ORDINANCE NUMBER 1528

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, PROVIDING FOR NOISE CONTROL AND REPEALING OTHER PROVISIONS.

WHEREAS, excessive sound is a serious hazard to the public health and welfare, safety and the quality of life, and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated, and

WHEREAS, the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health and welfare or safety or degrade the quality of life, and

WHEREAS, it is the policy of the city to prevent excessive sound which may jeopardize the health and welfare or safety of citizens or degrade the quality of life,

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Scope. This ordinance shall apply to the control of all sound originating within the limits of the city.

Section 2. Standards and definitions.

A. Terminology and standards. All terminology used in this ordinance that is not defined below shall be in accordance with the American National Standards Institute (ANSI) Standard 1.4-1971.

B. Measurements of sound level.

1. All measurements shall be made with a sound level meter, 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 ordinance, a sound level meter shall contain at least an A weighted scale and both fast and slow meter response capability.

2. When the location or distance prescribed in this ordinance or measurement of sound is impractical or would provide misleading or inaccurate results, measurements may be taken at other locations or distances using appropriate correction factors specified in this ordinance or in other regulations adopted pursuant to this ordinance.

3. Procedures and tests required by this ordinance and not specified herein are on file with the City Recorder.

C. Definitions.

1. City. The City of Milwaukie, Oregon, and the area within the territorial city limits of the City of Milwaukie, Oregon.

2. Persons. A person, persons, firm, association, co-partnership, joint venture, corporation or, any entity public or private in nature.

3. Commercial land use. Includes land uses zoned CN, CL and CG.

4. Construction. Any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair or equipping of buildings, roadways and utilities. It shall include land clearing, grading, excavating and filling before, during or following such activity.

5. Emergency work. Work made necessary to restore property to a safe condition following a calamity, work required to restore public utilities or work required to protect persons or property from imminent exposure to danger.

6. Industrial land use. Includes land use zoned MG and ML.

7. Night-time period. 10:00 p.m. of one day until 7:00 a.m. of the following day.

8. Noise sensitive land use. Includes property on which residential housing, apartment buildings, schools, churches, hospitals, nursing homes and other public buildings are located.

9. Day-time period. 7:00 a.m. until 10:00 p.m. of the same day.

Section 3. Responsibility and authority.

A. Responsibility. The responsibility for enforcement of this ordinance shall reside with the Chief of Police or his designee.

B. Authority. In order to implement this ordinance and for the general purpose of sound abatement and control, the police department shall have, in addition to any other authority vested in it, the powers defined below.

1. Inspections. Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or record at any reasonable time when granted permission by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this ordinance may exist. Such inspection may include administration of any necessary tests.

2. Issue summons. Issue summons, notices of violation or legal orders to any person in alleged violation of any provision of this ordinance.

3. Investigate violations. In consonance with all other provisions of this ordinance, investigate and document violations and take necessary actions preparatory to enforcement.

4. Variances. Grant variances to the provisions of this ordinance in accordance with procedures set forth in Section 8.B., and any other procedures as may be adopted.

5. Amendments and modifications. Develop and recommend amendments and modifications to this ordinance so as to maintain or enhance the effectiveness of the noise control program.

6. Education. Develop programs for public education regarding the requirements and remedies available through the noise control ordinance.

7. Impoundment. Upon citation of a person for a violation of this ordinance, the person issuing the citation may seize the sound producing device which was the source of the sound as evidence. 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 Section 8.B of this ordinance. It is the intent of this ordinance 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.

8. Regulations. Adopt reasonable regulations to carry out the requirements of this ordinance.

Section 4. Prohibited acts.

A. No person shall make any noise or excessive or unnecessary sound which disturbs, injures or endangers the comfort, convenience, repose, health, peace, safety, or welfare of any other person or persons or of any residential neighborhood within the limits of the City of Milwaukie.

B. The following acts are declared to be noises and unreasonable, excessive and unnecessary sounds in violation of this ordinance:

1. Horns, signaling devices, etc. The sounding of any horn, or signalizing device on any automobile, motorcycle, bus or other motor vehicle except as a necessary signal required by the exigencies of regular or pedestrian traffic.

2. Radios, phonographs, etc. The playing, using or operation of any radio, musical instrument, phonograph, television set, tape recorder or other machine or device for the producing or reproducing of sound in such a manner as to disturb any other person.

3. Loud speakers, amplifiers, etc. The use or operation of any loud speaker or sound amplifier, either stationary or mobile, in such a manner as to project sound upon public streets, or other public property, or upon private property owned by someone other than the owner or operator of the loud speaker or sound amplifier.

4. Animals. The maintenance of any animal which causes noise of such type, volume or duration as to disturb any person.

5. Steam Whistles. The blowing of any steam whistle attached to any stationary boiler except as a warning of fire or danger or upon the request of proper city authorities.

6. Exhausts. The discharge into the open air of any exhaust of any steam engine, stationary internal combustion engine, motorboat, automobile, motorcycle, bus, or other motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

7. Defect in vehicle or load. The use of any automobile, motorcycle, bus or other motor vehicle so out of repair, so loaded or in any otherwise unreasonable manner so as to disturb any person.

8. Loading, unloading, opening boxes. The loading or unloading of any motor vehicle or the opening, closing or destruction of bales, boxes, crates or containers, so as to disturb any person.

9. Construction or repair of buildings, streets, etc. The construction of any building, property, building site, street, sidewalk, driveway, sewer or utility line during the night-time period.

10. Schools, cemeteries, churches, hospitals. The creation of any noise on any street adjacent to any school, institution of learning, church, cemetery or funeral home, while the same is in use, or adjacent to any hospital, nursing home or other institution for the care of the sick or infirm, which interferes with the operation of the same or disturbs any person.

11. Pile drivers, hammers, machinery, etc. The operation during the night-time period of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other construction equipment, machinery or tools.

12. Jake brakes. Operating any motor vehicle with a dynamic braking device engaged except for the aversion of immediate danger.

13. Vehicle testing and repair. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle or motorboat so as to disturb any person.

14. Explosives, firearms, and similar devices. The use of any explosives, firearms, or similar devices.

15. Blowers and compressors. The operation of any blower, power fan, internal combustion engine, electrical motor or compressor, the operation of which disturbs any person.

16. Tampering. Removing, impairing or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any muffler or noise control device, or noise label of any product, or use of a product which has a muffler, or noise control device or noise label removed or rendered inoperative, with knowledge that such action has occurred.

17. Domestic power tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device used out of doors in residential areas during the night-time period.

18. Vehicle noise. Racing the engine of any motor vehicle or suddenly stopping or starting a vehicle unnecessarily.

Section 5. Recreational motorized vehicles operating off public right-of-way. No person shall operate or cause to be operated any recreational motorized vehicle off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the limits set forth in Table 1 as measured at or within the property boundary of a noise sensitive land use. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or noncommercial racing vehicles, motorcycles, go-carts, campers, and dune buggies, but not including motorboats.

TABLE 1. Maximum sound levels for off-road recreational vehicles operated near noise sensitive property.

Time	Sound Level Limit, in dBA
Day-time period	60
Night-time period	55

Section 6. Maximum permissible environmental noise and sound levels.

A. In addition to the prohibited sounds listed in Section 4, no person shall cause or permit noise or sound to intrude into the property of another person which noise or sound exceeds the maximum permissible noise levels set forth in this section.

B. The sound limitations established herein shall be measured at or within the property boundary of the receiving land use.

C. No sound shall exceed any of the below established limits by 10 dBA at any point in time.

D. The sound shall not exceed any of the below established limits by 5 dBA for a cumulative total of greater than one minute, but less than five minutes in any ten minute period.

E. The sound shall not exceed any of the below established limits for a cumulative total of five minutes or more in any ten minute period.

TABLE 2. Sound levels by receiving land use.

Land use designation of the property from which the source of the sound is measured.	Maximum number of decibels permitted during the day-time period.	Maximum number of decibels permitted during the night-time period.
Noise sensitive	55	50
Commercial	65	60
Industrial	80	75

Section 7. Exceptions and variances.

A. The following sounds are exempted from provisions of this ordinance:

1. Sounds caused by the performance of emergency work.

2. Aircraft sound.

3. Sounds caused by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, parks, schools, churches, athletic fields.

4. Sounds made by warning devices operating continuously for three minutes or less.

5. Construction activities during the day-time period.

6. Church bells.

7. Sounds generated by agricultural activities.

B. Variances. Upon application of any person who owns, controls or operates any sound source which violates any of the provisions of this ordinance, the Police Department may grant a variance from such provisions. The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason which the variance is sought and any other supporting information which the Police Department may reasonably require.

1. Review of variance. Review of the application shall include consideration of at least the following conditions:

a. The physical characteristics of the emitted sound.

b. The times and duration of the emitted sound.

c. The geography, zone and population density of the affected area.

d. Whether the public health and safety is endangered.

e. Whether the sound source predates the receiver(s).

f. Whether compliance with the standard(s) from which the variance is sought would produce hardship without equal or greater benefit to the public.

2. Time duration of variance. A variance may be granted for a specific time interval only.

C. Public notification and public hearing.

1. The Police Department may give notice and meet with affected property owners to discuss impacts of a requested variance.

2. A public hearing must be held before the granting of a variance if such hearing is requested by any affected party.

D. Appeal to City Council. Any person may appeal a decision of the Police Department under this section to the City Council.

Section 8. Penalties.

A. Any person violating any provision of this ordinance or failing to comply with any requirement of this ordinance, unless provision is otherwise made herein, shall upon conviction thereof be punished by a fine of not more than $500.

B. In addition to the penalties prescribed herein, the court may enjoin further operation of the noise producing equipment or order any sound producing device found to have been used to violate this ordinance seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the City general fund.

Section 9 . Severability provision. If any provision of this ordinance, or its application to any person or circumstances, is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

Section 10. Repealer. Ordinance numbers 1307 and 1410 and Section 15 (2) of Ordinance 1028 are repealed.

Read the first time on August 17, 1982 and moved to second reading by majority vote of the City Council.

Read the second time and adopted by the City Council on September 7, 1982.

Signed by the Mayor on September 7, 1982.

Joy Burgess

Joy Burgess, Mayor

ATTEST:

Laurie Perkin

Laurie Perkin, Recorder

Approved as to form:

Greg Eades

Greg Eades, City Attorney

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