

ORDINANCE NO. 2201

AN ORDINANCE AMENDING BEND CODE CHAPTER 5.50 NOISE

Findings:

- A. The Municipal Court Judge has issued an opinion letter holding that certain portions of Bend Code Chapter 5.50 Noise are ambiguous and stating that other provisions of the chapter may also be ambiguous.
- B. To eliminate these ambiguities, this ordinance amends BC Chapter 5.50.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend City Code Chapter 5.50 Noise, is revised as to read as shown on the attached Exhibit A.

Section 2. All other provisions of the Bend Code remain unchanged and in full effect.


First Reading Date: May 1, 2013

Second Reading Date: May 15, 2013

Adopted by roll call vote on May 15, 2013

YES: Mayor Jim Clinton
Councilor Jodie Barram
Councilor Scott Ramsay
Councilor Mark Capell
Councilor Sally Russell
Councilor Doug Knight

NO: none



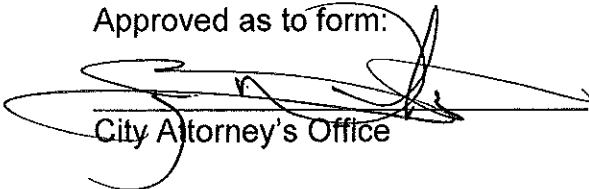
Jim Clinton, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office

EXHIBIT A

CHAPTER 5.50 NOISE

5.50.000 Noise Regulations

This section is adopted pursuant to the provisions of ORS 467.100 and the City of Bend Charter.

5.50.005 Prohibition on Excessive Noises

No person shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Bend in violation of this chapter. No person shall cause or permit any noise to emanate from property under that person's control in violation of this section.

5.50.010 Sound Measurement

While sound measurements are not required for the enforcement of this chapter, should measurements be made, they shall be made with a sound level meter using the A weighting network on a Type I or Type II meter.

5.50.015 Definitions

As used in this chapter:

- A. "dBA" means the sound pressure level in decibels measured using the A weighting network on a sound level meter.
- B. "Residence or other noise-sensitive unit" includes any building or portion of a building containing a residence, place of overnight accommodation, place of worship, day care center, hospital, school, or nursing care facility.
- C. "Plainly Audible" means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.
- D. "Unnecessarily Loud" means any sound that interferes with normal spoken communication or that could reasonably disturb sleep.
- E. "Daytime" is anytime between the hours of 7:00 a.m. and 10:00 p.m.
- F. "Nighttime" is anytime between the hours of 10:00 p.m. and 7:00 a.m. of the following day.
- G. "Property" means a lot, parcel or tract including all contiguous property under common ownership, except that each residential unit shall be considered a separate property. "Property" does not include public rights of way, private streets or parks.

5.50.020 Noise Limits

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It is a violation of this chapter to create noise in excess of the limits established in this section.

A. No person may create noise on a property if that noise results in a noise level above the levels listed in this subsection when measured on a property other than the source of the sound and that contains a residence or other noise sensitive unit.

<u>Zone Location</u>	<u>Daytime</u>	<u>Nighttime</u>
Residential	65 dBA	60 dBA
Commercial	70 dBA	65 dBA
Industrial	75 dBA	70 dBA

B. No person may create noise on a property if that noise results in a noise level above 85 dBA daytime, 80 dBA nighttime when measured on a property other than the source of the sound that does not contain a residence or other noise sensitive unit.

C. No person may create noise in a park, street or other public place that is unnecessarily loud at a distance of 50 feet. The City Manager may designate areas of parks, streets or other public places as exempt from this restriction and may grant permits under Section 5.50.035 to exceed this restriction.

5.50.025 Prohibited Noises

A. The use of exhaust brakes (jake brakes), except in an emergency or except when used by a person operating an emergency services vehicle equipped with a muffled compression braking system, is prohibited at all times within the city, regardless of noise level.

B. Except as provided in Section 5.50.035 Permits, the following acts are violations of this chapter:

- (1) The excessive sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.
- (2) The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.
- (3) The use of any automobile, motorcycle or other vehicle so out of repair, without a legal exhaust system, or in such a manner as to create unnecessary loud noise at a distance of 50 feet.
- (4) The use of any automobile, motorcycle, all-terrain vehicle or other vehicle outside of public rights-of-way where the use is unnecessarily loud.
- (5) The operation of air conditioning or heating units, heat pumps, refrigeration units (including those mounted on vehicles), swimming pool or hot tub pumps, blower, power fan, internal combustion engine, electric motor, compressor or similar machinery that is not sufficiently muffled so

as not to be unnecessarily loud to a person located on a property other than the source of the sound.

- (6) Constructing (including excavating), demolishing, altering or repairing a building, street, sidewalk, driveway, sewer or utility line between the hours of 10:00 p.m. and 7:00 a.m., except as provided in Section 5.50.030.
- (7) Using, operating or permitting to be used or operated a mechanical or electrical speaker or amplifier, either stationary or mobile, that creates noise that is plainly audible at the property line of a property with a residence or noise-sensitive unit, other than the property where the noise is generated, between the hours of 10:00 p.m. to 7:00 a.m. This section applies to any noise generated by a speaker or amplifier, regardless of whether the sound is generated on private or public property. If the amplified noise originates from a commercial establishment, a noise meter reading shall be taken as additional evidence relating to the alleged violation.
- (8) Any yelling, shouting, hooting, whistling, singing or other human-produced noise that is unnecessarily loud.

5.50.030 Exceptions

The following shall not be considered violations of any provision of this chapter:

A. Amplified or non-amplified sounds created by organized athletic or similar activities, when those activities are conducted on property generally used for that type of activity, such as stadiums, parks, schools, and athletic fields, between the hours of 7:00 am and 10:00 pm. If an event is scheduled so that it reasonably is expected to end by 10:00 pm but does not do so because of weather delay, overtime/extra innings or any other reason, the exception shall remain in effect through the end of the event.

B. Sounds caused by emergency work or by the ordinary and accepted use of emergency equipment.

C. Sounds caused by appropriate use of emergency warning devices and alarm systems for no more than 15 minutes or while the emergency remains in effect. All audible alarms shall automatically silence themselves after 15 minutes.

D. Sounds regulated by federal law, including, but not limited to, sounds caused by railroads, interstate motor carriers or aircraft.

E. Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in this chapter.

F. Sounds caused by air, electrical, or gas driven domestic tools, including lawn and construction tools, between the hours of 7:00 a.m. and 10:00 pm.

G. Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals between the hours of 7:00 am and 10:00 pm, but not including amplified sound generated from a fixed location.

H. Sounds made by legal fireworks on the Fourth of July holiday, between the hours of 7:00 A.M. and 11:00 P.M.

I. Sounds made by City of Bend solid waste franchisees.

J. Sounds made by the removal of snow or ice from public or private property.

K. Sounds made by the cleaning of or routine maintenance of City streets by City employees or agents.

L. Sounds made by the cleaning of commercial or industrial parking facilities or private roadways between the hours of 7:00 am and 2:00 am as long as the noise from the equipment does not exceed 65 dBA at 50 feet from the edge of the property being cleaned between 10:00 pm and 2:00 am.

M. The cumulative volume of normal speech of a group of people.

N. Amplified or non-amplified sound generated at concerts at an outdoor amphitheater with a capacity of at least 5000 people between the hours of 7:00 a.m. and 10:00 p.m., provided that concerts or outdoor entertainment events are a permitted land use on the property.

5.50.035 Permits

A. In cases of emergency or other public necessity, the City Manager may issue a permit allowing activities described in subsection 5.50.025 to take place at any hour. The permit may be for the duration of the permitted activity.

B. The City Manager may also issue a permit for a concert or similar event allowing noise otherwise prohibited by this chapter, provided the concert or event is permitted under the applicable provisions of this code. The permit may be for a single concert or event or for a concert series. Applications for a noise permit shall be submitted at least 45 days in advance of the date they will be needed. Within 5 days of submitting the application, the applicant shall provide notice in a form approved by the City to property owners and residents within 500 feet of the location where the sound will be generated. Notice may be provided by email, hand delivery, door-hangers, regular mail or other means calculated to provide individual notice. The City will provide notice to the applicable neighborhood association or the Downtown Bend Business Association and post notice of the application on the City website. Any person may provide comments to the City regarding the noise permit application within 15 days of the permit application. The applicant shall provide a statement to the City at least 30 days before the scheduled event that notices have been provided as required by this section. The City will normally issue or deny the permit at least 20 days prior to the date of the event. The City Manager may waive any of the deadlines or timelines established by this section, and also may issue a permit notwithstanding the timelines based on his or her

assessment of the factors outlined in this section. The City Manager shall consider written comments in making the decision whether to issue the permit, except in the rare instance where waiving a timeline makes it difficult to do so.

C. The grant or denial of permits by the City Manager may be appealed to the City Council within 15 days after denial or permit issuance. A permit when issued remains in effect until the Council decision on the appeal unless withdrawn by the City Manager.

D. Permit applications must include contact information, including a telephone number for a responsible person who will be available at that number while the noise is being generated.

E. Permits may include such restrictions or conditions necessary to safeguard the public peace, including maximum noise levels and time of day restrictions.

F. Failing to obtain a permit when one is required or failing to comply with a permit is a violation.

5.50.040 Violation

A. A violation of any provision of this Chapter is a Class A Civil Infraction. If noise is part of the use of a property, the property owner may be cited, as well as others responsible for generating the noise. Each day on which a violation continues is a separate violation. The maximum penalty for the first violation within a one-year period is \$250. The maximum penalty for a second violation within one year of the first violation is \$1,500. The maximum penalty for a third violation within one year of the second violation is \$5,000. The maximum penalty for a fourth violation within one year of the third violation, and for each subsequent violation within a year of the previous violation is \$10,000. If the Municipal Court determines that a violation has occurred, the amount of the penalty may not be reduced by more than 50%.

B. A citation issued may specify the specific section violated without citing to either this section or to Section 5.50.005.