

ORDINANCE NO. 2188

AN ORDINANCE AMENDING BEND CODE CHAPTER 5.50 NOISE

Findings:

- A. The City has received complaints about noise that has issued from outdoor concerts and other events in the City. In response to criticisms about the applicable code provisions and questions about the City's enforcement, City staff met with community representatives to discuss possible code changes.
- B. Based on the input from those meetings, staff has developed code amendments for council consideration. While staff takes the position, and council concurs, that the existing code is enforceable and provides reasonable protection against the intrusion of overly loud noise, changes are proposed for clarification and to require notice when certain noise permits are to be issued.
- C. The proposed amendments include minor changes for readability and clarity, an increase in permitted decibel levels, a different standard for noise in public places, making certain noise a violation regardless of decibel level, adding a notice requirement for concerts that will obtain a noise permit, and imposition of an escalating penalty provision for repeat violators.

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

Section 1. Bend Code Chapter 5.50 is revised as to read as shown on the attached Exhibit A. All other provisions of the Bend Code remain unchanged and in effect.

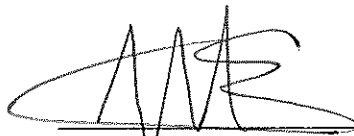
Section 2. This ordinance takes effect 30 days after adoption.

First Reading Date: June 6, 2012

Second Reading Date: June 20, 2012

Adopted by roll call vote of the Bend City Council on June 20, 2012.

YES:	Tom Greene	NO:	None
	Scott Ramsay		
	Mark Capell		
	Jim Clinton		
	Kathie Eckman		
	Mayor Jeff Eager		



Jeff Eager, Mayor

6/27/12

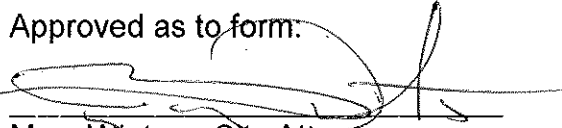
dated

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



Mary Winters, City Attorney

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 section, 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:

(1) "dBA" means the sound pressure level in decibels measured using the A weighting network on a sound level meter.

(2) "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.

(3) "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.

(4) "Unnecessarily Loud" means any sound that interferes with normal spoken communication or that could reasonably disturb sleep.

(5) "Daytime" for subsection A of the noise limits section is anytime between the hours of 7:00 a.m. and 10:00 p.m.

(6) "Nighttime" for subsection A of the noise limits section is anytime between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

5.50.020 Noise Limits

(1) The maximum allowable noise limits measured on a property with a residence or other noise sensitive unit, not the source of the sound, are:

Zone Location	Daytime	Nighttime
Residential	65 dBA	60 dBA
Commercial	70 dBA	65 dBA
Industrial	75 dBA	70 dBA

(2) The maximum allowable noise limits when measured on other property, not the source of the sound, are 85 dBA daytime, 80 dBA nighttime.

(3) If within a park, street or other public place, sound 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

(1) 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.

(2) Except as provided in Section 5.50.035 Permits, the following acts are violations of this chapter:

- (A) 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.
- (B) The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.
- (C) 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.
- (D) The use of any automobile, motorcycle, all-terrain vehicle or other vehicle outside of public rights-of-way where the use is unnecessarily loud.
- (E) 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.
- (F) 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.
- (G) Using, operating or permitting to be used or operated a mechanical or electrical speaker or amplifier, either stationary or mobile, that plainly audible at the property line of a property with a residence or noise-sensitive unit between the hours of 10:00 p.m. to 7:00 a.m.
- (H) 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:

- (1) 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.
- (2) Sounds caused by emergency work or by the ordinary and accepted use of emergency equipment.
- (3) 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.
- (4) Sounds regulated by federal law, including, but not limited to, sounds caused by railroads, interstate motor carriers or aircraft.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Sounds made by legal fireworks on the Fourth of July holiday, between the hours of 7:00 A.M. and 11:00 P.M.
- (9) Sounds made by City of Bend solid waste franchisees.
- (10) Sounds made by the removal of snow or ice from public or private property.
- (11) Sounds made by the cleaning of or routine maintenance of City streets by City employees or agents.
- (12) 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.
- (13) The cumulative volume of normal speech of a group of people.

(14) 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

(1) 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.

(2) 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.

(3) 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.

(4) 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.

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

5.50.040 Violation

A violation 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 \$750. 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%.

