

**COUNCIL BILL NO. 3088**

**ORDINANCE NO. 2568**

**AN ORDINANCE AMENDING ORDINANCE 2312 (THE WOODBURN NOISE ORDINANCE) TO CLARIFY AND STRENGTHEN IT AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Woodburn has enacted Ordinance 2312 (the Woodburn Noise Ordinance) to promote the health, safety, and welfare of its residents through the reduction, control, and prevention of disturbing and harmful noise; and

**WHEREAS**, as part of the City Council Ordinance Review and Revision Project, staff has reviewed the Woodburn Noise Ordinance to determine what revisions could be recommended to the City Council that would clarify and strengthen the Ordinance; and

**WHEREAS**, City residents have a right to an environment free from excess sound that could jeopardize their health and welfare and degrade the quality of life; and

**WHEREAS**, the City of Woodburn recognizes that its regulation of noise must be consistent with both the United States Constitution and the Oregon Constitution and that this Ordinance cannot regulate speech; and

**WHEREAS**, the City of Woodburn further recognizes that, in order to be legal, this Ordinance must contain standards that are not subjective in nature or unconstitutionally vague; and

**WHEREAS**, the City Council believes that it is in the public interest to amend Ordinance 2312 (the Woodburn Noise Ordinance) as specifically provided below;  
**NOW, THEREFORE,**

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1.** Section 1 of Ordinance 2312 is amended to read as follows:

**Section 1. Purpose.** This Ordinance is enacted to protect, preserve, and promote the health, safety, and welfare of the residents of the City of Woodburn through the reduction, control, and prevention of loud noise, or any noise which unreasonably disturbs, injures, or

endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

**Section 2.** Section 2 of Ordinance 2312 is amended to read as follows:

**Section 2. Findings.**

- A. Loud noise degrades the environment of the City of Woodburn because it is harmful to the health, welfare, and safety of its inhabitants and visitors; it interferes with the comfortable enjoyment of life and property; it interferes with the well-being, tranquility, and privacy of the home; and it can cause and aggravate health problems.
- B. The effective control and elimination of loud noise are essential to the health and welfare of the City of Woodburn's inhabitants and visitors to conduct the normal pursuits of life, including recreation, work, and communications.
- C. The use of sound amplification equipment creates loud noise that may, in a particular manner and in a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of the inhabitants and visitors to the City of Woodburn.
- D. The City of Woodburn recognizes that its regulation of noise must be consistent with both the United States Constitution and the Oregon Constitution. More specifically, this Ordinance does not regulate speech or the content of speech; the regulatory objective is noise, an effect of speech, which Article I, Section 8 of the Oregon Constitution and the First Amendment to the United States Constitution permit the City to regulate.
- E. This Ordinance contains constitutionally defensible standards and is not subjective in nature or unconstitutionally vague.

- F. This Ordinance is not unconstitutionally overbroad because it does not regulate the content of speech or other sounds; it only applies to the volume of those sounds.
- G. This Ordinance contains provisions providing for exemptions and a variance procedure to ensure that it is not unconstitutionally overbroad.

**Section 3.** Section 4 of Ordinance 2312 is amended to read as follows:

**Section 4. Definitions.** For the purposes of this Ordinance, the following definitions apply:

- A. A-Scale (dBA). The sound level in Decibels measured using the A-weighted networks as specified in the American National Standard Specification for Sound Level Meters.
- B. Decibel (dB). The unit for measuring the volume of a sound.
- C. Noise Sensitive Unit. Any authorized land 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, multi-family dwelling, or mobile home) or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.
- D. Plainly Audible. Any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided faculties.
- E. Power Equipment. Any power tools or equipment including, but not limited to: lawn mowers, leaf blowers, lawn edgers, snow removal equipment, hand tools, saws, drills and/or other similar lawn or construction tools,

when used for home or building repair, maintenance, landscaping, alteration, or home manual arts projects.

F. Sound Level Meter. A sound measuring device, either Type 1 or Type 2, as defined by American National Standard Specification for Sound Level Meters.

G. Sound Producing Device. A Sound Producing Device includes, but is not limited to, the following:

1. Loudspeakers;
2. Radios, tape players, compact disc players, phonographs, boomboxes, television sets, or stereo systems, including those installed in a vehicle;
3. Musical Instruments;
4. Sirens, bells, or whistles;
5. Engines or motors;
6. Air, electrical, or gas-driven tools, including, but not limited to, drills, chainsaws, lawn mowers, saws, hammers, or similar tools; and
7. Motor vehicles, including automobiles, motorcycles, motorbikes, trucks, buses, snowmobiles, boats, or any similar piece of equipment equipped with a propelling device.

**Section 4.** Section 6 of Ordinance 2312 is amended to read as follows:

**Section 6. Noise Prohibited Based Upon Decibel Level.** It shall be unlawful for any person to produce or permit to be produced, with any Sound Producing Device which when measured at or within the boundary of the property on which a Noise Sensitive Unit is located which is not the source of the sound, which sound exceeds the following levels:

- A. 50 dBA at any time between 9:00 p.m. and 7:00 a.m. of the following day where the property receiving the noise has a residential zoning designation.
- B. 60 dBA at any time between 7:00 a.m. and 9:00 p.m. of the same day where the property receiving the noise has a residential zoning designation.
- C. 60 dBA at any time between 9:00 p.m. and 7:00 a.m. of the following day where the property receiving the noise has a zoning designation which is not residential.
- D. 75 dBA at any time between 7:00 a.m. and 9:00 p.m. of the same day where the property receiving the noise has a zoning designation which is not residential.

**Section 5.** Ordinance 2312 is amended to add a new Section 6A to read as follows:

**Section 6A. Specific Noise Prohibitions.** The following acts are declared to be per se violations of this Ordinance that do not require a Decibel level measurement:

- A. Noisy Animals. It shall be a violation for any animal to unreasonably cause annoyance, alarm, noise disturbance at any time of the day or night by repetitive barking, whining, screeching, howling, braying or other like sounds which may be heard beyond the boundary of the owner's property or keeper's property under conditions wherein the animals sounds are shown to have occurred either as an episode of continuous noise lasting for a minimum period of 10 minutes or repeated episodes of intermittent noise lasting for a minimum period of 30 minutes. This provision is not applicable to any animals located in a kennel or similar facility authorized under the applicable land-use and zoning laws and regulations.
- B. The sounding of any motor vehicle audible anti-theft alarm system for a period of more than 15 minutes.

- C. Construction Activity. Construction activity related to the erection, excavation, demolition, alteration, or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m. except in the case of urgent necessity in the interest of the public welfare and safety and then only with a permit granted by the City Administrator for a period not to exceed 10 days.
- D. Power Equipment. Operating or permitting the use of Power Equipment between the hours of 9:00 p.m. and 7:00 a.m. so as to be Plainly Audible within any Noise Sensitive Unit which is not the source of the sound.
- E. Engine Noise. Operating or permitting the operation of a motor vehicle or other engine between the hours of 9:00 p.m. and 7:00 a.m. so as to be Plainly Audible within any Noise Sensitive Unit which is not the source of the sound.
- F. Sound Producing or Reproducing Equipment (Noise Sensitive Unit). Operating or permitting the use or operation of any device designed for sound production or reproduction between the hours of 9:00 p.m. and 7:00 a.m. so as to be Plainly Audible within any Noise Sensitive Unit which is not the source of the sound.
- G. Sound Producing or Reproducing Equipment (Public Property). Operating or permitting the use or operation of any device designed for sound production or reproduction on public property or on a public right-of-way so as to be Plainly Audible 100 feet or more from such device except if the device is being operated in a City park pursuant to a permit granted by the City and the operation is consistent with the conditions of the City permit.

**Section 6.** Ordinance 2312 is amended to add a new Section 6B to read as follows:

**Section 6B. Noise Citation Based Upon Private Party Certification.** An enforcement officer may issue a citation for an alleged violation of Section 6A of this Ordinance based upon a Certification by a private party. This Certification shall be made by the private party on a form provided by the City and shall describe how the Ordinance was violated, that the private party makes the Certification subject to ORS 153.990 (Penalty for False Certification), and that the private party is available and willing to testify in the Woodburn Municipal Court as to the alleged violation.

**Section 7.** Section 7 of Ordinance 2312 is amended to read as follows:

**Section 7. Exemptions.** The following constitute exceptions to this Ordinance and shall not be construed as violations:

- A. Sounds created by organized athletic or other group activities, when such activities are conducted on public property generally used for such purposes, such as stadiums, schools, and athletic fields.
- B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus.
- C. Sounds caused by bona fide use of emergency warning devices and properly functioning alarm systems.
- D. Sounds regulated by federal law, including but not limited to, sounds caused by railroads or aircraft.
- E. Sounds caused by demolition activities when performed under a permit issued by appropriate governmental authorities.
- F. Sounds caused by construction activities during the hours of 7:00 a.m. to 9:00 p.m. of the same day.

- G. Sounds caused by regular vehicular traffic upon premises open to the public.
- H. Sounds caused by Power Equipment during the hours of 7:00 a.m. to 9:00 p.m. of the same day.
- I. Bells, chimes and carillons while being used for religious purposes or in conjunction with religious services, or for national celebrations or public holidays.
- J. Parades for which a City permit has been issued.
- K. Sounds resulting from an event conducted in a City park where a park use permit has been issued and the conditions of that permit and this Ordinance have been complied with.
- L. Any noise resulting from activities of a temporary duration which is otherwise permitted by law.

**Section 8.** Ordinance 2312 is amended to add a new Section 7A to read as follows:

**Section 7A. Variances.** Any person who owns, controls, or operates any sound source which does not comply with provisions or standards of this Ordinance may apply for a variance.

- A. The application shall be in a form acceptable to the City Administrator and shall state the date, time, and location of the event or activity and the reasons for which the variance is being sought. The applicant may be required to supply additional information. The application shall not be considered received until all information has been supplied.
- B. Review of the application on its merit shall include consideration of at least the following:



1. The physical characteristics, times and durations of the emitted sound;
  2. The geography, zone and population density of the affected area;
  3. Whether the public health, safety or welfare is impacted;
  4. Whether compliance with the standard(s) or provision(s) from which the variance is sought would produce hardship without equal or greater benefit to the public; and
  5. Applicant's previous history, if any, of compliance or noncompliance.
- C. The application shall be reviewed and decided by the City Administrator within 20 days of receipt of the completed application.
- D. All variance decisions shall be in writing, shall state the facts and reasons leading to the decision and shall be made available to the applicant, and any other person who has requested such decision.
- E. A variance decision of the City Administrator may be appealed to the City Council as follows:
1. A variance decision may be appealed by the applicant, his legal representative, any affected neighborhood association, or any person who has submitted oral or written testimony on the application.
  2. Notice of intent to appeal shall be in writing to the City Recorder's Office within 10 days of the effective date of the decision. The notice shall identify the decision that is being appealed, and include the appellant's name, address, signature, phone

number, relationship to the variance decision action, and a clear statement of the specific reason(s) for the appeal.


3. Upon receipt of such appeal, the City Recorder shall schedule the matter as a public hearing on the City Council agenda.
4. At the time of the public hearing, the City Council may consider such new matter as it deems appropriate, as well as the record developed before the City Administrator.

F. The City Council shall decide all variance decision appeals based upon the criteria in Section 7A-B within 20 days after the close of the public hearing.

**Section 9.** Section 9 of Ordinance 2312 is amended to read as follows:

**Section 9. Sound Amplification in City Parks.** Notwithstanding any other provisions of this Ordinance, the City Administrator or designee is authorized to allow amplified sound in a City park by the issuance of a park use permit where a sound level of 80 dBA is not exceeded.

**Section 10.** This Ordinance being necessary for the immediate preservation of the public peace, health, and safety so that Woodburn residents can benefit from improvements to this Ordinance at the earliest possible time, an emergency is declared to exist and this Ordinance shall take effect immediately upon passage by the City Council and approval by the Mayor.


Approved as to form:  2/21/2019  
City Attorney Date

Approved:   
Eric Swenson, Mayor

Passed by the Council February 25, 2019  
Submitted to the Mayor March 13, 2019

Approved by the Mayor  
Filed in the Office of the Recorder

March 13, 2019  
March 13, 2019

ATTEST:   
Heather Pierson, City Recorder  
City of Woodburn, Oregon