

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL MAY 1, 2012

MILWAUKIE CITY HALL  
10722 SE Main Street

2125<sup>th</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |   | <b>Page<br/>No.</b> |
|---|---------------------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance   |                     |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   | <b>1</b>            |
| <b>A. Welcome the Portland Fighting Fillies – Home Field Milwaukie High School</b>  |                     |
| <b>B. Safety Break Oregon – Proclamation</b>  | <b>2</b>            |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>   | <b>3</b>            |
| <b>A. City Council Meeting Minutes</b>  | <b>4</b>            |
| 1. February 21, 2012 Work Session   |                     |
| 2. April 17, 2012 Work Session  |                     |
| 3. April 17, 2012 Regular Session   |                     |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> |                     |
| <b>5. PUBLIC HEARING</b> <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i>   |                     |
| <b>A. None scheduled</b>  |                     |

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **12**
- A. **Budget Committee Terms – Ordinance** **13**  
Staff: Finance Director Casey Camors
- B. **Amendments to Milwaukie Municipal Code Chapter 8.08, Noise Control – Ordinance** **16**  
Staff: Police Chief Bob Jordan and City Prosecutor Rhett Bernstein
- C. **Council Reports**
7. **INFORMATION**
8. **ADJOURNMENT**

**Public Information**

- **Executive Session**: The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,  
COMMENDATIONS,  
SPECIAL REPORTS,  
AND AWARDS

## PROCLAMATION

Proclamation by Mayor \_\_\_\_\_ Jeremy Ferguson \_\_\_\_\_

### **Workplace Safety Awareness Day in the City of Milwaukie May 9, 2012**

**WHEREAS**, the City of Milwaukie, Oregon OSHA and other organizations in Oregon recognize that ensuring safe workplaces in our state is a responsibility we all share; and

**WHEREAS**, Workplace injuries and deaths take a profound toll on Oregon's economy and working families; and

**WHEREAS**, Oregon's safety community has made significant progress in reducing worker deaths and injuries since the passage of the Oregon Safe Employment Act in 1973; and

**WHEREAS**, Oregon benefits from safe workplaces enabled by business, labor, and government collaborating to reduce the human suffering and financial burdens that stem from workplace injuries and deaths; and

**WHEREAS**, Various employers and employees will join together in an effort to further heighten awareness of the benefits of working more safely on May 9, 2012.

**Now, therefore**, I, Jeremy Ferguson, Mayor of the City of Milwaukie, hereby proclaim May 9, 2012 to be SAFETY BREAK FOR OREGON in Milwaukie and encourage all citizens of Milwaukie to join in this observance.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

\_\_\_\_\_  
Pat DuVal, City Recorder

3.

# CONSENT AGENDA

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**FEBRUARY 21, 2012**

**Mayor Ferguson** called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Library Director Katie Newell, Community Services Director JoAnn Herrigel, Assistant to the City Manager Teri Bankhead, Planning Director Katie Mangle, and Community Development/Public Works Director Kenny Asher

Media: Molly Harbarger, *The Oregonian*

**City Manager's Report**

**Mr. Monahan** reported on the final permit of entry for TriMet and legal opinion on Ms. Mangle's involvement with Portland-Milwaukie Light rail Project. The group discussed Les Poole's Land Use Board of Appeals (LUBA) and approving the permit of entry. He noted the arborist's report that had gone to the City Council. He discussed the Pilot schedule. He said next week was the annual goal setting where staff would be present to assist in the discussion.

**Councilor Hedges** had a question on the arborist's report from which he understood it was reasonable to save the tree.

**Mr. Monahan** replied that was correct, and the report was sent to TriMet.

**Mr. Asher** added that TriMet will probably not be prepared to discuss it at this meeting.

**Ms. Mangle** said they have a residential standards Planning Commission hearing next week and anticipated 3-4 more hearings. She reviewed the Planning Commission public testimony process.

**Mr. Asher** discussed the Community Development Block Grant (CDBG) process and match requirements. Parks were not ranked as a high priority. There will be money coming to Milwaukie for NW Housing Alternatives and the ADA ramp project.

**Council President Chaimov** asked if we can use CDBG funds to do part of the Balfour Project.

**Mr. Asher** replied there might be more funding. The decision is made at the Board of County Commissioners' level. The City needed to do what made sense for the community with available funding.

**Mr. Asher** provided a baseball update. Mayor Ferguson, Council President Chaimov, and he briefed members of the legislature on the project. They felt they had made a favorable impression and made some progress. Mr. Asher said ODOT was working on a relocation plan. He discussed the upcoming task force meeting, Council's decision on what should be studied next, and consultant selection process.

**Council President Chaimov** assumed the Council would see the contract prior to its signing.

**Councilor Hedges** felt the City Council should be involved in the selection process.

**Councilor Loomis** was comfortable with Councilor Hedges' representing Council on the selection committee.

**Mayor Ferguson** said he did not need to see the contract unless it exceeds Mr. Monahan's signing authority.

### **Library Board Report**

**Tom Hogan** and **Ms. Newell** provided highlights of the Library Board activities including helping in the hiring process for the library director. The Board developed a library information sheet to help introduce and promote the library through the neighborhood meetings. The Board continued to support the Friends of the Ledding Library, the concert series, and the Poetry Committee.

**Ms. Newell** announced Tom Hogan would be going off the Board as his term was limited.

**Mr. Monahan** discussed amendments to the Library Expansion Task Force.

**Councilor Loomis** expressed his appreciation to Mr. Hogan.

**Councilor Miller** asked if it was beneficial to add people to a long established Task Force to replace those who have resigned or left the group for some reason.

**Council President Chaimov** noted Ms. Perkins had been involved with the Library Board and did add the perspective of a parent with young children.

**Councilor Miller** said his question was not related to Ms. Perkins, he just wanted to know if they needed to have a full Task Force or if the remaining members could carry on with the project.

**Ms. Newell** said it was good to have someone from the Library Board to fill Mr. Docken's spot on the Task Force.

**Mr. Hogan** thanked the Council for its support of the Library and Poetry Series. He ended with a poem.

### **Riverfront Park Update**

**Ms. Herrigel** announced she had walked part of the Trolley Trail and encouraged others to do so. She reviewed the Klein Point Project and noted that Planning and Engineering were reviewing a new path design for vector access while preserving a large oak tree. They were still on track with work with the North Clackamas Parks and Recreation District. This week she would send new dock locations to the National Marine Fisheries as they removed the southern transient dock from the design. As an alternative they have a dock at 158' and the ramp that would have an extension on it so boats could tie up to it. She hoped one of the location options would be a go with the Army Corp of Engineers. She was getting a quote on a traffic study that was required prior to submitting an application to ODOT regarding access to the sewage treatment plant. She gave an overview of the capital campaign next steps. She planned to have a soft rollout of the steering committee in April.



**Councilor Miller** asked her to discuss the work of the Parks District on a wetlands delineation of Spring Park and a management plan for the wetlands area.

**Ms. Herrigel** said they had come up with a proposal of how to modify pathways in the park. The management plan went to the Park and Recreation Board (PARB) for review and now they need to go to the NDA's and meet with the affected property owners.

**Ms. Herrigel** provided comments on the County fiber project and how franchise fees might be collected in the future.

**Mr. Monahan** said he could have Ms. Herrigel work with the City Attorney to look at the feasibility of adopting some measures. First she would look at the code as this was an issue many cities were considering.

### **Citizen Appreciation Program**

**Ms. Bankhead** discussed a variety of recognition events including community pride, holiday decorations, beautification, gardens, service on boards, commissions, and committees, as well as retiring long-term employees. This was an introductory discussion, and she hoped to get some direction on setting some parameters for recognition.

**Mayor Ferguson** appreciated the work that Ms. Bankhead put into this proposal and commented on the value of volunteers. Establishing something to show appreciation was well worth the expense.

**Council President Chaimov** said he liked the idea very much. It would be a good idea to have something posted for public display that recorded those who were particularly generous in giving their time and talents and not just something for them to take home.

**Councilor Miller** thought it was a good idea. He wanted to make sure it went to more than just appointed advisory boards. He recommended recognizing groups outside of the City structure such as, Celebrate Milwaukie, Inc.

**Councilor Hedges** thought it would be good to accept nominations for awards. He liked the idea of doing something for staff at certain milestones of service.

**Councilor Loomis** felt the City could do a better job of recognizing people; he liked the idea of accepting nominations from the community.

**Ms. Bankhead** asked about her idea of certificates for completed terms, plaques for full term completions and then proclamations for longer service.

Consensus from Council was the members liked the idea, and they thanked Ms. Bankhead for her work.

**Mayor Ferguson** adjourned the work session at 6:51 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**APRIL 17, 2012**

**Mayor Ferguson** called the work session to order at 5:07 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: Assistant to the City Manager Teri Bankhead, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Police Chief Bob Jordan, and City Prosecutor Rhett Bernstein

**Assistant to the City Manager's Report**

**Ms. Bankhead** reviewed the evening's agenda and future agendas.

**Community Development and Planning Active Projects**

**Ms. Mangle** addressed questions related to the intergovernmental agreement (IGA) with the State of Oregon for a Transportation and Growth Management (TGM) grant to develop a Tacoma Station Area Plan. The Oregon Department of Transportation (ODOT) provided the funding, and she described the deliverables to the City. The grant was in the amount of \$145,000, and City staff would be obligated to work with the grant manager and project consultant to complete the scope of work by June 2013. The agreement goes on to state that the City staff time contribution must be equal to at least \$25,000 or 14.71% of the total project costs. Staff time is involved in all projects, and no general fund money was needed as a match for this project. She noted the City could not do the project without the grant funding. City staff applied for this grant at the Council's direction and provided an update on the matter at a recent work session. The consultant would represent the City to ensure the community's needs were met.

**Councilor Miller** was concerned about the amount of staff time going into the Tacoma Station Area Plan and what other projects might have to wait. Further, he was concerned about property owner and public involvement.

**Ms. Mangle** discussed the role of the Stakeholder Advisory Group (SAG) as outlined in the IGA and ODOT's interest in caring for its highway system. It was important to have ODOT as partner and leader because of potential impacts to Hwy 99E.

**Councilor Miller** had no problem with leaving the item on the consent agenda but had wished to express his concerns. His main concern was about maintaining a balance of work in the Planning Department.

**Mr. Asher** discussed the search for a contract planner to do Ms. Shanks' light rail permitting work and the Tacoma Station Area Plan project.

**Amendments to Milwaukie Municipal Code Chapter 8.08, Noise Control**

**Chief Jordan** discussed proposed noise ordinance amendments and their relationship to the variance process, light rail hours of construction, and the baseball project. He noted most of the current code was adopted in 1982 and suggested there were better and more defensible regulations. He discussed the use of sound level meters or audiometers which required calibration and other difficult to maintain procedures.

Further, he had concerns with the chief of police in the roles of both the enforcer and the person granting a variance. He understood noise was a quality of life issue and did not wish to bring the amendment to the City Council in a de facto manner. This was a start of the dialogue prior to beginning a public outreach process.

**Mr. Bernstein** looked at a case and had some concerns about the enforceability of the ordinance. He was in agreement with City Manager Monahan and Chief Jordan that that chapter of the code needed review, so he had researched model ordinances from other jurisdictions. He felt the key was to move away from decibel levels. He was not recommending a change to the hours of enforcement.

**Councilor Chaimov** thought this was a good starting point and asked the timing of the code amendments in order to have something in place when TriMet was preparing for construction particularly in the Ardenwald Neighborhood.

**Chief Jordan** replied if he got a variance request next week the City would be obligated to consider it under the existing code. Historically, variances were granted in Milwaukie for short periods of time and not for a prolonged construction period. He understood TriMet might submit a variance request as early as May.

**Councilor Miller** asked if the City was trying to protect the neighborhood or to make it easy for TriMet.

**Mr. Bernstein** said the question before the City Council at this meeting mostly had to do with who should be allowed to grant a variance. Typically in other jurisdictions it was the city manager and not the chief of police who had the granting authority.

**Chief Jordan** added the current ordinance did not give the police chief guidance on why or why not a variance should be granted. It was an outdated tool.

**Councilor Hedges** liked the idea of splitting the granting authority from the enforcement responsibility. The current code seemed to be written to handle nuisance complaints. He urged consultation with the citizens in the process to avoid going afoul.

**Mr. Bernstein** observed it was easier to complain in the current code, and updated language would help weed out unreasonable complaints.

**Councilor Chaimov** suggested addressing the variance issue first by giving the authority to the city manager and leaving the extent of the regulations to a future date. The Mayor and Councilors supported this suggestion.

**Chief Jordan** discussed what the City might anticipate in the way of TriMet variances related to Union Pacific's position. The current ordinance was a balky tool to address that kind of construction.

**Councilor Hedges** would want people to have the opportunity to hear about the possible ramifications before making a decision.

**Chief Jordan** suggested asking the Public Safety Advisory Committee (PSAC) to take this matter out to citizens.

The group agreed to consider an ordinance at the May 1, 2012 regular session and to discuss the remainder of the chapter at a future work session or study session.

### **Citizens Appreciation Program Cost Estimates**

**Ms. Bankhead** summarized earlier actions and provided a refined cost estimate. The Mayor and City Council fully supported the proposal and directed staff to move forward.

### **Board, Commission, and Committee Guidelines**

City Council Work Session – April 17, 2012

Draft Minutes

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**Ms. Bankhead** summarized earlier actions and changes to the original guidelines identified by the City Council. The group discussed meeting attendance and how to best communicate expectations. The guidelines would become part of the application materials and posted on the website. The group discussed how this section might be phrased, and Councilor Chaimov suggested some language which Ms. Bankhead would incorporate into the document for City Council consideration.

**Mayor Ferguson** announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

**Mayor Ferguson** adjourned to work session at 6:24 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**CITY OF MILWAUKIE**  
**CITY COUNCIL REGULAR SESSION**  
**APRIL 17, 2012**

Agenda Item: 3.A.3.  
Meeting Date: 5/1/12

**CALL TO ORDER**

**Mayor Ferguson** called the 2124<sup>th</sup> meeting of the Milwaukie City Council to order at 7:14 p.m. in the City Hall Council Chambers.

Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Attorney Tim Ramis, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

**A. Recognize Milwaukie High School Student of the Month for April**

Mayor Ferguson and the City Council recognized Valentina Galindo as the Milwaukie High School Student of the Month for April 2012.

**B. Earth Day Proclamation**

**Mayor Ferguson** read a proclamation naming April 22, 2012 as *Earth Day* and urged all citizens to be mindful of local, state, and national laws which protected our environment and to join in efforts to preserve the beauty and wonder of the land, skies, and water of the Earth in all its diversity.

**C. Portland General Electric Green Challenge Presentation**

**Thor Hinkley** and **Annette Mattson** of Portland General Electric (PGE) discussed the City's opportunity to participate in the EPA Green Power Challenge Program. The City would sign an agreement for a monthly premium, and PGE negotiated on the City's behalf to receive a certain amount of renewable power. Mr. Hinkley briefly reviewed the benefits.

**Mayor Ferguson** proposed that the Milwaukie City Council consider subscribing to the clean wind proposal at some level, preferably at the bronze level, to express the City's commitment to a sustainable future.

**Ms. Mattson** briefly discussed the LED lighting program. The technology had matured to the point where PGE would offer the program at the end of this year to jurisdictions and beginning with the older fixtures. The benefit would be reduced electrical costs.

**Mayor Ferguson** requested further discussion at a future work session.

**Mr. Hinkley** discussed residential use of renewable energy and the awards levels points program.

**CONSENT AGENDA**

**It was moved by Councilor Hedges and seconded by Councilor Chaimov to adopt the consent agenda as presented.**

**A. City Council Meeting Minutes:**

1. April 3, 2012 Work Session; and
2. April 3, 2012 Regular Session

- B. Resolution 22-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing Execution of an Intergovernmental Agreement with the State of Oregon to Prepare a Draft Tacoma Station Area Plan;**
- C. Resolution 23-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Adopting Its Council Goals for 2012;**
- D. An Intergovernmental Agreement between the Clackamas County Sherriff's Office and Signatory Law Enforcement Agency for the Provision of Peer Support Services; and**
- E. A Memorandum of Understanding between the Milwaukie Police Department and Cycle Oregon.**

**Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [5:0]**

#### **AUDIENCE PARTICIPATION**

**Greg Hemer**, Milwaukie, thanked City Council and staff for allowing the monthly light rail meetings where all were treated with respect although there was a diversity of opinions. He also invited the Mayor and Council to the first Pacific Northwest *Made in America Home* ribbon cutting in the Lake Grove area.

#### **PUBLIC HEARING**

None scheduled.

#### **OTHER BUSINESS**

##### **A. Council Reports**

Mayor Ferguson and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events.

#### **ADJOURNMENT**

**It was moved by Councilor Hedges and seconded by Councilor Miller to adjourn the meeting. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [5:0]**

**Mayor Ferguson** adjourned the regular session at 7:55 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

6.  
OTHER BUSINESS



Agenda Item: 6.A.  
Meeting Date: 5/1/12

**To: Mayor and City Council**

**Through: Bill Monahan, City Manager**

**From: Casey Camors, Finance Director  
Richard Seals, Finance Director**

**Subject: Budget Committee Terms**

**Date: April 6, 2012**

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#### **ACTION REQUESTED**

Adopt an ordinance amending Section 2.14.020 Membership-Qualification to read “the appointed members shall be appointed for terms consistent with Oregon Revised Statute 294.”

#### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

*October 2011* – The Budget Committee discussed the move to biennial budgeting and demonstrated intent to move to biennial budgeting.

*December 2011* – The Budget Committee recommended to the City Council that the City of Milwaukie move to biennial budgeting and make the necessary changes as applicable. The City Council adopted resolution 100-2011 acting on the Budget Committee’s recommendation adopting a resolution directing the preparation of biennial budgets for the City of Milwaukie effective for the biennium beginning July 1, 2012.

#### **BACKGROUND**

In accordance with Oregon Revised Statutes Section 294.414 - Budget Committee, appointive members of a budget committee that prepares a biennial budget shall be appointed for terms of four years. Currently, the City of Milwaukie Municipal Code Section 2.14.020 Membership-Qualifications reads that “the appointed members shall be appointed for terms of three (3) years” which is now in conflict with state law.

Part of the Budget Committee’s role with the City is to continually analyze the biennial budget process to ensure it is working to everyone’s benefit. Hence, there may come a time when the Budget Committee finds it appropriate to recommend moving back to annual budgets which would then require member appointments again to be 3 years.

Council Staff Report – Budget Committee Terms  
Page 1 of 2



In an effort to come into compliance with state law and avoid unnecessary updates to the City Municipal Code, it is requested that the terminology in the City Municipal Code be amended to reference Oregon Revised Statute section applicable to the term limits, 294.

**FISCAL IMPACTS**

N/A

**WORK LOAD IMPACTS**

N/A

**ALTERNATIVES**

N/A

**ATTACHMENTS**

1. Draft Ordinance

# ATTACHMENT 1

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO MODIFY THE TERMS OF OFFICE OF CITY BUDGET COMMITTEE MEMBERS TO BE THE LATEST ALLOWED UNDER STATE LAW AND AMEND SECTION 2.14.020 MEMBERSHIP-QUALIFICATIONS.**

**WHEREAS**, City Council passed Resolution #100-2011 directing the preparation of biennial budgets for the City of Milwaukie effective for the biennium beginning July 1, 2012; and

**WHEREAS**, in accordance with Oregon Revised Statutes Section 204.414 appointive members of a budget committee that prepares a biennial budget shall be appointed for terms longer than currently ordained; and

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

Section 1. Amend Section 2.14.020 Membership-Qualifications to the appointed members shall be appointed for terms consistent with Oregon Revised Statute 294 .

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney



Agenda Item: 6.B.  
Meeting Date: 5/1/12

**To: Mayor and City Council**  
**Through: Bill Monahan, City Manager**  
**From: Bob Jordan, Chief of Police**  
**Subject: Proposal to Modify the City of Milwaukie's Existing Noise Ordinance**  
**Date: April 18, 2012**

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### **ACTION REQUESTED**

Approval of modifications to the City's existing Noise Ordinance

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Staff presented proposed changes to the City's noise ordinance at the April 17, 2012 work session. Council requested changes to the variance language only and requested this be brought back to the May 1<sup>st</sup> regular session.

### **BACKGROUND:**

Our current Code provides that the Chief of Police shall be responsible for issuing variances. Placing the enforcement and variance responsibilities in the same office is not recommended. Our current noise ordinance should be modified in a manner to separate the functions of enforcement and the issuance of variances by vesting those responsibilities in two different offices within the City. The attachments referenced below reflect the proposed changes in the noise ordinance that change the authority from the Chief of Police to the City Manager to issue variances.

### **CONCURRENCE:**

Council concurred that the changes to the variance language would be appropriate.

**ATTACHMENTS:**

- 1) A copy of the existing noise ordinance
- 2) A copy of the proposed noise ordinance
- 3) A copy of the proposed noise ordinance with edits highlighted

**WORK LOAD IMPACTS:**

Authority of granting or denying noise variances would reside with the City Manager, thereby impacting his workload and reducing that of the Chief of Police's.

# ATTACHMENT 1

## 8.08.010 SCOPE

This chapter shall apply to the control of all sound originating within the limits of the City. (Ord. 1528 § 1, 1982)

## 8.08.020 TERMINOLOGY AND STANDARDS

All terminology used in this chapter that is not defined in this chapter shall be in accordance with the American National Standards Institute (ANSI) Standard 1.41971. (Ord. 1528 § 2(A), 1982)

## 8.08.030 DEFINITIONS

As used in this chapter:

“City” means the City of Milwaukie, Oregon, and the area within the territorial City limits of the City of Milwaukie, Oregon.

“Commercial land use” means and includes land uses zoned C-N, C-L and C-G.

“Construction” means 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.

“Daytime period” means 7:00 a.m. until 10:00 p.m. of the same day.

“Emergency work” means 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 exposures to danger.

“Industrial land use” means and includes land use zoned M.

“Nighttime period” means 10:00 p.m. of one day until 7:00 a.m. of the following day.

“Noise-sensitive land use” means and includes property on which residential housing, apartment buildings, schools, churches, hospitals, nursing homes, and other public buildings are located.

“Person” means a person, persons, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature. (Ord. 1528 § 2(C), 1982)

## 8.08.040 MEASUREMENTS OF SOUND LEVEL

A. 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 1.41971. For purposes of this chapter, a sound level meter shall contain at least an A-weighted scale and both fast and slow meter response capability.

B. When the location or distance prescribed in this chapter 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 chapter or in other regulations adopted pursuant to this chapter.

C. Procedures and tests required by this chapter and not specified in this chapter are on file with the City Recorder. (Ord. 1528 § 2 (B), 1982)

#### 8.08.050 RESPONSIBILITY AND AUTHORITY

##### A. Responsibility

The responsibility for enforcement of this chapter shall reside with the Police Chief or designee.

##### B. Authority

In order to implement this chapter 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 as follows:

##### 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 chapter 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 chapter.

##### 3. Investigate Violations

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

##### 4. Variances

Grant variances to the provisions of this chapter in accordance with procedures set forth in Section 8.08.110 of this chapter, and any other procedures as may be adopted.

##### 5. Amendments and Modifications

Develop and recommend amendments and modifications to this chapter 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 chapter, 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 8.08.110 of this chapter. It is the intent of this chapter to avoid such seizures except where the person being cited has received two (2) previous citations within the previous six (6) 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 chapter. (Ord. 1528 § 3, 1982)

8.08.060 PROHIBITED NOISES—GENERALLY

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. (Ord. 1528 § 4(A), 1982)

8.08.070 PROHIBITED NOISES—DESIGNATED

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

A. Horns, Signaling Devices, etc.

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

B. 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.

C. Loudspeakers, Amplifiers, etc.

The use or operation of any loudspeaker or sound amplifier, either stationary or mobile, in such a manner as to project sound upon private property owned by someone other than the owner or operator of the loudspeaker or sound amplifier.

D. Animals

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

E. 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.

F. 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.

G. 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.

H. 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.

I. Construction or Repair of Buildings, Streets, etc.

The construction of any building, property, building site, street, sidewalk, driveway, sewer, or utility line during the hours of 10:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends.

J. 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.

K. Compressors, Hammers, Machinery, etc.

The operation during the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends of any air compressors, nail guns, hydraulic hammers, electric, gas or diesel powered generators, or other construction equipment, machinery, or tools.

L. Jake Brakes

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

M. Vehicle Testing and Repair

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

N. Explosives, Firearms, and Similar Devices

The use of any explosives, firearms, or similar devices.

O. Blowers and Compressors

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

P. 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.

Q. 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 nighttime period.

R. Vehicle Noise

Racing the engine of any motor vehicle or suddenly stopping or starting a vehicle unnecessarily. (Ord. 1931 §§ 1, 2, 2004; Ord. 1528 § 4(B), 1982)

**8.08.080 RECREATIONAL MOTOR VEHICLES**

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 8.08.080 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.

<b>Table 8.08.080 Maximum Sound Levels for Off-road Recreational Vehicles Operated Near Noise-sensitive Property.</b>	
<b>Time</b>	<b>Sound Level Limit, in dBA</b>
Daytime period	60
Nighttime period	55

(Ord. 1528 § 5, 1982)

**8.08.090 MAXIMUM PERMISSIBLE ENVIRONMENTAL NOISE AND SOUND LEVELS**

- A. In addition to the prohibited sounds listed in Section 8.08.070, 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 in this section shall be measured at or within the property boundary of the receiving land use.
- C. No sound shall exceed any of the limits established in Table 8.08.090 by ten (10) dBA at any point in time.
- D. The sound shall not exceed any of the limits established in Table 8.08.090 by five (5) dBA for a cumulative total of greater than one (1) minute, but less than five (5) minutes in any ten (10)-minute period.
- E. The sound shall not exceed any of the limits established in Table 8.08.090 for a cumulative total of five (5) minutes or more in any ten (10)-minute period.

**Table 8.08.090  
Sound Levels by Receiving Land Use**

<b>Land Use Designation of the Property From Which the Source of the Sound Is Measured</b>	<b>Maximum Number of Decibels Permitted During the Daytime Period</b>	<b>Maximum Number of Decibels Permitted During the Nighttime Period</b>
Noise-sensitive	55	50
Commercial	65	60
Industrial	80	75

(Ord. 1528 § 6, 1982)

[8.08.100 EXCEPTIONS](#)

The following sounds are exempted from provisions of this chapter:

- A. Sounds caused by the performance of emergency work;
- B. Aircraft sound;
- C. 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;
- D. Sounds made by warning devices operating continuously for three (3) minutes or less;
- E. Construction activities during the daytime period;
- F. Church bells;
- G. Sounds generated by agricultural activities. (Ord. 1528 § 7(A), 1982)

[8.08.110 VARIANCES](#)

A. Upon application of any person who owns, controls, or operates any sound source which violates any of the provisions of this chapter, 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.

B. Review of Variance

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

- 1. The physical characteristics of the emitted sound;

2. The time and duration of the emitted sound;
3. The geography, zone, and population density of the affected area;
4. Whether the public health and safety is endangered;
5. Whether the sound source predates the receiver(s);
6. Whether compliance with the standard(s) from which the variance is sought would produce hardship without equal or greater benefit or greater benefit to the public.

C. Time Duration for Variance

A variance may be granted for a specific time interval only. (Ord. 1528 § 7(B), 1982)

8.08.120 PUBLIC NOTIFICATION AND PUBLIC HEARING

- A. The Police Department may give notice and meet with affected property owners to discuss impacts of a requested variance.
- B. A public hearing must be held before the granting of a variance if such hearing is requested by any affected party. (Ord. 1528 § 7(C), 1982)

8.08.130 APPEAL

Any person may appeal a decision of the Police Department under this section to the City Council. (Ord. 1528 § 7(D), 1982)

8.08.140 VIOLATION—PENALTY

- A. Any person violating any provision of this chapter or failing to comply with any requirement of this chapter, unless provision is otherwise made in this chapter, shall upon conviction thereof be punished by a fine of not more than five hundred dollars (\$500.00).
- B. In addition to the penalties prescribed in this section, 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 chapter seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the City general fund. (Ord. 1528 § 8, 1982)

**ATTACHMENT 2**  
PROPOSED CITY NOISE ORDINANCE  
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8.08.010 SCOPE

This chapter shall apply to the control of all sound originating within the limits of the City. (Ord. 1528 § 1, 1982)

8.08.020 TERMINOLOGY AND STANDARDS

All terminology used in this chapter that is not defined in this chapter shall be in accordance with the American National Standards Institute (ANSI) Standard 1.41971. (Ord. 1528 § 2(A), 1982)

8.08.030 DEFINITIONS

As used in this chapter:

“City” means the City of Milwaukie, Oregon, and the area within the territorial City limits of the City of Milwaukie, Oregon.

“Construction” means 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.

“Daytime period” means 7:00 a.m. until 10:00 p.m. of the same day.

“Emergency work” means 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 exposures to danger.

“Nighttime period” means 10:00 p.m. of one day until 7:00 a.m. of the following day.

“Person” means a person, persons, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature. (Ord. 1528 § 2(C), 1982)

8.08.040 PURPOSE

The City Council of the City of Milwaukie finds that low and moderate ambient noise levels are a significant City amenity. They find further that the level of noise that exists in a community directly affects the livability of the community and the health, comfort and welfare of its residents. It is, therefore, the express intent and purpose of this section to establish noise level standards that protect and improve the quality of life of Milwaukie’s residents at work, rest and play and that can be objectively measured and enforced.

8.08.050 RESPONSIBILITY AND AUTHORITY

A. Responsibility

The responsibility for enforcement of this chapter shall reside with the Police Chief or designee.

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B. Authority

In order to implement this chapter 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 as follows:

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 chapter 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 chapter.

3. Investigate Violations

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

4. Repealed by \_ ORD XXXX \_\_\_\_\_

5. Amendments and Modifications

Develop and recommend amendments and modifications to this chapter 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 chapter, 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 8.08.110 of this chapter. It is the intent of this chapter to avoid such seizures except where the person being cited has received two (2) previous citations within the previous six (6) months for the use of the same or similar sound-producing

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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 chapter. (Ord. 1528 § 3, 1982)

8.08.060 PROHIBITED NOISES—GENERALLY

- A. No person shall make, continue, or cause to be made or continued any Loud or Raucous Noise within the City at any time of day.
- B. Factors for determining whether a sound is Loud or Raucous Noise may include, but are not limited to, the following:
  - 1. The proximity of the sound to sleeping facilities, whether residential or commercial area;
  - 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;
  - 5. Whether the sound is recurrent, intermittent or constant;
  - 6. Whether the sound is audible at the property edge of any property that is not the source of the sound; and
  - 7. Whether the sound is audible within any dwelling unit that is not the source of the sound.

8.08.070 PROHIBITED NOISES—DESIGNATED

No person shall make, continue or cause to be made or continued any of the following acts, which are declared *per se* violations of this Ordinance:

A. Radios, Phonographs, etc.

The playing, using, or operation of any device designed for sound production or reproduction, including, but not limited to, any radio, musical instrument, , television set, stereophonic equipment, loud speaker, sound production or reproduction device, bell, drum or chime so as to be audible:

- 1. At the property edge of property that is not the source off the sound, or
- 2. Within any dwelling unit that is not the source of the sound.

B. Animals

The owning, possessing or keeping of any animal that produces frequent or continuing noise for a period of 15 aggregate minutes in any one hour period during the daytime period or 5 aggregate minutes in any one hour during the nighttime period that can be heard:

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1. At the property edge of property that is not the location of the animal, or
2. Within any dwelling unit that is not the location of the animal,

except for animals provoked by a person trespassing, threatening to trespass or unambiguous taunting of the animal by a person.

C. 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 without a a muffler or with a sound control device less effective than that provided on the original engine or mechanical device..

D. Loading, Unloading, Opening Boxes

The loading or unloading of any motor vehicle or the opening, closing, moving or destruction of bales, boxes, crates, containers, garbage cans or other similar objects during the nighttime period so as to: be audible:

1. At the property edge of property that is not the location of the vehicle or object, or
2. Within any dwelling unit that is not the location of the vehicle or object.

E. Construction or Repair of Buildings, Streets, etc.

The construction of any building, property, building site, street, sidewalk, driveway, sewer, or utility line during the hours of 10:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends.

F. Schools, Cemeteries, Churches, Hospitals

The creation of any noise 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, while the same is in use, so as to be audible:

1. At the property edge of a school, institution of learning, church, cemetery, funeral home, hospital, nursing home or other institution for the care of the sick or infirm, or
2. Within any structure of a school, institution of learning, church, cemetery, funeral home, hospital, nursing home or other institution for the care of the sick or infirm.

G. Compressors, Hammers, Machinery, etc.

The operation during the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends of any air compressors, nail guns, hydraulic hammers, electric, gas or diesel powered generators, or other construction equipment, machinery, or tools.



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H. Explosives, Firearms, and Similar Devices

The use of any explosives, firearms, or similar devices.

I. Blowers and Compressors

The operation of any blower, power fan, internal combustion engine, electrical motor, or compressor, the operation of which is audible:

1. At the property edge of property that is not the location of the blower, power fan, internal combustion engine, electrical motor, or compressor, or
2. Within any dwelling unit that is not the location of the blower, power fan, internal combustion engine, electrical motor, or compressor.

J. 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.

K. Domestic Power Tools

Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device used for lawn care, landscaping, gardening, hobby craft and household maintenance during the nighttime period.

L. Motor Vehicle, Motorcycle, Motor Boat and other Motor Vehicle Noise

1. Revving the engine of any motor vehicle:
  - a. In a way unnecessary to the operation of the vehicle or
  - b. Causing the vehicle to suddenly stop or start unnecessarily.
2. Allowing any motor vehicle to idle for more than 15 aggregate minutes during any one hour period during the nighttime period.
3. Causing the squealing of tires by acceleration or the speed of a motor vehicle, except to avoid imminent danger to person or property.
4. The use of any motor vehicle so out of repair, so loaded or in any otherwise unreasonable manner so as to be audible:
  - a. At the property edge of property that is not the location of the vehicle, or
  - b. Within any dwelling unit that is not the location of the vehicle.
5. Operating any motor vehicle with a dynamic braking device engaged, except to avoid imminent danger to person or property.
6. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat so as to be audible:
  - a. At the property edge of property that is not the location of the motor vehicle, motorcycle or motorboat, or

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- b. Within any dwelling unit that is not the location of the motor vehicle, motorcycle or motorboat.
- 7. The sounding of any horn or signaling device on any automobile, motorcycle, bus, or other motor vehicle, except as a necessary signal required by the exigencies of regular or pedestrian traffic.
- 8. The playing of a radio or other vehicle sound system must meet the requirements of ORS [815.232](#).

M. Emergency Signaling Devices. The sounding of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling [g device](#), except in an emergency or except as provided in subsections (i) and (ii), below.

(i) Testing of an emergency signaling device shall occur during the daytime period and any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

(ii) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen 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

N. The gathering of any number of persons upon premises, whether public or private, and the creation of noise from the collective voices of such persons during the nighttime period that is plainly audible within any dwelling unit that is not the source of the sound.

8.08.080 Repealed by \_ORD XXXX\_\_\_\_\_

8.08.090 Repealed by \_ORD XXXX\_\_\_\_\_

[8.08.100 EXCEPTIONS](#)

The following sounds are exempted from provisions of this chapter:

- A. Sounds caused by the performance of emergency work;
- B. Aircraft sound;
- C. 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;
- D. Sounds made by warning devices operating continuously for three (3) minutes or less;
- E. Construction activities during the daytime period;

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F. Church bells;

G. Sounds generated by agricultural activities. (Ord. 1528 § 7(A), 1982)

8.08.110 VARIANCES

A. Upon application of any person who owns, controls, or operates any sound source which violates any of the provisions of this chapter, the City Manager 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 City Manager may reasonably require.

B. Review of Variance

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

1. The physical characteristics of the emitted sound;
2. The time and duration of the emitted sound;
3. The geography, zone, and population density of the affected area;
4. Whether the public health and safety is endangered;
5. Whether the sound source predates the receiver(s);
6. Whether compliance with the standard(s) from which the variance is sought would produce hardship without equal or greater benefit or greater benefit to the public.

C. Time Duration for Variance

A variance may be granted for a specific time interval only. (Ord. 1528 § 7(B), 1982)

8.08.120 PUBLIC NOTIFICATION AND PUBLIC HEARING

A. The City Manager may give notice and meet with affected property owners to discuss impacts of a requested variance.

B. A public hearing must be held before the granting of a variance if such hearing is requested by any affected party. (Ord. 1528 § 7(C), 1982)

8.08.130 APPEAL

Any person may appeal a decision of the City Manager under this section to the City Council. (Ord. 1528 § 7(D), 1982)

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8.08.140 VIOLATION—PENALTY

- A. Any person violating any provision of this chapter or failing to comply with any requirement of this chapter, unless provision is otherwise made in this chapter, shall upon conviction thereof be punished by a fine of not more than five hundred dollars (\$500.00).
- B. In addition to the penalties prescribed in this section, 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 chapter seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the City general fund. (Ord. 1528 § 8, 1982)

**ATTACHMENT 3**  
EXISTING CITY NOISE ORDINANCE WITH THE EDITS HIGHLIGHTED  
CITY OF MILWAUKIE MUNICIPAL CODE

8.08.010 SCOPE

This chapter shall apply to the control of all sound originating within the limits of the City. (Ord. 1528 § 1, 1982)

8.08.020 TERMINOLOGY AND STANDARDS

All terminology used in this chapter that is not defined in this chapter shall be in accordance with the American National Standards Institute (ANSI) Standard 1.41971. (Ord. 1528 § 2(A), 1982)

8.08.030 DEFINITIONS

As used in this chapter:

“City” means the City of Milwaukie, Oregon, and the area within the territorial City limits of the City of Milwaukie, Oregon.

~~“Commercial land use” means and includes land uses zoned C-N, C-L and C-G.~~

“Construction” means 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.

“Daytime period” means 7:00 a.m. until 10:00 p.m. of the same day.

“Emergency work” means 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 exposures to danger.

~~“Industrial land use” means and includes land use zoned M.~~

“Nighttime period” means 10:00 p.m. of one day until 7:00 a.m. of the following day.

~~“Noise sensitive land use” means and includes property on which residential housing, apartment buildings, schools, churches, hospitals, nursing homes, and other public buildings are located.~~

“Person” means a person, persons, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature. (Ord. 1528 § 2(C), 1982)

8.08.040 MEASUREMENTS OF SOUND LEVEL PURPOSE

~~A.—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 1.41971. For purposes of this chapter, a sound level meter shall contain at least an A-weighted scale and both fast and slow meter response capability.~~

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~~B. When the location or distance prescribed in this chapter 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 chapter or in other regulations adopted pursuant to this chapter.~~

~~C. Procedures and tests required by this chapter and not specified in this chapter are on file with the City Recorder. (Ord. 1528 § 2 (B), 1982)~~

The City Council of the City of Milwaukie finds that low and moderate ambient noise levels are a significant City amenity. They find further that the level of noise that exists in a community directly affects the livability of the community and the health, comfort and welfare of its residents. It is, therefore, the express intent and purpose of this section to establish noise level standards that protect and improve the quality of life of Milwaukie's residents at work, rest and play and that can be objectively measured and enforced.

#### 8.08.050 RESPONSIBILITY AND AUTHORITY

##### A. Responsibility

The responsibility for enforcement of this chapter shall reside with the Police Chief or designee.

##### B. Authority

In order to implement this chapter 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 as follows:

##### 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 chapter 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 chapter.

##### 3. Investigate Violations

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

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~~4. Variances Repealed by ORD XXXX~~

~~Grant variances to the provisions of this chapter in accordance with procedures set forth in Section 8.08.110 of this chapter, and any other procedures as may be adopted.~~

5. Amendments and Modifications

Develop and recommend amendments and modifications to this chapter 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 chapter, 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 8.08.110 of this chapter. It is the intent of this chapter to avoid such seizures except where the person being cited has received two (2) previous citations within the previous six (6) 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 chapter. (Ord. 1528 § 3, 1982)

8.08.060 PROHIBITED NOISES—GENERALLY

~~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. (Ord. 1528 § 4(A), 1982)~~

A. No person shall make, continue, or cause to be made or continued any Loud or Raucous Noise within the City at any time of day.

B. Factors for determining whether a sound is Loud or Raucous Noise may include, but are not limited to, the following:

1. The proximity of the sound to sleeping facilities, whether residential or commercial area;

2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;

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3. The time of day or night the sound occurs;
4. The duration of the sound;
5. Whether the sound is recurrent, intermittent or constant;
6. Whether the sound is audible at the property edge of any property that is not the source of the sound; and
7. Whether the sound is audible within any dwelling unit that is not the source of the sound.

8.08.070 PROHIBITED NOISES—DESIGNATED

~~The following acts are declared to be noises and unreasonable, excessive, and unnecessary sounds in violation of this chapter:~~

~~No person shall make, continue or cause to be made or continued any of the following acts, which are declared *per se* violations of this Ordinance:~~

~~A. —Horns, Signaling Devices, etc.~~

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

~~B.A. Radios, Phonographs, etc.~~

~~The playing, using, or operation of any device designed for sound production or reproduction, including, but not limited to, any radio, musical instrument, phonograph, television set, stereophonic equipment, tape recorder, loud speaker, sound production or reproduction device, bell, drum or chime so as to be audible; or other machine or device for the producing or reproducing of sound in such a manner as to disturb any other person.~~

1. At the property edge of property that is not the source off the sound, or
- 1-2. Within any dwelling unit that is not the source of the sound.

~~C. —Loudspeakers, Amplifiers, etc.~~

~~The use or operation of any loudspeaker or sound amplifier, either stationary or mobile, in such a manner as to project sound upon private property owned by someone other than the owner or operator of the loudspeaker or sound amplifier.~~

~~D.B. Animals~~

~~The maintenance of any animal which causes noise of such type, volume, or duration as to disturb any person. The owning, possessing or keeping of any animal that produces frequent or continuing noise for a period of 15 aggregate minutes in any one hour period during the daytime period or 5 aggregate minutes in any one hour during the nighttime period that can be heard:~~

1. At the property edge of property that is not the location of the animal, or



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2. Within any dwelling unit that is not the location of the animal,

except for animals provoked by a person trespassing, threatening to trespass or unambiguous taunting of the animal by a person.-

~~E.~~ ~~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.~~

~~F.C.~~ 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 without ~~athrough~~ a muffler or with a sound control device less effective than that provided on the original engine or mechanical device.~~other device which will effectively prevent loud or explosive noises therefrom.

~~G.~~ ~~Defect in Vehicle or Load~~

- ~~(i) 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.~~

~~H.D.~~ Loading, Unloading, Opening Boxes

The loading or unloading of any motor vehicle or the opening, closing, moving or destruction of bales, boxes, crates, ~~or~~ containers, garbage cans or other similar objects during the nighttime period so as to ~~disturb any person.~~ be audible:

1. At the property edge of property that is not the location of the vehicle or object, or
2. Within any dwelling unit that is not the location of the vehicle or object.

~~I.E.~~ Construction or Repair of Buildings, Streets, etc.

The construction of any building, property, building site, street, sidewalk, driveway, sewer, or utility line during the hours of 10:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends.

~~J.F.~~ 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, while the same is in use, which interferes with the operation of the same or disturbs any person. so as to be audible:

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1. At the property edge of a school, institution of learning, church, cemetery, funeral home, hospital, nursing home or other institution for the care of the sick or infirm, or
- ~~1.2.~~ Within any structure of a school, institution of learning, church, cemetery, funeral home, hospital, nursing home or other institution for the care of the sick or infirm.

**KG.** Compressors, Hammers, Machinery, etc.

The operation during the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday and during the hours of 5:00 p.m. and 8:00 a.m. on weekends of any air compressors, nail guns, hydraulic hammers, electric, gas or diesel powered generators, or other construction equipment, machinery, or tools.

~~L. — Jake Brakes~~

~~M. — Vehicle Testing and Repair~~

~~Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat so as to disturb any person.~~

**NH.** Explosives, Firearms, and Similar Devices

The use of any explosives, firearms, or similar devices.

**OI.** Blowers and Compressors

The operation of any blower, power fan, internal combustion engine, electrical motor, or compressor, the operation of which ~~disturbs any person.~~ is audible:

1. At the property edge of property that is not the location of the blower, power fan, internal combustion engine, electrical motor, or compressor, or
2. Within any dwelling unit that is not the location of the blower, power fan, internal combustion engine, electrical motor, or compressor.

**PJ.** 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.

**QK.** Domestic Power Tools

Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device used for lawn care, landscaping, gardening, hobby craft and household maintenance ~~out of doors in residential areas~~ during the nighttime period.

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RL. Motor Vehicle, Motorcycle, Motor Boat and other Motor Vehicle Noise

1. Revving the engine of any motor vehicle:
  - a. In a way unnecessary to the operation of the vehicle or
  - b. Causing the vehicle to suddenly stop or start unnecessarily.
2. Allowing any motor vehicle to idle for more than 15 aggregate minutes during any one hour period during the nighttime period.
3. Causing the squealing of tires by acceleration or the speed of a motor vehicle, except to avoid imminent danger to person or property.
4. The use of any motor vehicle so out of repair, so loaded or in any otherwise unreasonable manner so as to be audible:
  - a. At the property edge of property that is not the location of the vehicle, or
  - b. Within any dwelling unit that is not the location of the vehicle.
5. Operating any motor vehicle with a dynamic braking devise engaged, except to avoid imminent danger to person or property.
6. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat so as to be audible:
  - a. At the property edge of property that is not the location of the motor vehicle, motorcycle or motorboat, or
  - b. Within any dwelling unit that is not the location of the motor vehicle, motorcycle or motorboat.
7. The sounding of any horn or signaling device on any automobile, motorcycle, bus, or other motor vehicle, except as a necessary signal required by the exigencies of regular or pedestrian traffic.
8. The playing of a radio or other vehicle sound system must meet the requirements of ORS 815.232.

M. Emergency Signaling Devices. The sounding 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 subsections (i) and (ii), below.

(i) Testing of an emergency signaling device shall occur during the daytime period and any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

(ii) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen 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

N. The gathering of any number of persons upon premises, whether public or private, and the creation of noise from the collective voices of such persons during the nighttime period that is plainly audible within any dwelling unit that is not the source of the sound.

~~8.08.080 RECREATIONAL MOTOR VEHICLES~~ Repealed by ORD XXXX

~~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 8.08.080 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, motoreycles, go-carts, campers, and dune buggies, but not including motorboats.~~

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<b>Table 8.08.080 Maximum Sound Levels for Off-road Recreational Vehicles Operated Near Noise-sensitive Property</b>	
<b>Time</b>	<b>Sound Level Limit, in dBA</b>
Daytime period	60
Nighttime period	55

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~~(Ord. 1528 § 5, 1982)~~

~~8.08.090 MAXIMUM PERMISSIBLE ENVIRONMENTAL NOISE AND SOUND LEVELS~~  
Repealed by ORD XXXX

~~A.— In addition to the prohibited sounds listed in Section 8.08.070, 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 in this section shall be measured at or within the property boundary of the receiving land use.~~

~~C.— No sound shall exceed any of the limits established in Table 8.08.090 by ten (10) dBA at any point in time.~~

~~D.— The sound shall not exceed any of the limits established in Table 8.08.090 by five (5) dBA for a cumulative total of greater than one (1) minute, but less than five (5) minutes in any ten (10) minute period.~~

~~E.— The sound shall not exceed any of the limits established in Table 8.08.090 for a cumulative total of five (5) minutes or more in any ten (10) minute period.~~

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**Table 8.08.090**

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<b>Sound Levels by Receiving Land Use</b>		
<b>Land Use Designation of the Property From Which the Source of the Sound Is Measured</b>	<b>Maximum Number of Decibels Permitted During the Daytime Period</b>	<b>Maximum Number of Decibels Permitted During the Nighttime Period</b>
Noise sensitive	55	50
Commercial	65	60
Industrial	80	75

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(Ord. 1528 § 6, 1982)

8.08.100 EXCEPTIONS

The following sounds are exempted from provisions of this chapter:

- A. Sounds caused by the performance of emergency work;
- B. Aircraft sound;
- C. 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;
- D. Sounds made by warning devices operating continuously for three (3) minutes or less;
- E. Construction activities during the daytime period;
- F. Church bells;
- G. Sounds generated by agricultural activities. (Ord. 1528 § 7(A), 1982)

8.08.110 VARIANCES

A. Upon application of any person who owns, controls, or operates any sound source which violates any of the provisions of this chapter, the ~~Police Department~~City Manager 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~~City Manager may reasonably require.

B. Review of Variance

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

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1. The physical characteristics of the emitted sound;
  2. The time and duration of the emitted sound;
  3. The geography, zone, and population density of the affected area;
  4. Whether the public health and safety is endangered;
  5. Whether the sound source predates the receiver(s);
  6. Whether compliance with the standard(s) from which the variance is sought would produce hardship without equal or greater benefit or greater benefit to the public.
- C. Time Duration for Variance

A variance may be granted for a specific time interval only. (Ord. 1528 § 7(B), 1982)

8.08.120 PUBLIC NOTIFICATION AND PUBLIC HEARING

- A. The ~~Police Department~~City Manager may give notice and meet with affected property owners to discuss impacts of a requested variance.
- B. A public hearing must be held before the granting of a variance if such hearing is requested by any affected party. (Ord. 1528 § 7(C), 1982)

8.08.130 APPEAL

Any person may appeal a decision of the ~~Police Department~~City Manager under this section to the City Council. (Ord. 1528 § 7(D), 1982)

8.08.140 VIOLATION—PENALTY

- A. Any person violating any provision of this chapter or failing to comply with any requirement of this chapter, unless provision is otherwise made in this chapter, shall upon conviction thereof be punished by a fine of not more than five hundred dollars (\$500.00).
- B. In addition to the penalties prescribed in this section, 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 chapter seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the City general fund. (Ord. 1528 § 8, 1982)