

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN

ORDINANCE #280

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AN ORDINANCE AMENDING ORDINANCE #155 AND CREATING NEW CODE PROVISIONS, SECTIONS 2.2000 THROUGH 2.2045, REGULATING NOISE WITHIN THE UNINCORPORATED AREAS OF LINCOLN COUNTY, AND DECLARING AN EMERGENCY

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The Board of Commissioners for the County of Lincoln ordains as follows:

SECTION 1:

That the Lincoln County Code adopted as Ordinance #155 is hereby amended to add the following:

2.2000 Title; Area of Application

This chapter shall be known as the Lincoln County Noise Control Ordinance and shall apply within the unincorporated areas of Lincoln County, Oregon.

2.2005 Definitions

As used in this chapter, unless the context requires otherwise:

- (1) Idling speed: Speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.
- (2) Noise sensitive unit: Any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including--but not limited to--individual residential units, individual apartments, trailers, hospitals, and nursing homes.
- (3) Person: Any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.
- (4) Plainly audible: Unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to, understandable musical rhythms, understandable spoken words, and vocal sounds other than speech which are distinguishable as raised or normal.

(5) Sound producing device:

- (a) Loudspeakers, public address systems;
  - (b) Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems, including those installed in a vehicle;
  - (c) Musical instruments, amplified or unamplified;
  - (d) Sirens, bells;
  - (e) Vehicle engines or exhausts, when vehicle is not on a public right-of-way, particularly when the engine is operating above idling speed;
  - (f) Vehicle tires, when caused to squeal by excessive speed or acceleration;
  - (g) Domestic tools; including electric drills, chain saws, lawn mowers, electric saws, hammers, and similar tools, but only between 10 p.m. and 7 a.m. of the following day;
  - (h) Heat pumps, air conditioning units, and refrigeration units, including those mounted on vehicles.
- (6) Vehicle: Automobiles, motorcycles, motorbikes, trucks, buses, and snowmobiles.
- (7) Firearms: Devices, by whatever name known, which are designed to expel a projectile or projectiles by the combustion of black powder or smokeless powder.

2.2010 Findings and Policy

- (1) The Board of Commissioners for Lincoln County has found that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the county.
- (2) The Board has further determined that while certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the county necessarily require the production of sounds which may offend, disrupt, intrude and otherwise create hardship among the citizenry, the Board is obliged

to impose some limitations and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.

- (3) It is, therefore, the policy of this Board to prevent and regulate excessive sound wherever it is deemed harmful to the health, safety, welfare and quality of life of the citizens of Lincoln County. This chapter shall be liberally construed to effectuate that purpose.

2.2015 Administration and Enforcement

- (1) The Sheriff of Lincoln County shall administer, supervise and perform all acts necessary to enforce this chapter.
- (2) Persons appointed or assigned by the Sheriff, as he deems necessary to accomplish effective enforcement of this chapter, may be peace officers or not, but if unsworn persons are selected and empowered to issue citations for violation of this chapter, the Sheriff shall exercise powers under ORS 204.635.
- (3) Upon citation of a person for a violation of this chapter, the person issuing the citation may seize as evidence the sound producing device which was the source of the sound. The sound producing device, if seized, shall be impounded subject to disposition of the issued citation and determination by the court whether the sound producing device shall be returned to the cited person or deemed contraband, subject to LCC 2.2045(2). It is the intent of this chapter to avoid such seizures, except where the person being cited has received two previous citations within the previous six months for the use of the same or similar sound producing device. The previous citations may, but need not, occur on the same date as the citation which prompts the seizure.
- (4) Citation forms authorized pursuant to Lincoln County Code Chapter 10 may be used for any violation of this ordinance.
- (5) In addition to any other enforcement procedures, the Board of County Commissioners may, upon its own motion or upon receipt of a petition requesting a hearing by the Board, signed by no fewer than five persons residing in the vicinity of a property upon which is located an alleged violation of this chapter, issue its order to the

person producing or permitting to be produced the sound which allegedly violates this chapter to appear before the Board and show cause why the Board should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the Board referring the order to the county counsel for injunctive enforcement or, alternatively, to the district attorney for appropriate action.

2.2020 Sound Measurement

- (1) If measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A weighed scale and both fast and slow meter response capability.
- (2) If measurements are made, personnel making those measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.
- (3) Measurements may be made at or within 25 feet of the exterior boundary of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound.
- (4) All measurements made pursuant to this chapter shall comply with the provisions of this section.

2.2025 Prohibitions

It shall be unlawful for any person to produce or permit to be produced, with a sound producing device, sound which:

- (1) When measured at or within 25 feet of the exterior perimeter of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound, exceeds:
  - (a) 50 dBA at any time between 10 p.m. and 7 a.m. the following day, or
  - (b) 60 dBA at any time between 7 a.m. and 10 p.m. the same day, and

The sound exceeds the levels identified in subsections (a) and (b) above for five (5) consecutive minutes or ten (10) minutes in any one-half hour period, or when intermittent sounds exceed the identified levels ten (10) or more times in any one-half hour period.

- (2) Notwithstanding any other provision of section 1 above, prohibited sounds shall not exceed 15 dBA above the levels identified in subsections (1)(a) and (1)(b) above for any duration.
- (3) If the noise source is an idling vehicle licensed to travel upon public roads of the state, the noise source shall not be allowed to exceed the levels identified in subsection (1)(a) and (1)(b) above for more than 15 consecutive minutes between 10:00 p.m. and 7:00 a.m. the following day and 20 minutes between 7:00 a.m. and 10:00 p.m. the same day. At no time may the sound from an idling vehicle, when measured in accordance with subsection 1, exceed 15 dBA more than the levels established therein.
- (4) If a measurement of the sound is made, subsection (1) of this section shall supersede subsection (2) of this section and shall be used to determine if a violation exists.
- (5) When the sound is emitted from a motorboat, it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance closer than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the county unless equipped with a functioning underwater exhaust, muffler, or system which continuously pipes water into the exhaust line.

#### 2.2030 Exceptions

Notwithstanding Section 2.2025 of this chapter, the following exceptions from this chapter are permitted:

- (1) Sounds caused by organized athletic or other group activities, when those activities are conducted on property generally used for those purposes, including: stadiums, parks, schools, churches, athletic fields, race tracks, airports, and

waterways; provided, however, that this exception shall not impair the Sheriff's power to declare the event or activities otherwise to violate other laws, ordinances, or regulations.

- (2) Sound caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles, and apparatus, whether or not the work is performed by a public or private agency upon public or private property.
- (3) Sounds caused by sources regulated as to sound production by federal law, including, but not limited to: sounds caused by railroad, aircraft, or commercially licensed watercraft operations.
- (4) Sounds caused by bona fide use of emergency warning devices and alarm systems.
- (5) Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m., excluding weekends, unless the permit expressly authorizes otherwise.
- (6) Sounds caused by industrial, agricultural or construction organizations or workers during their normal operations.
- (7) Sounds made by activities by or on direction of Lincoln County or any other public or private utility in maintenance, construction, or repair of public or utility improvements in public rights-of-way, easements, or property.
- (8) Sounds caused by motor vehicles operated on public roads, which are regulated by state law, ORS 815.025.
- (9) Sounds created by firearms. Firearms are not regulated by this ordinance.

2.2035

Variances

Any person who is planning the use of a sound producing device which may violate any provision of this chapter may apply to the Sheriff for a variance from the provision.

- (1) This application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought, and other supporting information which the Sheriff may reasonably require.

- (2) The Sheriff shall consider:
  - (a) The nature and duration of the sound emitted.
  - (b) Whether the public health, safety or welfare is endangered.
  - (c) Whether compliance with the provision would produce no benefit to the public.
  - (d) Whether previous permits have been issued and the applicant's record of compliance.
- (3) A variance may be granted for a specific time interval only.
- (4) The Sheriff shall, within ten days, deny the application, approve it, or approve it subject to conditions.
- (5) The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of appeal should be delivered to the executive assistant of the Board. The Board shall review the application de novo and within 15 days deny the application, approve it, or approve it subject to conditions.
- (6) The Sheriff may at any time before or during the operation of a variance granted by the Sheriff revoke the variance for good cause. The Board may at any time before or during the operation of any variance revoke the variance for good cause.

2.2040 Additional Remedies

The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other claim, cause of action, or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend, or modify any law, ordinance, or regulation relating to noise or sound but shall be deemed additional to existing legislation and common law on such subject.

2.2045 Penalties

- (1) Violation of any provision of this ordinance shall be punished in accordance with Chapter 10 of the Lincoln County Code.
- (2) In addition to the penalties here prescribed, the court may order any sound producing device, found to have been used to violate this chapter, seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the county general fund.

SECTION 2: SEVERANCE CLAUSE

If any section, subsection, provision, clause, or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause, or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 3: EMERGENCY CLAUSE

This ordinance, being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall be referred to the voters in the unincorporated areas of Lincoln County at a special election to be held on June 27, 1989; and if approved by a majority of the voters at the election, shall become effective on the 1st day of July, 1989.

PASSED AND ADOPTED this 24<sup>th</sup> day of May, 1989.

LINCOLN COUNTY BOARD OF COMMISSIONERS

1st Frank Armstrong  
FRANK ARMSTRONG, Chairman

1st Andy Zedwick  
ANDY ZEDWICK, Commissioner

1st Norma McMillin  
NORMA McMILLIN, Commissioner

READINGS: May 17, 1989  
May 24, 1989  
May 31, 1989