

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Adoption of the )  
Yamhill County Noise Ordinance; ) **Ordinance 822**  
and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on December 12, 2007 at 9:00 a.m. in Room 32 of the courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

THE BOARD OF COMMISSIONERS MAKES THE FOLLOWING FINDINGS:

A. The making, creation or maintenance of loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare, and prosperity of the residents of the county and should be immediately abated.

B. The necessity in the public interest for the provisions and prohibitions hereinafter declared contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the county and its inhabitants.

C. The Board of Commissioners of Yamhill County has the authority to establish a noise control ordinance pursuant to ORS 467.100. This ordinance effects and controls all unincorporated areas of Yamhill County as well as areas within the city limits of municipalities that consent to its jurisdiction.

NOW THEREFORE, THE BOARD ORDAINS AS FOLLOWS:

**Section 1. Definitions.**

a.. "Farm use" means the current employment of land including that portion of such lands under buildings supporting accepted farming practices for the purposes of raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" means and includes the preparation, processing, and packaging and storage of the products raised on such land and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS Chapter 321, or the construction and use of dwellings customarily provided in conjunction with the farm use.

b. "Farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms and customarily utilized in conjunction with farm use.

c. "Noise sensitive unit" means any building or portion thereof, vehicle, boat or other structure used as a church, day care center, hospital, nursing care center, school, or place lawfully used for overnight accommodations of persons, including, but not limited to, individual homes, individual apartments, trailers and nursing homes, and the curtilage thereof.

d. "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.

e. "Vehicle" means and includes automobiles, motorcycles, motorbikes, go-karts, trucks, buses, all-terrain vehicles, quads, dirt bikes, and snowmobiles. All watercraft (boats, jet skis, etc) are exempt.

## **Section 2. Exemptions.**

- a. Nothing in this ordinance is intended to unreasonably restrict or regulate:
- 1) Forestry. The normal and usual operation of equipment and machinery in connection with and on land being used for the growing and harvesting of timber and other forest products because of noise arising from such activity;
  - 2) Farming. Farming practices because of noise arising from farm use of land;
  - 3) Organized Athletic or Other Group Activities. Sounds caused by organized athletic or other group activities or permitted mass gatherings when those activities are conducted on property generally used for those purposes, including stadiums, parks, schools, churches, airports and athletic fields. Activities permitted by land use conditional use permission granted by the Department of Planning and Development are exempt. These exceptions do not prohibit the county from declaring a specific event or activity in violation of this ordinance, or other laws, ordinances or regulations;
  - 4) Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles, sirens, bullhorns and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property;
  - 5) Sounds caused by regular vehicular traffic upon premises open to the public;
  - 6) Sounds regulated by federal and state law, including but not limited to sounds caused by railroads, aircraft, airports, quarries, and lawful blasting and explosives;

- 7) Lawn, garden or household equipment associated with the normal repair, upkeep or maintenance of property.
- 8) Watercraft. Normal and customary engine sounds of powered boats, jet skis, etc.
- 9) Firearms. Discharges of firearms for sport, hunting, target practice, plinking, recreational shooting, training, trap, skeet, predator control, livestock management, or other lawful firearms activities.
- 10) Law enforcement activities. All law enforcement activities by sworn and certified police officers, including any and all training, whether it involves firearms, explosives, simulated gunfire, or any other noise.
- 11) Kennels. Licensed kennels, animal control or breeding facilities, or other entities that board animals. A kennel must be licensed by the Yamhill County Sheriff's Office to be exempt. Unlicensed kennels can and will be subject to noise enforcement pursuant to this ordinance.
- 12) Shooting Ranges. Lawful commercial or law enforcement firearms shooting ranges or practice facilities.

**Section 3. Variances.**

- a. Any person, business, or government agency planning the operation of a sound source, which may violate any provision of this ordinance, may apply for a variance from such provision.
- b. Any person, business, or government agency planning the operation of a sound source, which may violate any provision of this ordinance, may apply for a variance from such provision.

**Section 4. Application for Variance.**

The applicant must submit a complete written application in a form acceptable to the county and submitted to the Yamhill County Sheriff's Office. The application need only address that portion of the project for which a variance is sought. Any application that does not comply with the following requirements is not complete and must be resubmitted.

- a. A processing fee of \$200;
- b. The name, address and telephone number of the entity requesting the variance and the signature of an authorized representative.
- c. The length of time for the variance; and

- d. An analysis of the proposal, addressing:
  - 1) The purpose for the creation of the noise;
  - 2) The nature of the noise;
  - 3) The affected population within the geographical area of the noise source, whether it is residential, commercial or industrial;
  - 4) The projected duration and times of the noise;
  - 5) The potential impacts of the noise on the affected population;
  - 6) The extent and scope of measures that the applicant has taken or will take to reduce or diminish the disturbance for the affected population such as:
    - i) Modification of operations to reduce the impact the noise will have on the affected population.
    - ii) Any other measure that is deemed necessary and proper to minimize impacts the noise will create in the affected area.

**Section 5. Processing the Variance.**

a. The Yamhill County Sheriff's Office shall provide a response within fifteen days of the applicant's submittal of a complete application and processing fee.

b. The Yamhill County Sheriff's Office may deny the application, approve the application or approve the application subject to conditions. The decision by the Yamhill County Sheriff's Office shall be in writing and include a brief summary of the relevant facts, reasoning and conclusion, together with any conditions of approval including the duration of the variance.

c. In the event of denial or approval subject to conditions, the applicant may submit the application for reconsideration. The application for reconsideration may include additional information in support of the requested variance and must be submitted within five days of the initial decision. The Yamhill County Sheriff's Office will issue the decision on reconsideration within seven days. The decision of the Yamhill County Sheriff's Office shall be the final decision of the county.

d. The decision of the Yamhill County Sheriff's Office shall be reviewable solely under ORS 34.010 through ORS 34.100 in the Circuit Court of Yamhill County.

**Section 5. Extension or Revocation of Variance.**

a. The county may grant an extension to a variance upon a determination that it is warranted by reasonably unforeseeable and uncontrollable events.

b. The variance may at any time before or during the operation of any variance be revoked for any reason.

**Section 6. Violations.**

a. Violation of the terms and conditions of the variance shall be deemed a violation of

this ordinance enforceable as provided in the Violations section.

b. The fines provided for herein are in addition to, and not in lieu of, any other remedy allowed by law, including but not limited to an action for revocation, a restraining order, and injunction or abatement.

#### **Section 7. Standards Generally.**

a. It is unlawful for any person to make, continue or cause to be made or continued, any noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any person of normal sensitivity in a noise sensitive unit. The standard which shall be utilized in determining whether a violation of the provisions of this ordinance exists may include, but not be limited to, the following:

- 1) The volume of the noise;
- 2) The intensity of the noise;
- 3) Whether the nature of the noise is usual or unusual;
- 4) Whether the origin of the noise is natural or unnatural;
- 5) The volume and intensity of the background noise, if any;
- 6) Whether the noise is plainly audible within a noise sensitive unit;
- 7) The nature and zoning of the area within which the noise emanates;
- 8) The density of the inhabitation of the area within which the noise emanates;
- 9) The time of day or night the noise occurs;
- 10) The duration of the noise;
- 11) Whether the noise is recurrent, intermittent, or constant; and
- 12) The willingness or unwillingness of the noise producer to timely cease or abate the noise.

#### **Section 8. Conformity with Law.**

This ordinance shall not in any way be a substitute for, nor eliminate in any way, the necessity for conformity with any and all laws or rules of the state of Oregon or its agencies, nor any ordinance or rule or regulation of the county.

#### **Section 9. Citation.**

A county officer, as defined in the Uniform Citation Ordinance, may issue a citation for violation of this ordinance and the rules and regulations adopted pursuant thereto. The Uniform Citation Ordinance, Yamhill County Citation Ordinance No. 755, is hereby incorporated into this Ordinance by this reference, and its provisions control the enforcement of this ordinance. All citations shall conform with Ordinance 755 and ORS Chapter 153. All citations shall be adjudicated in the Yamhill County Circuit Court. The provisions of this ordinance are in addition to and not in lieu of any other procedures and remedies provided by law, including equitable relief and damages.

**Section 10. Seizure of Instruments and Equipment; Disposal.**

Any peace officer who issues a citation for violation of this ordinance is authorized to seize and hold for no longer than fifteen days any radio, stereo, instrument, or equipment used to create or amplify the noise for which the citation is issued, in order to abate the noise violation, protect the public health and safety, and reduce repeat calls for service. The sheriff will provide a written receipt for the property to the person from whom the property was seized. If property seized under this ordinance is not claimed or picked up within fifteen days of seizure, the sheriff shall provide written notice to the person from whom the property was seized and anyone else that has asserted an interest in the property. If the property is not claimed or picked up within thirty days from the date of which the notice is sent, the sheriff shall consider the property abandoned and destroy the property or dispose of it by public auction.

**Section 11. Violation; Penalty.**

a. Upon conviction of any person for violation of any provision of this ordinance or rules or regulations adopted pursuant thereto, such person may be punished by a fine of not more than seven hundred (\$700) dollars.

b. Each day any person shall be in violation of this ordinance or rules or regulations adopted pursuant thereto shall be deemed a separate offense.

c. Any person who has been convicted of a violation of this ordinance or rules or regulations adopted pursuant thereto and who is found by a court to have been formerly convicted of any violation of this ordinance or rules or regulations adopted pursuant thereto may be punished by a fine of not more than one thousand five hundred (\$1500) dollars.

**Section 12. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

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**Section 13. Declaration of Emergency.**

This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE this 12<sup>th</sup> day of December, 2007 at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN

County Clerk

By Anne M. Britt  
Deputy ANNE BRITT

APPROVED AS TO FORM

Rick Sanai  
RICK SANAI  
Assistant County Counsel



Kathy George

KATHY GEORGE

Mary P. Stern

MARY P. STERN

Leslie Lewis

LESLIE LEWIS