

ORDINANCE NO. 1361-13

AN ORDINANCE RELATING TO NOISE; ADDING CHAPTER 6-14 TO THE TUALATIN MUNICIPAL CODE; AND AMENDING TUALATIN MUNICIPAL CODE 6-1-210

WHEREAS, unreasonable noise adversely impacts, the health, safety, and welfare of the citizens of Tualatin; and

WHEREAS, unreasonable noise reduces the desirability of Tualatin as a place to live, play, and work; and

WHEREAS, the City of Tualatin has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order; and

WHEREAS, the City Council desires to minimize and control the harmful and adverse effects of noise.

NOW THEREFORE, THE CITY OF TUALATIN ORDAINS AS FOLLOWS: Noise Ordinance

**Section 1.** Chapter 6-14 is added to the Tualatin Municipal Code to read as follows:

**TMC 6-14-010 Purpose.**

The City Council finds it is in the public interest to minimize exposure to the potentially negative physiological and psychological effects of excessive noise and to protect, promote and preserve the public health, safety and welfare. The purpose of this Chapter is to control the level of noise in a manner that promotes the health of its citizens, the use, value and enjoyment of property, and the conduct of business in a manner that reduces unnecessary and excessive sound in the environment.

**TMC 6-14-020 Definitions.**

Except where the context specifically requires otherwise, as used in this Chapter, the following words and phrases mean:

(1) "Animals" mean any domesticated animal, including but not limited to dogs, cats, and birds.

(2) "City Manager" means the City Manager or the City Manager's designee.

(3) "Dynamic braking device" means a braking device used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purposes of vehicle braking without the use of wheel brakes.

(4) "Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion

(5) "Noise disturbance" means any sound that:

- (a) Injures or endangers the health or safety of a person;
- (b) Disturbs a reasonable person of normal sensitivities from enjoying their private real property; or
- (c) Injures or endangers personal or real property.

(6) "Noise sensitive property" means real property normally used for sleeping, or any real property used as a school, daycare facility, place of worship, hospital, or public library.

(7) "Plainly audible" means the listener can clearly hear the sound produced by a sound source with unaided hearing faculties. Sounds which may be plainly audible include, but are not limited to musical rhythms, engine noises, spoken words or phrases even though not clearly discernible and other vocal sounds.

(8) "Power equipment" means 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.

(9) "Sound producing, amplifying, or reproducing equipment" means any device that produces or amplifies sound, including, but not limited to musical instruments, radios, televisions, stereos , portable audio devices, amplifiers, or loudspeakers

**TMC 6-14-030. Noise Disturbance Prohibited.**

No person shall knowingly create, permit, or assist in the creation or continuance of any noise disturbance.

**TMC 6-14-040. Specific Noise Disturbances Prohibited.**

Except when allowed by a permit issued by the City, the following are noise disturbances per se:

(1) **Sound Equipment.** It is unlawful to operate or use, or to permit the operation or use, of sound producing, amplifying, or reproducing equipment in such a manner that the sound produced thereby is plainly audible:

(a) Within any noise sensitive property, other than the place where the sound originates; or

(b) On public property or public right-of-way located one hundred fifty feet from the place where the sound originates.

(2) **Animals.** It is unlawful to keep, or permit the keeping of, any animal that barks, cries, whimpers, crows, clucks, or makes any other sound on a frequent or continuous basis for fifteen minutes or longer and that is plainly audible within a noise sensitive property, other than the place where the sound originates.

(3) **Power Equipment.** It is unlawful to operate, or to permit the operation of, any power equipment between the hours of 10:00 p.m. and 7:00 a.m.

(4) **Dynamic braking devices.** It is unlawful to use a dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property.

(5) **Idling engines on motor vehicles.** It is unlawful to operate an idling engine for more than fifteen consecutive minutes between the hours of 10 p.m. and 7:00 a.m. in a manner that is plainly audible within a noise sensitive property.

(6) **Motor vehicle repair and testing.** It is unlawful to repair or test any motor vehicle between the hours of 10 p.m. and 7:00 a.m. in a manner that is plainly audible within a noise sensitive property.

#### **6-14-050 Exceeding Decibel Level.**

No person shall knowingly create, permit, or assist in the creation or continuance of any noise from any sound source that exceeds the following decibel levels, measured from the property line of the recipient property:

(1) Where the recipient property is a noise sensitive property:

(a) 50 decibels at any time between 10 p.m. and 7:00 a.m. the following day, or

(b) 70 decibels at any time between 7 a.m. and 10:00 p.m.

(2) Any other property:

(a) 60 decibels between 10 p.m. and 7:00 a.m. the following day; or

(b) 80 decibels at any time between 7 a.m. and 10:00 p.m.

#### **6-14-060 Exceptions.**

The prohibitions of Section 6-14-030 to 6-14-050 do not apply to the following:

(1) **Government Facilities.** Sounds emanating from parks, libraries, or other government facilities that comply with rules or regulations promulgated by the government authority that owns or manages the facility;

(2) **Community Events.** Sounds created by community events, such as events, parades, public fireworks displays, street fairs, school events, athletic events, and festivals approved by the City or other governmental entity with authority over the location of the community event;

(3) **Emergency Sounds.** Sounds caused by emergency work, emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property, and emergency warning devices and alarm systems;

(4) **Industrial, Agricultural, Construction and Demolition.** Sounds caused by industrial, agricultural, construction, or demolition activities when performed during the hours of 7 a.m. to 6 p.m. seven days a week or otherwise under a permit issued by the City or other governmental authority with jurisdiction;

(5) **Traffic.** Sounds caused by regular vehicular traffic emanating from premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise or sound in violation of this Chapter;

(6) **Holiday Sounds.** Sounds caused 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; and

(7) **Federal and State law.** Sounds regulated by federal or state law, including, but not limited to, sounds caused by railroads or aircraft;

#### **TMC 6-14-070 Variances.**

(1) 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.

(2) A person seeking a variance must submit an application in writing to the City that contains the following:

- (a) a reference to the provision of this Chapter for which the variance is sought;
- (b) the reason the variance is necessary;
- (c) the type and physical characteristics of the sound;
- (d) the times when the sound will be emitted and its anticipated duration;
- (e) a site plan sketch showing the area of sound generation and whether the uses in the area within 400 feet of the source of the sound are commercial, industrial, or noise sensitive, or a combination thereof;
- (f) any other supporting information related to the variance criteria in TMC 6-14-080; and
- (g) an application fee in an amount established by resolution of the City Council.

**TMC 6-14-080 Variance Criteria.**

(1) In determining whether to grant or deny the variance, the City Manager must consider the application materials and any other information deemed appropriate by the City Manager.

(2) The City Manager may grant a variance 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) That the public health and safety provisions of the City code, exclusive of this Chapter, will not be violated if a variance is granted; and
- (c) That granting the variance will not be unreasonably detrimental to the public welfare.

(3) In making the decision, the City Manager must consider such factors as the potential impacts on businesses and noise sensitive properties within 400 feet, the time of day, the day of the week, the proposed type and amount of amplification and any secondary noise consequences.

**TMC 6-14-090 Variance Decision.**

(1) The City Manager shall grant or deny a variance within 30 business days of receipt of a completed variance application. The City Manager may impose such limitations, conditions, and safeguards as deemed appropriate, so that the intent of this chapter will be met, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this chapter.

(2) A decision to grant or deny a variance must be in writing and must state the reasons for the decision. The City Manager must notify the applicant of the decision in writing.

**TMC 6-14-100 Appeal.**

(1) The applicant may appeal a variance decision to the City Council by submitting a request for appeal within 14 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 the next regular City Council meeting for hearing.

(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 TMC 6-14-080. The City Council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the intent of this chapter will be met, and the public safety and welfare secured. The City Council's decision shall be final.

**TMC 6-14-110 Evidence of Noise Violation.**

(1) To establish a violation in an enforcement action based on Sections 6-14-030 and 6-14-040 requires the evidence of at least two persons from different households. Any police officer, code enforcement officer, or other city employee who witnessed the violation shall be counted as a witness for purposes of the two witness requirement.

(2) To establish a violation in an enforcement action based on Section 6-14-050 requires the evidence of a sound measurement device that:

- (a) is in good operating condition;
- (b) meets the requirements of a Type I or Type II meter;
- (c) contains at least an A-weighted scale and both fast and slow meter response;
- (d) was operated by a person trained in the use of a sound meter and used in a manner consistent with that training.

**TMC 6-14-115 Violation is Civil Infraction.**

(1) A violation of any provision of this Chapter is a civil infraction and punishable by a fine of not less than \$100 and not more than \$250.

(2) A violation of the same or a similar noise disturbance within six months of having received a citation or other notice of a violation of this Chapter shall be punishable by a fine not to exceed \$500, imprisonment not to exceed thirty days, or both.

(3) The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation of this Chapter.

**Section 2.** Tualatin Municipal Code 6-1-210 is amended as follows:

The following offenses constitute civil infractions:

(1) Begging. No person shall accost or detain another in a public place for the purpose of soliciting alms.

(2) Lodging. No person shall lodge in a car, outbuilding or other place not intended for that purpose without permission of the owner or person entitled to the possession thereof.

(3) Horses on Sidewalks and Bike Paths.

- (a) No person shall ride, walk, lead or allow a horse to be on a sidewalk or bike path.

(b) A penalty imposed for the violation of this section shall not exceed \$50.00.

~~(4) Unnecessary Noise. No person shall create, assist in creating or permit the continuance of unreasonable noise in the City of Tualatin. "Unreasonable noise" includes but is not limited to:~~

~~(a) Keeping an animal which by loud and frequent or continued noise disturbs the comfort and repose of persons in the vicinity.~~

~~(b) Construction, including excavation, demolition, alteration or repair, of a building other than between the hours of 7:00 a.m. and 6:00 p.m., except upon special permit granted by the City.~~

~~(c) Playing, using or operating a radio, tape player, compact disc player, phonograph, television set, stereo system, loudspeaker or sound-amplifying device, including those installed in a vehicle, in such a manner as to be plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day, local time:~~

~~(i) from a noise sensitive property as defined in the Tualatin Development Code; or~~

~~(ii) at a distance of 100 feet or more from the source of the sound. However, upon application to the Council, permits may be granted to persons or organizations to broadcast programs of music, news, speeches or general entertainment.~~

~~(d) Using compression brakes, commonly referred to as "jake brakes", on a motor vehicle, except to avoid imminent danger to persons or property.~~

~~(e) Playing outdoor sports in or near a noise sensitive property between the hours of 10:00 p.m. and 7:00 a.m. the following day, except for school-sanctioned outdoor sports events at school facilities.~~

~~(f) Repairing motor vehicles in or near a noise sensitive property between the hours of 10:00 p.m. and 7:00 a.m. the following day.~~

~~(6)~~ (5) Dumping Garbage. No person shall knowingly deposit or cause to be deposited any trash, refuse, garbage, grass clippings, yard debris, or any form of solid waste, as defined in Ordinance 698-86 onto the property of another without the approval of the owner of such property, or upon any public right-of-way.

~~(7)~~ (6) Public Nudity Display.



(a) No person shall knowingly and publicly display their person in such a manner that it becomes nudity display.

(b) "Nudity" means uncovered or less than opaquely covered adult, human genitals or pubic areas, the adult human female breast, or the covered human male genitals in a discernibly turgid state.

(c) "Publicly" means in a public place or in view of a public place.

(d) This subsection shall not be applied to conduct which taken as whole has serious educational, artistic, dramatic, political or scientific value.

~~(8)~~ (7) Purchase or possession of alcoholic beverages by person under 21.

Except as otherwise allowed by ORS 471.430, it is unlawful and a civil infraction for a person who owns or controls premises to knowingly or negligently allow a person on such premises to violate ORS 471.430. For purposes of this subsection in multiple family residential structures, premises means the individual living unit or apartment. For purposes of this subsection a person negligently allows violation if in the exercise of reasonable diligence the person should have known that a violation of ORS 471.430 would occur.

**Section 3.** Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

INTRODUCED AND ADOPTED this 14th Day of October, 2013.

CITY OF TUALATIN, OREGON

BY Monique L. Beckman  
Mayor Council President

APPROVED AS TO LEGAL FORM

BY [Signature]  
City Attorney

ATTEST:

BY [Signature]  
City Recorder