

ORDINANCE A-249

AN ORDINANCE ESTABLISHING NOISE STANDARDS; PRESCRIBING PENALTIES; AND DECLARING AN EMERGENCY

The City of Coburg Ordains as follows:

Section 1. **PURPOSE**

The City Council has determined that excessive sound is a serious hazard to the public health, welfare and quality of life, and it shall be the policy of the City to prevent excessive sound which may jeopardize the health, welfare and safety of citizens or degrade the quality of life.

Section 2. **SCOPE**

This Ordinance shall apply to the regulations of all sounds originating with the city limits.

Section 3 **DEFINITIONS**

- A. "Administrator" means the City Administrator or the Administrator's designee.
- B. "Noise disturbance" means any sound which:
 - 1. Injures or endangers the safety or health of a human;
 - 2. Annoys or disturbs a reasonable person of normal sensitivities; or
 - 3. Endangers or injures personal or real property.
- C. "Noise sensitive unit" means any residence, apartment, condominium, multifamily dwelling, or vehicle, boat or other structure adapted or used for the overnight accommodation of persons, or any school, hospital, residential treatment center, church, temple, synagogue, nursing home, rest home, retirement home, group care home, or daycare center.
- D. "Plainly audible" means where the listener clearly can hear the content of the sound produced by the noise source. Sounds which may be clearly audible include, but are not limited to, musical rhythms, spoken words, vocal sounds, and engine noises.
- E. "Person" means a natural person, firm, association, or corporation.
- F. "Person in control of property" means any property owner, tenant, resident, occupant, or other person who has a current right to use property and a right to limit access to property by others.
- G. "Sound reproduction device" means any radio, stereo, loudspeaker, amplifier, television, tape player, or other similar machine or mechanical or electronic device intended for the reproduction or amplification of sound.

Section 4 PROHIBITIONS

No person shall create or assist in creating or permit the continuance of noise in the City of Coburg from the following sources, by the following acts, or in excess of the following limits:

- A. Sound Reproduction Devices. Operation of any sound reproduction device which creates sound which:
 - 1. Between the hours of 7:00 a.m. and 10:00 p.m. creates a noise disturbance; or
 - 2. Between the hours of 10:00 p.m. and 7:00 a.m. is plainly audible:
 - a. Within any noise sensitive unit which is not the source of the sound or
 - b. 50 feet or more from such device
- B. Steam whistles. Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, as a warning of fire or danger or as authorized by permit.
- C. Sirens. Sounding a stationary siren, except as a warning of fire or danger or as authorized by permit.
- D. Exhausts. Discharging into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat, motor vehicle, or any mechanical device operated by compressed air or steam without a muffler or other device which will effectively prevent the emission of loud or explosive noises except where such discharge is from vehicles used for participation in vehicle spectator sports activities between the hours of 7 a.m. and 10 p.m., and the activities are properly licensed by the City and consistent with its zoning ordinance.
- E. Exhaust Brakes. The use of exhaust brakes (jake brakes), regardless of noise level, except in an emergency or except when used by a person operating an emergency vehicle equipped with a muffled compression braking system.
- F. Loading, unloading, opening boxes. Loading or unloading any vehicle or opening, closing or destroying bales, boxes, crates and containers, between the hours of 9 p.m. and 7 a.m. the following day, so as to create a noise disturbance.
- G. Construction or repair of buildings, streets, etc. Constructing (including excavating), demolishing, altering, or repairing any building, street, sidewalk, driveway, sewer or utility line between the hours of 9 p.m. and 7 a.m. the following day.
- H. Pile drivers, hammers, lawnmowers, etc. Operating any pile driver, lawnmower, steam shovel, pneumatic hammer, derrick, or steam or electric hoist between the hours of 9 p.m. and 8 a.m. the following day.

- I. Animals. Keeping any animal which frequently or for a continuous duration barks or makes other vocal or other sounds so as to create a noise disturbance. In order to constitute a violation of this provision, the animal must make noise that can be heard by persons inside a building on any adjacent property or living space, or outside a building more than one property distant from the source of the noise. The noise must last for at least five minutes at least three successive periods within an hour. Continuous animal noise for a period of over ten minutes will also constitute a violation of this Section.
- J. Park Rules. Violation of any noise regulations set forth in the City's park rules.
- K. Other. Producing sound by any means or through any activity other than those listed in this Ordinance which:
 - 1. Between the hours of 7:00 a.m. and 9:00 p.m., creates a noise disturbance; or
 - 2. Between the hours of 9:00 p.m. and 7:00 a.m., is plainly audible (i) within any noise sensitive unit which is not the source of the sound or (ii) 50 feet or more from such device.

Section 5. LIABILITY OF PERSON IN CONTROL OF PROPERTY

- A. A person in control of property is liable and subject to penalties to the same extent as a person who violates any of the provisions of this Ordinance if such person:
 - 1. Has actual knowledge of the violation at the time it occurs;
 - 2. Has the actual ability and legal right to prevent the violation by ejecting a person creating the noise from the property, removing or causing the termination of the operation of the noise-producing device or activity, or otherwise preventing the violation; and
 - 3. Fails, refuses, or neglects to prevent the violation.
- B. Nothing in this section shall be construed to render any person in control of property liable for violations of this Ordinance by trespassers or other persons using the property without the implied or express consent of the person in control of the property, nor shall anything in this chapter be construed to require a person in control of property to assume a substantial risk of physical injury to prevent a violation.

Section 6. EXEMPTIONS

The provisions of this Ordinance shall not apply to:

- 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 burglar or fire alarms shall not operate continuously for more than fifteen minutes.
- 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 current employment of land and buildings for farm uses, i.e., for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of livestock, poultry, fur-bearing animals or honeybees, or the produce thereof, or for dairying and the sale of dairy products or any other agricultural or horticultural operations or any combination thereof including the preparation and storage of the products raised for man's use and animal use and disposal by marketing or otherwise by a farmer on such farm.
- E. Sounds made by activities by or at the request of the city in maintenance, construction, or repair of public improvements in public or private property, rights-of-way or easements.
- F. Sounds produced pursuant to a specific variance granted by the Oregon Department of Environmental Quality, or by the City Administrator or City Council under Section 6 of this Ordinance.
- G. Sounds caused by sources regulated as to sound production by federal law or sounds caused by sources the regulation of which is preempted by state law.
- H. Sounds not electronically amplified, created by athletic and entertainment events other than motor vehicle racing events or fireworks displays.
- I. The sounding of any horn or signaling device on an automobile, motorcycle, or other vehicle reasonably required by the exigencies of vehicular or pedestrian traffic.
- J. Sounds specifically authorized under a permit or license issued by the City.

Section 7. VARIANCES

Any person who owns or controls any sound producing device or other sound source, or who is engaged in or planning any activity which violates, will violate, or may violate any provision of this chapter, or any property owner or person in control of property on which such sound source is located or such activity is planned, may apply to the City Administrator for a variance.

- A. Application. Applications for a noise variance shall be made to the City Administrator, and shall include:
 - 1. The provision from which the variance is sought,
 - 2. The period of time the variance is to apply,

3. The reason for which the variance is sought,
 4. An application fee, which may be waived by the City Administrator if they find that the imposition of the fee would constitute a substantial financial hardship to the applicant.
- B. Review Considerations. In considering a request for a variance, the City Administrator may approve or deny the application, based on consideration of the following factors:
1. The potential nature and duration of the sound caused or to be caused by the device or activity;
 2. The protection of the health, safety, and welfare of citizens, and the potential effect of the sound on the sleep, peace, quiet, comfort or repose of other persons;
 3. The feasibility and cost of noise abatement and the financial ability of the owner, occupant or other person producing noise or in control of property to comply with this chapter;
 4. The loss or inconvenience which would result to any party in interest from the denial of the variance;
 5. The past, present, and future patterns of land use;
 6. Whether previous variances have been granted and the applicant's record of compliance with the terms and restrictions of any previous variances;
 7. In the case of a person requesting a variance for a heating or cooling device, any special medical requirements for continued use of the device shall be considered
- C. Notification. Notice on applications for variance shall be provided as follows:
1. Notice of the variance determination shall be provided to property owners and residents within 500 feet of the property where the sound will be generated.
 2. Notice of the variance determination shall include:
 - a. A description of the location of the property for which the variance is sought by street address or, if there is no street address, by legal description or other description reasonably calculated to apprise persons receiving the notice of the location of the property;
 - b. A general description of the variance requested and the type of sound-producing activity or device which is proposed; and
 - c. A statement that an appeal may be filed to the City Council within 10 days of the date of notice.
- D. Appeal. The decision of the City Administrator may be appealed to the City Council. Notice of appeal shall be delivered to City Hall, along with an appeal fee. The Council shall review the application and shall have the discretion whether or not to hold a further hearing. If a hearing is held, notice of the hearing shall be provided to the appellant and the applicant. Notice of the final written decision shall be provided to the applicant, appellant, and any person who appeared at the hearing.

- E. Conditions and Restrictions. If a variance is approved, the City Administrator, planning commission, or City Council may impose such conditions or restrictions as are deemed reasonably necessary to ensure the peace, quiet, repose, health, welfare, and safety of the citizens of Coburg and to effectuate the purposes of this chapter.
- F. At any time before or during the operation of any variance, the City Administrator, or city council may revoke the variance for good cause.

Section 8. VIOLATION CONSTITUTES A NUISANCE

Violation of this Ordinance constitutes a nuisance and may be abated as provided for in the City's nuisance regulations.

Section 9. PENALTIES

- A. Violation of this Ordinance which shall constitute a Class C infraction. In addition to the imposition of any fine for the conviction for the violation of any provision of this ordinance, the Municipal Judge may also require a person convicted of violating this ordinance to pay for all or part of the court costs, the City's attorney fees in prosecuting the case, and such other reasonable costs which the City has incurred in the case, including but not limited to any abatement costs the City has been unable to recover.
- B. Repeat offenses under this Ordinance shall be subject to increased fines. As used in this Section, "repeat offense" means a second (or any subsequent) violation of the same requirement or provision of this Ordinance committed at any time after the last violation occurred. Each subsequent violation will increase to the next classification level, with the maximum being a Class A infraction.

Section 10. EMERGENCY CLAUSE

The City Council has determined that:

- A. Excessive sound is a serious hazard,
- B. This Ordinance is necessary for the immediate preservation of the public peace, health, and safety,
- C. An emergency is hereby declared to exist, and
- D. This Ordinance shall take effect immediately upon its passage by the Council and approval by the Mayor.


Section 11. SEVERABILITY

The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

ADOPTED by the **City Council** of the **City of Coburg** this 9th day of April, 2019 by a vote of 4 four and 0 against.

APPROVED by Mayor of the City of Coburg this 9th day of April, 2019.





Ray Smith, Mayor

ATTEST:



Sammy L. Egbert, City Recorder