, television, phonograph, loudspeaker, bullhorn, or other similar equipment to be plainly audible within any dwelling unit other than the source, or plainly audible at a distance of fifty (50) feet from the source in a commercial area, industrial area, or public space.
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 motor vehicle, designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, mini-bikes, motor scooters, and dune buggies, 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.
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.
9. Vehicle horns, signaling devices, and similar devices. The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten (10) consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.
10. Animals and birds. Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird.

11. Noise sensitive areas. The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of a noise sensitive institution or facility; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.
12. Construction or repair of buildings. The construction, demolition, alteration, or repair of any building during night hours. In cases of emergency, construction or repair noises are exempt from this provision.
13. Emergency signaling devices. The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (a) and (b), below.
 - a. Testing of an emergency signaling device shall occur during day hours. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five (5) minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
 - b. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, in instances other than as provided in subsection (a) above, shall terminate within fifteen (15) minutes of activation, unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Ordinance.

9.52.060 Exemptions

Sounds caused by the following are exempt from the prohibitions set out in Sections 9.52.040-9.52.050; these exemptions are in addition to the exemptions specifically set forth in Section 9.52.050:

1. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work, including but not limited to sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency, when in pursuit of an actual or suspected violator of the law, and when performing required testing of emergency equipment.
2. Sounds made by activities by or at the direction of the City, the State, or the federal government in maintenance, construction, demolition, or repair of public improvements in public rights-of-way or easements, provided that such activities shall not take place during night hours except when public welfare and convenience renders it impractical to perform the work during day hours.
3. Sounds produced pursuant to a specific variance granted by the Oregon environmental quality commission, or under [Section 9.52.080](#) of this chapter.
4. Sounds produced by the audience, participants, and sound amplifying equipment at events on public property or private school property which are sponsored, sanctioned, or otherwise approved by the City, the Sherwood School District, or the private school which owns the property where the event occurs.

5. 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.
6. Sounds made by legal fireworks on the third of July, Fourth of July, and the Friday and Saturday during the weekend closest to the Fourth of July of each year, between the hours of 7 a.m. and 11 p.m., and sounds made between midnight and 12:30 a.m. on January 1st of each year.

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

Any person who owns, controls, or operates any sound source which does not comply with a provision of this chapter may apply for a variance.

9.52.090 Variance application

An applicant for a variance shall submit an application in writing to the City Manager that contains the following:

1. A reference to the provision(s) from which the variance is sought;
2. The reason(s) the variance is necessary;
3. The type and 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 designating 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;
6. Any other supporting information related to the variance criteria in Section 9.52.110 or which the City Manager may reasonably require to allow evaluation under said criteria.
7. An application fee in an amount established by resolution of the City Council.

9.52.100 Public notification for variance

1. Within five (5) business days of the submission of an application for a variance, the City Manager may, if the City Manager determines that the requested variance may have a substantial impact on the surrounding areas, require public notification of the request for a variance. If such notification is required, the decision timeline in Section 9.52.110 will not commence until ten (10) business days after the completion of said public notice and provision to the City Manager of the information specified in Subsection 3 of this Section.
2. If such public notice is required by the City Manager, the applicant shall:
 - a. 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;
 - b. Provide a copy of the notice to the City for publication on the City's website; and
 - c. Deliver written notice to the owner or occupant of each property that is located within three-hundred (300) feet of the property line of the property containing the sound source.
3. Notice under this Section shall include:
 - a. The nature and substance of the variance being requested, including the provision(s) of this Ordinance from which the variance is being requested;
 - b. The location, date(s), and time(s) for which the variance is being requested;
 - c. The name of the event to which the variance relates, if applicable;
 - d. The name and contact information of the applicant;
 - e. The name and contact information for the City Manager.
 - f. A statement that all interested persons may file written comments on the application with the City Manager and stating a deadline for such comments which is ten (10) business days after the date of the notice.
4. Upon completion of provision of the above notice, the applicant shall so notify the City Manager in writing and provide a list of addresses to which notices were delivered, the name of the newspaper in which notice was published, and the date(s) on which the notice was published.

9.52.110 Variance review

1. The City Manager may grant a variance, after considering the written application for variance and any written comments submitted pursuant to [Section 9.52.100](#), when it appears that:
 - a. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance;
 - b. The public health and safety provisions of the City code, exclusive of this Ordinance, will not be violated if a variance is granted; and;
 - c. That granting the variance will not be unreasonably detrimental to the public welfare.
2. In making said decision, the City Manager must consider such factors as the potential impacts on businesses and noise sensitive properties within four-hundred (400) feet, the time of day, the day of the week, the proposed type and amount of amplification, and any secondary noise consequences.

9.52.120 Variance decision

1. The City Manager shall grant or deny a variance within ten (10) business days of receipt of a complete variance application.
2. The City Manager 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.
3. A decision to grant or deny the variance shall be in writing and shall state the reasons for such decision. The 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 Appeal

1. The applicant may appeal a variance decision to the City Council by submitting a written request for appeal within ten (10) business days from the date of the City Manager's decision.
2. To file an appeal, the applicant must submit the following information to the City Recorder:
 - a. The name of the applicant for the variance;
 - b. The claimed reasons the City Manager's decision was in error; and
 - c. The appeal fee, as established by resolution of the City Council.
3. Upon receipt of the completed appeal request, the City Recorder shall place the matter on the agenda for a hearing at the next regular City Council meeting which is at least five (5) business days from the date the request is received, and provide written notice of the date of the hearing to the applicant and any individuals who submitted written comments on the application under Section 9.52.100.
4. At the hearing, the City Council shall hear from the applicant, the City Manager, and any other person deemed appropriate by the City Council. Upon conclusion of the hearing, the City Council must decide whether to grant or deny a variance based on the variance criteria in Section 9.52.110. The City 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 such condition or limitation shall constitute a violation of this Chapter. The City Council's decision shall be final.

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.