

**ORDINANCE NO. 631**

**AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING THE NUISANCE SECTION OF CHAPTER 6, INCLUDING DEFINITIONS, NOISE, ENFORCEMENT, AND CITATION.**

WHEREAS, enforcement procedures for nuisance violations under the current Code include abatement procedures and civil violations, and there is no authority to issue a citation to deter the creation of nuisances and encourage faster abatement; and

WHEREAS, noise regulations under the Wilsonville Code are narrow in scope and do not regulate a broad enough range of disruptive noises that negatively affect the City; and

WHEREAS, it is in the interest of the public's safety, health, and welfare to adopt broader noise regulations for the City and provide the authority to issue citations for violations of Chapter 6 that create a nuisance;

NOW THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

**Section 1.** Wilsonville Code Chapter 6, sections 6.200, Definitions, shall be amended to add the following definitions. All other definitions shall remain unchanged in section 6.200.

**6.200 Definitions.**

Authorized Officer. The Sheriff, any Sheriffs Deputy, or any other person expressly authorized by the City Manager or Clackamas County Sheriff to issue Noise Ordinance citations, or make determinations of the existence of a Noise Ordinance violation for the purpose of enforcement procedures set forth in Chapter 6.

Farm Area. Any real property which contains a farm, provided that the structure or building is properly zoned, or is legally nonconforming, for farm use in accordance with the terms and maps of the City's zoning ordinance.

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

Commercial Area. Areas zoned Planned Development Commercial (PDC), including PDC-TC (Town Center) in accordance with the terms and maps of the City's zoning ordinance.

Industrial Area. Areas zoned Planned Development Industrial (PDI) in accordance with the terms and maps of the City's zoning ordinance.

Loud or Raucous Noise

- (i) any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
  
- (ii) any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

Person. Any individual, firm, association, partnership, joint venture, or corporation.

Plainly Audible. Any sound that can be detected by a reasonable person of ordinary sensitivities using unaided hearing faculties.

Public space. Any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Residential Area. Areas zoned Residential in accordance with the terms and maps of the City's zoning ordinance or any real property which contains a structure or building in which one or more persons reside, that is legally nonconforming.

**Section 2.** Wilsonville Code Chapter 6, section 6.204, Noise, shall be repealed and readopted as follows:

**6.204 Noise**

(1) General Prohibition. No person shall make, continue, or cause to be made or continued any Loud or Raucous Noise.

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

- (i) The proximity of the sound to sleeping facilities, whether residential or commercial area;
- (ii) the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- (iii) the time of day or night the sound occurs;
- (iv) the duration of the sound;
- (v) whether the sound is recurrent, intermittent or constant;
- (vi) whether the sound has occurred in the past and with what affect; and
- (vii) the practical or exigent justifications for the sound.

(2) Noises Prohibited. The following acts, if done intentionally or permitted knowingly, are declared to be *per se* violations of this Ordinance. This enumeration does not constitute an exclusive list:

(a). Unreasonable Noises. The making of any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally

affect the operators of adjacent places of business are exempted from this provision.

- (b). Vehicle Horns, Signaling Devices, and Similar Devices. The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.
  
- (c). Non-Emergency Signaling Devices. The sounding of any amplified signal from any bell, chime, siren, whistle, or similar device intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the City for traffic control purposes are exempt from the operation of this provision.
  
- (d). 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 between 7:00 a.m. and 7:00 p.m. 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.

- (e). Radios, Televisions, Boomboxes, Phonographs, Stereos, Electronically/Electrically Amplified Musical Instruments and Similar Devices. The use or operation of a radio, television, boombox, stereo, electronically/electrically amplified musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by in residential areas, including multi-family or single-family dwellings.
- (f). Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. The unreasonably loud operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:
- (i) Within or adjacent to residential or noise-sensitive areas;
  - (ii) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates.
- This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City.
- (g). Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing in residential areas or in public places, between the hours of 10:00 pm and 7:00 am, or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the

content of the communication but due to the volume, duration, location, timing or other factors not based on content.

- (h). Animals. Unreasonably Loud or Raucous Noise emitted by an animal for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal.
  
- (i). Construction or Repair of Buildings, Excavation of Streets and Highways. The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 9:00 p.m., on weekdays, Pacific Daylight Time, and 9:00 am and 7:00 pm on Saturdays, Pacific Daylight Time, and 7:00 am to 8:00 pm, on weekdays, Pacific Standard Time, and 9:00 am to 6:00 pm, on Saturdays, Pacific Standard time. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the City Manager or designee may issue a permit, upon application, if the City Manager or designee determines that the public healthy and safety, as affected by Loud or Raucous Noise caused by construction or repair of buildings or excavation of streets and highways between above mentioned hours will not be impaired, and if the City Manager or designee further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less. In non-emergency situations where application for a permit is not practically possible, an Authorized Officer may, on the above-determinations, find the noise not to be a *per se* violation.
  
- (j). Blowers, Lawn, Garden, Household Equipment, and Similar Devices. In residential areas, between the hours of 8:00 p.m. and 7:00 a.m., on weekdays, and 8:00 pm and 9:00 am on weekends, the operation of any noise-creating blower, power fan, lawn, garden, or household equipment, or any internal combustion engine, the operation of which causes noise due to electric power or the explosion of operating gases or fluids, provided that the noise is unreasonably Loud or

Raucous and can be heard across the property line of the property from which it emanates.

- (k). Commercial Establishments Adjacent to Residential Property. Unreasonably Loud or Raucous Noise from the premises of any commercial establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from within any residential property.

(3) Exemptions. Sounds caused by the following are exempt from the prohibitions set out in 6.204 and are in addition to the exemptions specifically set forth in Section 6.204(2).

- (a). Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.
- (b). Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 6.204(2)(d) continues to apply.
- (c). The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- (d). Repairs or excavations of bridges, streets, or highways by or on behalf of the City, the State, or the federal government between the hours of 7:00 p.m. and 7:00 a.m. when the public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- (e). Outdoor School Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.

- (f). Other Outdoor Events. Outdoor gatherings, public dances, shows, sporting events, and other similar outdoor events, provided that any necessary permit has been obtained from the appropriate permitting authority.
- (g). Normal farm operation taking place in a Farm Area.
- (h). Lawn, garden, or household equipment associated with the normal repair, upkeep or maintenance of property, provided that the prohibition of Section 6.204(2)(j) continues to apply.
- (i). Sounds originating from the loading or unloading of any freight, material or property into or from a railroad car, or the opening, closing or destruction of bales, boxes, crates, or containers in connection therewith during the hours of 8:00 am to 7:00 pm on any day of the week, unless said railroad car is being loaded or unloaded directly into a building immediately adjacent to said railroad car, in which case loading and unloading will be permitted at all hours on any day of the week.
- (j). Sounds originating from the normal cleaning, sweeping, and vacuuming of commercial and industrial facility parking lots during the hours of 10:00pm and 7:00 am.
- (k). Ordinary maintenance and golf club operations occurring at the Charbonneau Golf Course.
- (l). Operations of the Oregon Department of Transportation in constructing or maintaining any state highway.
- (m). Sounds originating from the ordinary loading or unloading of merchandise, materials, equipment or other things at a place of business or industry.

(4) Exceptions.

- (a). Upon written request from the owner or controller of a noise source, the City Manager or designee may authorize an exception permit as specifically listed in these rules for:
  - (i) Unusual and/or infrequent events;
  - (ii) Industrial or commercial facilities previously established in areas of new development of residential areas;
  - (iii) Those industrial or commercial noise sources whose permitted noise levels are exceeded by any noise source external to the industrial or commercial noise source in question;
  
- (b). In establishing exceptions, the City Manager or designee shall consider the protection of health, safety, and welfare of Wilsonville citizens as well as the feasibility and cost of noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints. For those exceptions which it authorizes the City Manager or designee shall specify the times during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.
  
- (c). A denial of such an exception permit may be appealed to the City Council at the next regularly scheduled meeting of the City Council following the applicant's denial.

(5) Defense. It is a defense to a prosecution of the person cited in violation of section 6.204(1) or (2) if:

- (a). The noise emissions cited for violating 6.204(1) or (2) can be shown not to have exceeded the noise limits specified in the Oregon Administrative Rules, Chapter 340, Division 35, Department of Environmental Quality Noise Control

Regulations for Industrial and Commercial Noise Source Standards as set forth in Regulations 340-035-0015 and 340-035-0035 including applicable Regulations and Tables referenced therein (“DEQ Regulation”). For the purposes of this chapter, the term “Quiet Area” in the DEQ Regulation is “Residential Area” as defined in this Chapter.

- (b). The City Manager or designee has issued a permit as set forth excepting the noise at issue from the specified violation.

**Section 3.** Wilsonville Code Chapter 6, sections 6.229, Enforcement, shall be added as follows:

**6.229            Enforcement.**

The following individuals shall enforce this Ordinance: The City Manager or designee or Authorized Officer has primary responsibility for the enforcement of the nuisance regulations contained this Chapter. Nothing in this Ordinance shall prevent the City Manager or designee, or Authorized Officer from obtaining voluntary compliance by way of warning, notice or education.

**Section 4.** Wilsonville Code Chapter 6, section 6.252, Citation, shall be added as follows:

**6.252            Citation**

1. Issuance of Citation and Penalties

- (a). A person who violates sections 6.200 – 6.228 of this Chapter is guilty of a violation punishable upon conviction by a fine not exceeding \$1,000.00.
- (b). City Manager or designee may adopt a schedule of fines for violation of sections 6.200 – 6.228 of this Chapter.
- (c). Each day a violation continues shall constitute a separate violation.
- (d). The issuance of a citation or the imposition of a penalty does not relieve the person from the duty to abate a nuisance.

2. Response to Citations.

- (a). Upon receiving a citation for a violation of this Ordinance, the person(s) shall:

- (i) Within 20 days, deliver to the City of Wilsonville City Hall, the form provided with the citation, admitting the violation(s), forfeiting and paying the amount of the fine(s) indicated on the citation: Forfeiture may be made by mail but must be actually received by the City of Wilsonville City Hall within 20 days from the date of the citation; or
- (ii) Within 20 days, deliver to the City of Wilsonville City Hall the form provided with the citation, denying all or part of the violation(s), and posting bail by paying a refundable deposit equivalent to the amount of fine(s) indicated on the citation. The response may be made by mail, but must be actually received by City of Wilsonville City Hall within 20 days from the date of the citation.
- (iii) Upon receipt of a denial, the City shall inform the Municipal Court, who shall set a hearing within 30 days of the City receipt of the denial and bail, and shall notify the person(s) and any other person who reasonably appears to have an interest in the property; notification of the hearing date, time and place shall be mailed within 15 days of the City's receipt of the denial and bail, or if request for a hearing is waived, respond to the person whether the citation is valid or invalid.

3. Failure to Comply with Citation

- (a). Failure to perform any part of 6.252(2), including failure to respond within 20 days, shall be presumed an admission of the violation(s) cited, and the fine(s) shall be doubled.
- (b). Failure to perform any part of 6.252(2), including failure to respond within 20 days, may result in the municipal court clerk sending to the person or owner of the property, where the noise violation occurred, a letter informing the owner of the violation and commanding the owner to appear in court at a fixed time and a specified place to show cause why the penalty was not paid or to pay the penalty plus increased amount by a fixed time and at a specific place, and warning him or

her that in the event that the letter is disregarded for a period of ten (10) days, a warrant for the arrest of the owner may be issued.

4. Hearing.

- (a). The hearing shall afford a reasonable opportunity for the person(s) requesting it to present evidence that the citation was invalid or unjustified.
- (b). The decision of the Municipal Judge is final.

**Section 5.** Wilsonville Code Chapter 4, W.C. 4.135(.05)(I) and 4.135.5(.06)(I) are hereby amended with additions shown in **bolded** and underlined text as follows:

W.C. 4.135 PDI – Planned Development Industrial Zone.

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(.05) Performance Standards. The following performance standards apply to all industrial properties and sites within the PDI Zone, and are intended to minimize the potential adverse impacts of industrial activities on the general public and on other land uses or activities. They are not intended to prevent conflicts between different uses or activities that may occur on the same property.

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(I) Noise: Noise generated by the use, with the exception of traffic noises from automobiles, trucks, and trains, shall not violate any applicable standards adopted by the Oregon Department of Environmental Quality **and W.C. 6.204** governing noise control in the same or similar locations.

W.C. 4.135.5 Planned Development Industrial – Regionally Significant Industrial Zone.

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(.06) Performance Standards. The following performance standards apply to all industrial properties and sites within the PDI-RSIA Zone, and are intended to minimize the potential adverse impacts of industrial activities on the general public and on other land uses or activities. They are not intended to prevent conflicts between different uses or activities that may occur on the same property.

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(I) Noise: Noise generated by the use, with the exception of traffic noises from automobiles, trucks, and trains, shall not violate any applicable standards adopted by the Oregon Department of Environmental Quality **and W.C. 6.204** governing noise control in the same or similar locations.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 18<sup>th</sup> day of June 2007, at the hour of 7 p.m. at the Wilsonville City Hall, submitted for a continuation of first reading on July 16<sup>th</sup>, 2007, at the hour of 7 p.m. at the Wilsonville City Hall, and scheduled for second reading on August 6th, 2007 commencing at the hour of 7 p.m. at the Wilsonville City Hall.

*Starla Schur*

Starla Schur, CMC, Deputy City Recorder

ENACTED by the City Council on the 6 day of August 2007, by the following votes:

YEAS: 4      NAYS: 0

*Starla Schur*

Starla Schur, CMC, Deputy City Recorder

DATED and signed by the Council President this 7 day of August, 2007.

*Alan Kirk*

Alan Kirk, Council President

SUMMARY OF VOTES:

|                  |         |
|------------------|---------|
| Mayor Lehan      | Excused |
| Councilor Kirk   | Yes     |
| Councilor Knapp  | Yes     |
| Councilor Ripple | Yes     |
| Councilor Núñez  | Yes     |