

## ORDINANCE 1196

An ordinance amending section 93.58 of the Prineville Code to expand the ability of the city to protect the livability of the community and to more effectively respond to a wide range of noise complaints from citizens.

The People of the City of Prineville hereby ordain that Section 93.58 of the Code of Prineville is amended to read as follows:

### 93.58 Noise

**(A) Purpose.** This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of the City of Prineville 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. Nothing in this ordinance shall limit the city or state in enforcing the regulations of Oregon Administrative Rule 340, Division 35 – Noise Control Regulations.

**(B) Findings.** The City Council of the City of Prineville finds:

- (1) Loud and raucous noise degrades the environment of the City to a degree that:
  - (a) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
  - (b) Interferes with the comfortable enjoyment of life and property;
  - (c) Interferes with the well-being, tranquility, and privacy of the home; and
  - (d) Both causes and aggravates health problems.
- (2) 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.
- (3) 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.
- (4) Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- (5) 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 of the United States Constitution. This ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

**(C) Scope.** This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

**(D) Definitions.**

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

Emergency Work means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

City means the "City of Prineville"

City Manager means the City Manager or designee

Noise Sensitive Area includes, but is not limited to; real property normally used for residential and/or sleeping purposes, or normally used as a school, church, hospital or public library.

Person means any individual, firm, association, partnership, joint venture, or corporation.

Plainly audible means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

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.

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.

Residential area means any real property which 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.

**(E) General Prohibition.**

- (1) No person shall make, continue, or cause to be made or continued:
  - (a) Any unnecessary or unreasonably loud, or raucous noise; or
  - (b) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
  - (c) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, 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.
- (2) Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
  - (a) The proximity of the sound to sleeping facilities, whether residential or commercial;

- (b) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- (c) The time of day or night the sound occurs;
- (d) The duration of the sound; and
- (e) Whether the sound is recurrent, intermittent, or constant.

**(F) Noises Prohibited.** The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

- (1) Unreasonable Noises: The unreasonable making of, or knowingly permitting to be made, any unreasonably loud, unnecessary, boisterous or unusual noise, disturbance, commotion or vibration. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of any residential, commercial or public property 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.
- (2) Vehicle Horns, Non-Emergency Signaling Devices, and Similar Devices: The unreasonable and/or unnecessary sounding of any horn, non-emergency signaling device, or other similar device.
- (3) Radios, Televisions, Stereos, Loudspeakers, Musical Instruments and Similar personal sound making Devices: The use or operation of a radio, television, , 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 which unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas.
- (4) Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places at any time or place-so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.
- (5) 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.
- (6) Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.
- (7) Construction or Repair of Buildings, Excavation of Streets and Highways: All outdoor construction shall be conducted in compliance with the hours listed in Prineville Code 113.02 Hours Set unless exempted under Section (G) below.
- (8) Power Tools and Similar Devices: The operation of power tools or similar devices in residential or noise sensitive areas- which creates unreasonably loud and raucous noise or which creates a noise that would be reasonable except for the time of day/night in which the noise takes place.

- (9) 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 the control of the establishment.
- (10) Idling of Commercial Motor Vehicles: In accordance with Oregon House Bill 2081, no commercial motor vehicle shall be allowed to idle for more than five minutes in any continuous 60-minute period, except as authorized as an exception under House Bill 2081.

**(G) Exemptions.** Sounds caused by the following are exempt from the prohibitions set out in Section (F) and are in addition to the exemptions specifically set forth in Section (F):

- (1) Motor vehicles on traffic ways of the City, provided that they do not create unmuffled engine or breaking noise and the prohibitions of Sections (F)(2) and (F)(5) continue to apply.
- (2) 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.
- (3) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- (4) Repairs or excavations of bridges, streets or highways or utility structures by or on behalf of the City, the State, or the federal government-when public safety, welfare and convenience renders it impractical to perform the work in the hours prescribed in Prineville Code 113.02 Hours Set.
- (5) Outdoor School and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.
- (6) Other Outdoor Community Events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events.
- (7) Commercial and industrial businesses existing prior to the date of adoption of this ordinance which are operating within their historically typical noise levels. Any increase in noise due to change of equipment, operations or any other reason shall be subject to the standards of this ordinance.

**(H) Enforcement.** The following individuals shall enforce this Ordinance: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this Ordinance. Nothing in this Ordinance shall prevent the City Manager or Police Chief from obtaining voluntary compliance by way of warning, notice or education.

**(I) Penalties.**

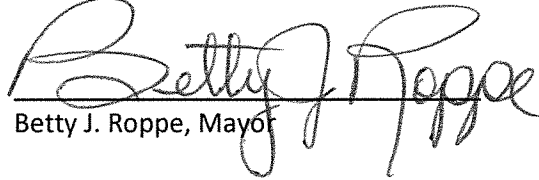
- (1) A person who violates a provision of this Ordinance is guilty of an infraction which is punishable by a fine not to exceed \$500.00.
- (2) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be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

**(J) 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.

**(K) Savings Clause.** A prosecution which is pending on the effective date of this Ordinance and which arose from a violation of an ordinance repealed by this Ordinance, or a prosecution which is 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.

PASSED by the City Council this 27<sup>th</sup> day of August, 2013.

  
Betty J. Roppe, Mayor

Attest:   
Lisa Morgan/Recorder