

ORDINANCE NO. 15-1008

AN ORDINANCE AMENDING OREGON CITY MUNICIPAL CODE TITLE 9.12 – OFFENSES AGAINST PUBLIC PEACE AND DECENCY, AMENDING CHAPTER 1.16 – GENERAL PENALTY AND DECLARING AN EMERGENCY

WHEREAS, on May 20, 2015, the City Commission adopted Ordinance 15-1004, replacing existing regulations prohibiting disturbing the peace with new standards addressing the same; and

WHEREAS, although the text of Ordinance 15-1004 made it clear that the existing noise disturbance standards were repealed and replaced through the proposed amendment, the Ordinance contained a scrivener's error referencing OCMC Chapter 9.12.010, as containing the noise standards to be replaced, when Chapter 9.12.010 restricts drinking in public places; and

WHEREAS, some small adjustments and changes to the ordinance are needed to ensure that the City's goals are accomplished; and

WHEREAS, an emergency exists in that the noise disturbance standards should be applied in the most fair and transparent manner at all times.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. The references in Ordinance 15-1004 to Oregon City Municipal Code existing Chapter 9.12.010 were incorrect. Oregon City Municipal Code Chapter 9.12.010 is hereby retained and re-adopted as part of the OCMC as follows:

9.12.010 - Drinking in public places.

It is unlawful to drink or consume any alcoholic liquor or have in one's possession any bottle, can or other receptacle containing any alcoholic liquor which has been opened, or a seal broken, or the contents of which have been partially removed, while in or upon any public street, alley, park or other public grounds, school grounds or municipal buildings; providing, however, that the city commission may permit the service and consumption of alcoholic liquors within designated municipal buildings and municipal parks on such terms and conditions as the commission may provide.

Section 2. Oregon City Municipal Code existing Chapter 9.12.020 is hereby repealed:

9.12.020 – Disturbing the peace.

~~It is unlawful for any person, intentionally, knowingly, recklessly or with criminal negligence, to disturb the peace and quiet of another person, group of people, neighborhood, family, religious or other lawful assembly by:~~

- ~~A. _____ Engaging in fighting, violent, tumultuous or threatening behavior;~~
- ~~B. _____ Making unreasonable noise, commotion or other disturbance;~~

- ~~C. _____ Obstructing vehicular or pedestrian traffic on a public way;~~
- ~~D. _____ Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or~~
- ~~E. _____ Creating a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.~~

Section 3. Oregon City Municipal Code Chapter 9.12 is amended as shown below, with the changes highlighted below with additions shown in underline and deletions shown in ~~strikethrough~~:

9.12.020 - Disturbing the Peace

9.12.021 - Purpose

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the citizens of Oregon City through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety, or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

9.12.022 - Findings

The City Commission of Oregon City finds as follows:

Loud and raucous noise degrades the environment of the City to a degree that it:

- A. is harmful to the health, welfare, and safety of its inhabitants and visitors;
- B. interferes with the comfortable enjoyment of life and property;
- C. interferes with the well-being, tranquility, and privacy of the home; and
- D. both causes and aggravates health problems.

9.12.023 - Noises Prohibited

The following acts are declared to be a violation of this Ordinance. This enumeration does **not** constitute an exclusive list:

- A. Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonable loud, boisterous or unusual noise, disturbance, commotion or vibration in a boarding facility, dwelling, place of business or other structure, or upon any public street, park or other place or building. The ordinary and usual 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. Noisy Animals: Barking dogs or other unreasonably noisy animals which disturb the comfort of any person in the vicinity for a period of 10 minutes in any hour except for animals provoked by a person trespassing, threatening to trespass, or taunting of the animal.

C. Sound producing or reproducing equipment: Operating or permitting the unreasonable use or operation of any device designed for sound production or reproduction in such a manner as to cause an unreasonable noise; or operating or permitting the operating or use of any such device between the hours of 10 pm and 7 am.

D. Operation of mechanically powered domestic tools: Lawn equipment, garden tools, chainsaws, blowers or similar devices, in a residentially zoned neighborhood between the hours of 10 pm and 7 am.

E. The construction, demolition, alteration or repair of any building or the excavation of any streets and highways in a residentially zoned neighborhood between the hours of 8 pm and 7 am, Monday – Saturday; and between 8 pm and 9 am on Sunday.

F. Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting in residential or in public places, between the hours of 10 pm and 7 am, or at any time or place so as to unreasonably disturb the quiet and comfort of reasonable persons. 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.

G. Motor Vehicles: (1) The parking of any motor vehicle of 10,000 pounds GCWR, or more, with the motor or attached auxiliary equipment in operation on private property in such a manner as to be plainly audible within any dwelling unit between the hours of 10 pm and 7 am. (2) No person may operate, and no owner of any vehicle may permit to be operated, any motor vehicle so as to cause any greater noise or sound than is reasonably necessary.

9.12.024 - Exemptions

The following sounds are exempted from the provisions of this Ordinance:

A. Sounds caused by the performance of emergency work or training thereof, or by the ordinary and accepted use of emergency apparatus and equipment.

B. Outdoor School and Playground Activities. Reasonable activities conducted on 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.

C. Other Outdoor Events. Reasonable activities conducted at outdoor public gatherings, public dances, shows, sporting events, and events operated under a valid City-issued permit.

D. Blasting, under permit.

E. Sounds made by warning devices.

F. Sounds caused by power tools during the hours of 7 am and 10 pm.

G. Sounds caused by the services performed to the community associated with garbage, towing of vehicles, franchised hauler companies, commercial transportation of passengers, or to other vehicles being loaded or unloaded.

H. Sounds resulting from legal fireworks on the third of July, Fourth of July, and the Friday and Saturday during the weekend closest to the Fourth of July of each year, between the hours of 7am and 10pm.

I. Sounds made between midnight and 12:30 am on January 1 of each year.

9.12.025 - Authority

- A. A Code Enforcement Officer or a sworn Police Officer has authority to enforce the provisions of this Ordinance. That authority includes, but is not limited to:
1. The issuance of citations for civil infraction ~~violation~~ of this Ordinance.
 2. Requiring the cooperation of the owner or operator of any noise source in the reasonable operation, manipulation, or shutdown of various equipment or operations as needed to ascertain the source of sound.
 3. The Code Enforcement Officer or sworn officer must have witnessed the violation occur for issuance of a citation.
- B. A person other than a Code Enforcement Officer or a sworn Police Officer may enforce the provisions of this ordinance by filing a complaint with the Oregon City Municipal Court. The complaint shall be entered by the court in the court record.
1. A complaint under this section must contain:
 - a. The name of the court, the name and address of the person bringing the action and the name and address of the defendant.
 - b. A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the violation is alleged to have occurred.
 - c. A certificate signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties provided in ORS 153.990 (Penalty for false certification).
 2. Upon the filing of a complaint under this section, the court shall cause a summons to be delivered to the defendant and shall deliver a copy of the complaint to the city prosecutor. The court may require any enforcement officer to serve the summons.
 3. If the complaint does not conform to the requirements of this section, the court shall set it aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion to set aside may be appealed.
 4. The court may, acting in its sole discretion, amend a complaint filed under the provisions of this section.
 5. The court shall dismiss a complaint filed under this section upon the motion of the district attorney for the county or of the city prosecutor if:
 - a. The district attorney or city prosecutor has brought a proceeding against the defendant named in the complaint or intends to bring a proceeding against the defendant named in the complaint; and
 - b. The proceeding is brought by the district attorney or city attorney by reason of the same conduct alleged in the complaint.

9.12.026 - Enforcement

Administration and enforcement by Police or Code Enforcement Officers:

- A. First Offense: Persons violating the provisions of this ordinance shall, upon a first offense, receive a verbal or written warning to cease such activity or alter such equipment as is causing the violation.

B. Second and subsequent offenses: persons violating the provisions after the first offense of this ordinance, for a second time, and subsequent times, may be issued a ~~violation~~ citation for civil infraction by either a Police Officer or Code Enforcement Officer.

C. When responding to noise complaints at businesses, residences, or at locations where groups or organizations have gathered, the owner, manager or adult person in charge shall be held responsible for maintaining a reasonable noise level.

D. A police officer or code enforcement, who believes that an object, including noisy animal(s), causing a sound believed to be a violation likely may be used to persist in causing additional violations of the provisions of this Ordinance, upon issuance of a citation, may seize the object and impound it.

9.12.027 - Penalty

The violation of any provision of this chapter is subject to the code enforcement procedures of Chapters ~~1.16~~, 1.20 and 1.24.

Section 4. Oregon City Municipal Code Chapter 1.16 is amended as shown below, with the changes highlighted below and additions shown in underline and deletions shown in ~~strike through~~:

Chapter 1.16 - GENERAL PENALTY

1.16.010 - Penalty.

A. Any person convicted of a violation of Section 9.04.010 and Chapters 6.04, 9.08, 9.12, except for Sections 9.12.020 through .027, 9.16, 9.20 and 9.24 of this code shall be fined in a sum not to exceed five thousand dollars and/or confinement in jail not to exceed one year. In the event the section violated contains the identical elements of criminal conduct as a state statute, the penalty imposed may not exceed the maximum limits permitted for violation of the state statute.

B. Any person convicted of an offense which by state statute is made subject to the jurisdiction of the municipal court shall be subject to fine and/or imprisonment as provided in the applicable state statute, not to exceed the foregoing limits.

C. Any person convicted of the violation of any other section of the code shall be fined not more than three hundred dollars, unless otherwise specified in this code.

D. In addition to the above penalties, the municipal judge may assess reasonable court costs upon conviction.

1.16.020 - Application.

A. The penalty provided in this chapter shall be applicable to every section of this city code the same as though it were a part of each and every separate section. Any person convicted of a violation of any section of this city code where any duty is prescribed or obligation imposed, or where any act which is of a continuing nature or declared to be unlawful, shall be deemed guilty of a misdemeanor. A separate offense shall be deemed committed upon each day such duty or

obligation remains unperformed or such act continues, unless otherwise specifically provided in this city code.

B. In all cases where the same offense is made punishable or is created by different clauses or sections of this city code the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

C. Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this city code and there shall be no fine or penalty specifically declared for such breach, the provisions of this chapter shall apply and a separate offense shall be deemed committed upon each day during or on which a breach or violation occurs or continues.

1.16.030 - Liability of officers.

No provision of this city code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the governing body to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

1.16.040 - Extension of police power beyond city limits.

All police and penal provisions of this code, necessary to protect property and preserve peace and order now in force and also those hereinafter enacted, applicable within the city shall apply with equal force and effect to all lands owned or controlled by the city located outside the boundaries of the city and the penalties of fine and imprisonment and the right to make arrests and serve process shall likewise apply.

Section 5. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on July 1, 2015.

Read for the first time at a regular meeting of the City Commission held on the 1st day of July 2015, and the City Commission finally enacted the foregoing ordinance this 1st day of July 2015.

DAN HOLLADAY, Mayor

Attested to this 1st day of July 2015,

Approved as to legal sufficiency:

Kattie Riggs, City Recorder

City Attorney

GSB:7141453.1