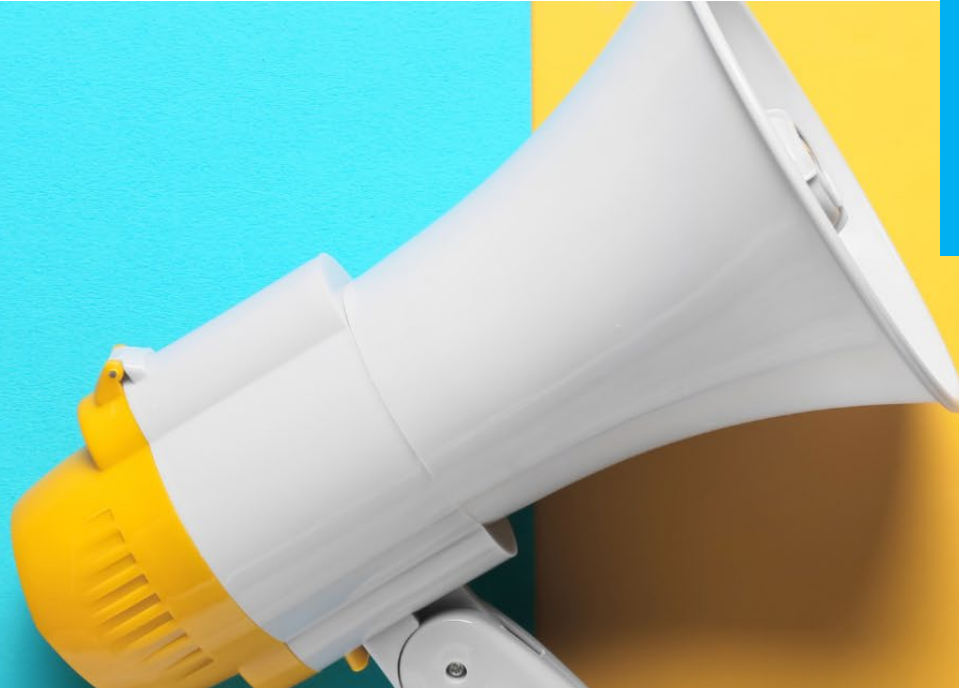


**MODEL**



# Model Noise Ordinance

NOVEMBER 2017

## **FOREWORD**

A city's model noise ordinance regulates the adverse impacts of noise by applying a "reasonable person standard." Using that standard allows cities to avoid spending public funds on purchasing and maintaining noise measurement equipment. The standard also allows enforcement officers to make subjective determinations on what noise is unreasonably loud or raucous under the circumstances. This method of enforcement is simple and cost-effective.

First Amendment free speech implications arise when the noise at issue is also a form of speech protected under the Oregon or United States Constitutions. Protected speech is any expression of beliefs through oral speech or expressive conduct that is sufficiently imbued with the elements of communication to implicate the First Amendment to the United States Constitution or Article I, Section 8 of the Oregon Constitution. All government regulation of protected speech must be content neutral, narrowly tailored, serve a significant governmental interest, and leave open ample alternative channels for communication.

Entrusting enforcement officials with discretion to decide when noise is unreasonable also requires a city to properly train enforcement officials to know when speech is constitutionally protected. If the regulated noise happens to be protected speech, then enforcement is constitutional only if the enforcement is not directed toward the speech's content. Enforcement must be directed towards the speech's non-communicative elements—such as time, place and manner. Enforcement officers may regulate speech based on the volume, duration, location, and timing of the noise, if the basis for the regulation is wholly unrelated to the content or message expressed by the noise.

The League of Oregon Cities' Legal Research Department first drafted this model ordinance in 2006. Minor updates were made in 2017 to reflect pertinent changes in the law. Any model document provided by the League is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs.

## **DISCLAIMER**

This model is not intended as a substitute for legal advice. Cities should consult with their city attorney before adopting a noise ordinance to ensure that the ordinance submitted complies with all aspects of federal, state, and local law.

# MODEL NOISE ORDINANCE

## SECTION

1. Purpose
2. Findings
3. Scope
4. Definitions
5. General Prohibition
6. Noises Prohibited
7. Exemptions
8. Enforcement
9. Penalties
10. Appeal
11. Severability
12. Savings Clause
13. Effective Date

*(Insert your City's Ordaining Clause, e.g., "The People of the City of \_\_\_\_\_ ordain as follows")*

**Section 1. Purpose.** This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of [City] 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.

**Section 2. Findings.** The City Council of [City] finds:

- A. Loud and raucous noise degrades the environment of the City to a degree that:
  - 1) Is harmful to the health, welfare and safety of its inhabitants and visitors;
  - 2) Interferes with the comfortable enjoyment of life and property;
  - 3) Interferes with the wellbeing, tranquility and privacy of the home; or
  - 4) Causes and aggravates health problems.
- B. 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.
- C. 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.

- D. Certain short-term easing of noise reductions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- E. 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 to the United States Constitution. This ordinance enacts narrowly drawn and content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

**Section 3. Scope.** This ordinance applies to the control of all sound originating within the City’s jurisdictional limits.

**Section 4. Definitions.**

- A. “Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.
- B. “Emergency work” means any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.
- C. “City” means City of [Insert City Name].
- D. “City Administrator/Manager” means the City Administrator/Manager of the City or the City Administrator/Manager’s designee.
- E. “Noise Enforcement Officer” means the person appointed by the City Council to enforce the provisions of this ordinance or that officer’s designee.
- F. “Noise Sensitive Area” includes, but is not limited to, real property normally used for sleeping or normally used as a school, church, hospital, or public library.
- G. “Person” means any individual, firm, association, partnership, joint venture, or corporation.
- H. “Plainly audible” means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.
- I. “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.
- J. “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.
- K. “Residential area” means any real property that 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.

- L. "Utility Service" means the normal operation of utilities within the City, whether provided by the City or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications, and garbage hauling.

## **Section 5. General Prohibition.**

- A. No person shall make or continue to make:

- 1) Any unreasonably loud or raucous noise;
- 2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity; or
- 3) Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity of the location from which that noise emanates, 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.

- B. Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:

- 1) The proximity of the sound to sleeping facilities, whether residential or commercial;
- 2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- 3) The time of day or night the sound occurs;
- 4) The duration of the sound; and
- 5) Whether the sound is recurrent, intermittent, or constant.

**Section 6. Noises Prohibited.** The following acts are declared to be per se violations of this ordinance. This enumeration does not constitute an exclusive list:

- A. Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park or other place or building. The ordinary and usual sounds, noises, commotion, or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

- B. 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 consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.
- C. Non-Emergency Signaling Devices: Sounding any amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period.
- D. 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 the following:
- 1) The testing of any emergency signaling device shall occur between 7 a.m. and 7 p.m. 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.
  - 2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, 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.
- E. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device, including but not limited to computers, mp3 players, and cellular phones, that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.
- F. Loudspeakers, Amplifiers, Public Address Systems and Similar Devices: The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system or other device for producing or reproducing sound between the hours of 10 p.m. and 7 a.m. on weekdays, and 10 p.m. and 10 a.m. on weekends and recognized city holidays in the following areas:
- 1) Within or adjacent to residential or noise sensitive areas; or

- 2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates and is unreasonably loud and raucous.

This provision shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City or for which the City is hosting.

- G. Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10 p.m. and 7 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing, or other factors not based on content.
- H. 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.
- I. Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous, and excessive noise relating to the loading or unloading of any vehicle at a place of business or residence.
- J. Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration, or repair of any building or the excavation of streets and highways other than between the hours of 7 a.m. and 7 p.m. on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the City Administrator/Manager may issue a permit, upon application, if the City Administrator/Manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7 p.m. and 7 a.m. will not be impaired, and if the City Administrator/Manager further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than thirty days. The permit may be renewed once for a period of thirty days or less.
- K. Noise Sensitive Areas (Schools, Courts, Churches, Hospitals and Similar Institutions): 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 the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.<sup>1</sup>

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<sup>1</sup> If a city includes Section 6(K) in its noise ordinance, the city should double-check their sign code to be sure that the signs mentioned in Section 6(K) are permitted under the sign code. If not, the city should consider making an exemption in the sign code to allow signs under Section 6(K).

- L. Blowers, and Similar Devices: In residential or noise sensitive areas, between the hours of 7 p.m. and 7 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.
- M. Commercial Establishments Adjacent to Residential Property: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under control of the establishment, between the hours of 10 p.m. and 7 a.m. that is plainly audible at a distance of five (5) feet from any residential property. [Cities with mixed-use buildings that include both commercial and residential establishments may consider an exemption from this prohibition or a separate prohibition that applies to those buildings.]

**Section 7. Exemptions.** Sounds caused by the following are exempt from the prohibitions set out in Section 6 and are in addition to the exemptions specifically set forth in Section 6:

- A. Motor vehicles on traffic ways of the City, provided that the prohibitions of Section 6(B) and (D)(2) continue to apply.
- B. Repairs of utility structures that pose a clear and immediate danger to life, health, or significant loss or property.
- C. Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 6(D) continues to apply.
- D. The emission of sound to alert persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- E. Repairs or excavations of bridges, streets, or highways by or on behalf of the City, the State or the federal government, between the hours of 7 p.m. and 7 a.m., when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 7 p.m.
- F. Reasonable activities conducted on public playgrounds and public or private school grounds that are conducted in accordance with the way such spaces are generally used, including but not limited to school athletic and school entertainment events.
- G. Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored by the City.
- H. Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices, from July 1 until July 5 of each year.
- I. [If the City hosts an event unique to the City, such as an air show or parade, the City may want to consider creating another exemption specific to that event.]



**Section 8. Enforcement.** The City Administrator/Manager, Police Chief, Noise Enforcement Officer, or any designee(s) thereof will have primary responsibility for the enforcement of the noise regulations contained in this ordinance. Nothing in this ordinance shall prevent the City Administrator/Manager, Police Chief or Noise Enforcement Officer from obtaining voluntary compliance by way of warning, notice, or education.

**Section 9. Penalties.**

- A. A person who violates a provision of this ordinance is guilty of an infraction, which is punishable by a fine not to exceed \$500.00.
- B. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate infraction, and may be punished separately.

**Section 10. Appeals.** Any person found to have violated any provision of this ordinance under Section 8 and assessed a penalty under Section 9 has the right to appeal that determination to the City Council. Notice of an appeal under this Section must be filed within 30 days of a finding under Section 8 or the assessment of a penalty under Section 9, whichever is later.

- A. Every person taking an appeal under this Section has the right to appear before the City Council, to have the allegations explained, and to be heard on the matter. The City Council has the authority to set rules of procedure to govern a hearing under this Section.
- B. In any appeal under this Section, the City Council must consider the facts *de novo* and render a decision independently of any prior finding under Section 8.

**Section 11. Severability Clause.** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

**Section 12. Savings Clause.** A prosecution that is pending on the effective date of this ordinance and arose from a violation of an ordinance repealed by this ordinance, or a prosecution started within one year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

**Section 13. Effective Date.** This ordinance is effective on \_\_\_\_\_.

## MISCELLANEOUS NOTES & COMMENTS CONCERNING NOISE ORDINANCES

**Reasonable Person Standard vs. Objective Standard:** Several Oregon cities have noise ordinances based on decibel standards. While these ordinances are more objective than ordinances using the reasonable person standard, they present unique problems. The cost of purchasing sound level meters, testing, and calibrating equipment and training staff can be prohibitive. Meters capable of being certified for prosecutions can cost several times the amount of a generic meter.

The reasonable person standard regulates noise that is either “unreasonably loud” or “plainly audible.” The “unreasonably loud” and “plainly audible” standards used in the model ordinance avoid the need for expensive decibel testing equipment. The plainly audible standard prohibits noise from being generated that is detectable by the human ear of normal sensitivity in certain locations at certain times. The unreasonable noise standard has been the subject of litigation in Oregon. Oregon courts have interpreted the term “unreasonable” as meaning “not conformable to reason, irrational, not governed or influenced by reason, immoderate, excessive, exorbitant, foolish, unwise, absurd, silly, preposterous, senseless and stupid.” *State v. Marker*, 21 Or App 671 (1975). The word “noise” is interpreted as meaning “a sound; loud, confused, or senseless shouting; any sound that is undesired or that interferes with something to which one is listening; an unpleasing sound; a sound that lacks agreeable music quality or is noticeably loud, harsh or discordant, inarticulated and confused sound.” *Id.* at 675.<sup>2</sup>

**Definitions:** The model ordinance’s definitions are listed in alphabetical order. Definitions set forth in the model ordinance should be compared to definitions existing in the city charter or other ordinances to minimize conflicts between definitions.

**Noise Enforcement Officers:** Cities should ensure that every Noise Enforcement Officer (or any individual tasked with enforcing the noise ordinance) has reviewed the appropriate materials to assist in enforcement of the ordinance. Noise Enforcement Officers should have a strong understanding of the general constitutional problems that may be encountered when they respond to a noise complaint.

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<sup>2</sup> See also, *Abolish Abortion Oregon v. City of Grants Pass*, 593 F.Supp.3d 1047 (2022), interpreting a city noise ordinance and also applying *State v. Marker* as applied to ORS 166.025.