



AMENDED

**Staff Report**

For City Council Meeting - 4/7/2021

***Subject - New Business - Discussion - Noise Ordinance Review***

**Synopsis:** The City has been receiving an influx of questions surrounding the current noise ordinance. (attached - Ordinance 877; and due to a municipal court ruling requiring separation of construction noise from the standard noise ordinance, additional Ordinance 876) Further, with an increase of building construction in the area, formal correspondence from a group of Gearhart residents has been received proposing changes to the noise ordinance, mostly pertaining to construction generated noise. (also attached)

**Recommendation:** Should the Council decide changes to the ordinance should be made, Staff requests direction on the specific items to amend as the criticism the City is receiving centers on vague language.

**Legal Analysis:** Amendment of the current ordinance can be made through the adoption of a new ordinance. If the Council chooses, City staff can produce a draft ordinance for review at a public meeting.

**Financial Analysis:** N/A

Respectfully Submitted,

Chad

## ORDINANCE NO. 876

AN ORDINANCE REGULATING CONTRACTOR WORK HOURS IN THE CITY OF GEARHART.

The City of Gearhart does ordain as follows:

### **Definitions:**

The following terms and definitions shall apply in this chapter unless the context requires otherwise;

- “Contractor” means any of the following;
  - A person that, for compensation or with the intent to sell, arrange or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move wreck or demolish for another, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof.
- “Commercial Contractor” means a licensed contractor that holds an endorsement as a:
  - (a) Commercial general contractor level 1;
  - (b) Commercial specialty contractor level 1;
  - (c) Commercial general contractor level 2;
  - (d) Commercial specialty contractor level 2; or
  - (e) Commercial developer.
- “Commercial developer” means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.
- “General contractor” means a contractor whose business requires the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor.
- “Landscape construction professional” means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to;
  - (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
  - (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
  - (c) Maintenance on lawns, shrubs, vines, trees or nursery stock.
  - (d) Construct, repair or maintenance on ornamental water features, drainage systems or irrigations systems;
  - (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

- “Lawn care contractor” means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the use of mowers, edging tools, blowers, hand shovels, rakes, brooms and other lawn maintenance equipment.
- “Employee” means an individual who for compensation or with intent to be compensated performs labor activities for a contractor.

**General Prohibition.**

- 1) No work shall be performed within the city limits of Gearhart by any Contractor, Commercial contractor, Commercial developer, General contractor or employees between the hours of 6pm and 8am the next day.
- 2) No work shall be performed within the city limits of Gearhart by any Landscape construction professional, Lawn care contractor or employees between the hours of 7pm and 7am the next day.

**Exemptions:**

- 1) Repairs or excavations of bridges, streets or highways by or on behalf of the City, State or the federal government is exempt from General Prohibition (1) & (2).
- 2) Gearhart Golf Course maintenance may only use lawn mowers in good repair outside the working hours in General Prohibition (1) & (2).
- 3) In cases of emergencies contractors or employees are exempt from General Prohibition (1) & (2).
- 4) In cases of non-emergencies, the City Administrator may issue a permit, upon application, if the City Administrator determines that the public health and safety will not be impaired. The City Administrator may issue a permit for (5) five working days. The permit may be revoked if complaints arise by working outside of the permit parameters.

**Enforcement:**

- 1) The following individuals shall enforce this subchapter; The police will have primary responsibility for the enforcement of the Contractor Work Hours regulations contained in this subchapter. Nothing in this subchapter shall prevent the City Administrator or Police Chief from obtaining voluntary compliance by way of warning, notice or education.

**Penalty:**

- 1) General. Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to 10.99.
- 2) Contractor Work Hours
  - a) Any person who violates a provision of this chapter shall be fined up to \$500.
  - b) Each occurrence of a violation, or in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offence and may be punished separately.

Passed by the City Council of Gearhart this 5<sup>th</sup> day of February, 2014.

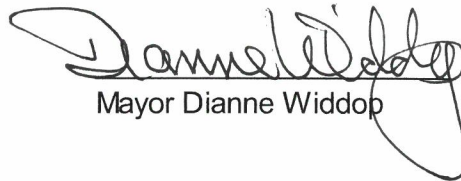
Yeas: 4

Nays: 0

Absent: 1

Abstain: 0

Approved and signed by the Mayor of the City of Gearhart this 5<sup>th</sup> day of February, 2014.



Mayor Dianne Widdop



Chad Sweet, City Administrator

## **ORDINANCE NO. 877**

### AN ORDINANCE REGULATING NOISE IN THE CITY OF GEARHART.

The City of Gearhart does ordain as follows:

#### **Definitions.**

The following terms and definitions shall apply in this chapter unless the context requires otherwise;

- A scale (dBA) means the sound level in decibels measured using the A—weighted network as specified in American National Standard Specification for Sound Level Meters (ANSI S1.4-1971)
- Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure. The reference pressure is twenty micropascals (twenty micronewtons per square meter).
- Domestic tools means power tools or equipment used for home and building repair, maintenance, alteration or other home manual arts projects including, but not limited to, powered hand tools, lawnmowers, garden equipment, snow removal equipment and power generators.
- Idling speed means that speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.
- Motor vehicle means any land vehicle which is, or is designed to be, self—propelled.
- Noise sensitive means any use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single—family dwelling, duplex, triplex, multi family dwelling, or mobile home) or other use of the same general type, and rights-of-way attached to, whether publicly or privately owned.
- Person includes, an individual, any public or private corporation, association, partnership or other legally recognized public or private entity.
- Plainly audible means unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to, understandable musical rhythms, understandable spoken words and vocal sounds other than speech which are distinguishable as raised or normal.

- Sound level in dBA, means the weighted sound pressure level, measured by the use of an A-weighted sound level meter set at a fast meter response.
- Sound level meter means a sound level measuring device, either Type I or Type II, as defined by American National Standard Specification Sound Level Meters (ANSI S1.4—1971).
- Sound producing device includes:
  - A. Loudspeakers, public address systems;
  - B. Radios, audio recorders and/or audio players, phonographs, television sets, stereo systems including those installed in a vehicle;
  - C. Musical instruments, amplified or unamplified;
  - D. Sirens, bells;
  - E. Vehicle engines or exhausts, when the vehicle is not on a public right-of-way, particularly when the engine is operated above idling speed;
  - F. Vehicle tires, when caused to squeal by excessive speed or acceleration;
  - G. Domestic tools, including electric drills, chainsaws, lawnmowers, electric saws, hammers and similar tools, but only between ten p.m. and eight a.m.
  - H. Heat pumps, air conditioning units and refrigeration units, including those mounted on vehicles.
- Sound measurement:
  - A. If measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability.
  - B. If measurements are made, personnel making those measurements shall have completed training in the use of the sound level meter and measurement procedures consistent with that training shall be followed.
  - C. Measurements may be made at or within the boundary of the noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of sound.
  - D. All measurements made pursuant to this chapter shall comply with the provisions of this section.

## Noise disturbance prohibited.

1. It is unlawful for any person to knowingly create, assist in creating, permit, continue, or permit the continuance of any noise disturbance.
2. The following acts are declared to be noise disturbances. This list is not exclusive.
  - a. **Dynamic Braking Devices.** Using any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device, commonly referred to as a Jake or Jacobs brake, is one used primarily on trucks and buses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.
  - b. **Idling Engines on Motor Vehicles.** Operating for more than fifteen consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between ten p.m. and eight a.m.
  - c. **Motor Vehicle Repair and Testing.** Repairing or testing any motor vehicle in such a manner as to be plainly audible within any dwelling unit between ten p.m. and eight a.m.
  - d. **Steam Whistles.** Blowing any steam whistle attached to any stationary boiler.
  - e. **Sirens.** Sounding a siren.
  - f. **Exhausts.** Discharging into the open air the exhaust of any steam engine, internal combustion engine or any mechanical device operated by compressed air or steam without a muffler, or with a sound control device less effective than that provided on the original engine or mechanical device.
  - g. **Exceeding Maximum Permissible Noise Levels.** Producing or permitting the production of sound which, when measured at or within the boundary of the property of a noise sensitive unit which is not the source of the sound and exceeds:
    - i. Fifty dBA at any time between ten p.m. and eight a.m. the following day.
    - ii. Sixty dBA at any time between eight a.m. and ten p.m. the same day.
3. **Plainly Audible Sound.** Producing or permitting the production of sound which is plainly audible:
  - a. Within a noise sensitive unit which is not the source of the sound at any time between ten pm. and eight am. the following day.
  - b. On a public right-of-way at a distance of fifty feet or more from the source of the sound at any time.
4. **Domestic Tools:** Operating domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source of the sound between the hours of ten p.m. and eight a.m.

5. **Excessive Tire Noise:** Operating a motor vehicle on any public street or premises open to the public in such a manner as to cause any squealing or screeching noise from the tires of such motor vehicle as a result of unnecessarily rapid acceleration, regardless of whether or not the production of such noise was an intended result of said acceleration. Noise resulting from emergency action to avoid imminent danger to a person or property is exempt from this prohibition.

## Exceptions.

Notwithstanding the provisions of Section the following exceptions from this chapter are permitted when conditions therefore are met:

1. **Domestic power equipment.** It shall be *lawful* to operate, or to permit the operation of any domestic power equipment between the hours of eight a.m. and ten p.m.
2. **Organized athletic or other group activities,** between the hours of eight a.m. and ten p.m., when such activities are conducted on property generally used for such purposes, including parks, schools, churches, athletic fields and waterways ; provided, however, that said exemption shall not impair the city's power to declare such events or activities otherwise to violate other laws, ordinances or regulations.
3. **Emergency vehicle sounds,** as defined in ORS 487.005, when responding to, or from, an emergency or when in pursuit of an actual or suspected violator of the law.
4. **Regulated by Federal law.** Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations.
5. **Warning Devices.** Sounds made by warning devices to protect persons or property from imminent exposure to danger; provided, however, that burglar or fire alarms shall not operate continuously for more than fifteen minutes.
6. **Public Calamity.** Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.
7. **Generators.** Sounds made by a generator during power outages not caused by power bills in arrears.
8. **Commercially Zoned Property.** Sounds caused by commercial and agricultural zoned property, and construction organizations and their workers between the hours of eight a.m. and ten p.m.
9. **City Projects.** Sounds made by activities by or on direction of the city in maintenance, construction or repair of public improvements in public rights-of-way or easements.
10. **Bells and Chimes.** Sounds made between the hours of nine a.m. and ten p.m. which are made by or in simulation of bells and chimes and whose purpose is to denote the time of day and which do not exceed three minutes in length.



11. **Gearhart Golf Course.** Course maintenance employees are allowed to use lawn mowers in good repair outside the restricted times set forth in this ordinance.

## **Variances.**

1. Any person who is planning the use of a sound producing device which may violate any provision of this chapter may apply to the Chief of Police or City Administrator for a variance from such provision.
2. **Application.** The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought and any other supporting information which the Chief of Police or City Administrator may reasonably require.
3. **Review Considerations.**
  - a. The nature and duration of the sound emitted.
  - b. Whether the public health, safety or welfare is endangered.
  - c. Whether compliance with the provision would produce no benefit to the public.
  - d. Whether previous permits have been issued and the applicant's record of compliance.
4. **Time Duration of Variance.** A variance may be granted for a specific time interval only.
5. The Chief of Police or City Administrator shall within ten days, deny the application, approve it, or approve it subject to conditions.
6. The Chief of Police or City Administrator's decision to deny an application may be appealed to the city council. Notice of appeal should be delivered to the city recorder. The city council shall review the application at its next regular meeting and within fifteen days thereof, deny the application, approve it, or approve it subject to conditions.
7. The Chief of Police or City Administrator at any time before or during the operation of a variance may revoke the variance for good cause. The City Council may at any time before or during the operation of any variance, revoke the variance for good cause.

## **Provisions not exclusive.**

1. The provisions of this chapter are cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy. Nor, unless specifically provided, are they deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but are deemed additional to existing legislation and common law on such subject.

## **Administration and enforcement.**

1. The Chief of Police for the city shall administer, supervise and perform all acts necessary to enforce this chapter.
2. The Chief of Police may appoint or assign persons as deemed necessary to accomplish effective enforcement of this chapter.
3. Upon citation of a person for a violation of this chapter, the person issuing the citation may seize the sound producing device which was the source of the sound as evidence. The sound producing device, if seized, shall be impounded subject to disposition of the issued citation and determination by the court whether the sound producing device shall be returned to the cited person or deemed contraband, subject to Section XXXXXX (B). It is the intent of this chapter to avoid such seizures except where the person being cited has received two previous citations within the previous six months for the use of the same or similar sound producing device. The previous citations may, but need not, occur on the same date as the citation which prompts the seizure.
4. Citation forms authorized pursuant to ORS 153.110 to 153.310 may be used for any violations of this chapter.
5. Citation forms authorized pursuant to ORS 153.505 to 153.635 may be used for any violation of this chapter which involves a motor vehicle.
6. In addition to any other enforcement procedures, the city council may, upon its own motion, or upon receipt of a petition requesting hearing by the council signed by no fewer than ten persons residing in the vicinity of a property upon which is located an alleged violation of this chapter, issue its order to the person producing or permitting to be produced the sound which allegedly violates this chapter, to appear before the council and show cause why the council should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the council referring the order to the city attorney for injunctive enforcement or prosecution.

**Penalty.**

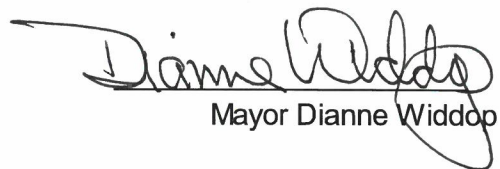
1. General: Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to 10.99.
2. Noise Control:
  - a. A person who violates a provision of the General Prohibition is guilty of an infraction which is punishable by a fine not to exceed \$500.
  - b. Each occurrence of a violation, or in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.
3. In addition to the penalties prescribed in this chapter, the court may order any sound producing device found to have been used to violate this chapter seized, confiscated and destroyed as contraband or sold with the proceeds of sale to be deposited in the city general fund.

Passed by the City Council of Gearhart this 2<sup>nd</sup> day of April, 2014.

Yeas: 4  
Nays: 1  
Absent: 0  
Abstain: 0

Approved and signed by the Mayor of the City of Gearhart this 2<sup>nd</sup> day of April, 2014.

  
Chad Sweet, City Administrator

  
Mayor Dianne Widdop

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**FW: Construction Noise and Vibration Concerns**

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**connellpc@comcast.net** <connellpc@comcast.net>

Fri, Mar 19, 2021 at 2:30 PM

To: Chad Sweet &lt;chadsweet@cityofgearhart.com&gt;, Krysti Ficker &lt;krysti@cityofgearhart.com&gt;

I don't see you two on the recipients of this...

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**From:** Sheila Nolan <senolan@gmail.com>**Sent:** Friday, March 19, 2021 12:08 PM**To:** mayorcockrum@cityofgearhart.com; Brent Warren <councilorwarren@cityofgearhart.com>; councilorjesse@cityofgearhart.com; councilorsmith@cityofgearhart.com; Reita Fackerell <councilorfackerell@cityofgearhart.com>; Carole Connell <connellpc@comcast.net>**Subject:** Construction Noise and Vibration Concerns

March 19, 2021

City of Gearhart

Dear Mayor Cockrum, City Council Members and Ms. Connell:

As you are aware, Gearhart is undergoing unprecedented construction. In fill lots and long dormant subdivisions are now being built to accommodate our community's recent population surge from people wishing to escape urban areas.

Unfortunately, this has compromised the sanctuary of full-time and part-time residents due to increased traffic, excavation, dump trucks and general construction. Construction is currently allowed seven days per week between the hours of 8:00 am and 6:00 pm and on holidays. We have experienced regular construction throughout all weekends, holidays, and outside of the allowed hours.

Many jurisdictions have moved in the direction of ordinances to assist in providing compromise to existing homeowners subject to neighborhood construction noise and vibration.

Attached is a proposal for your consideration which would limit residential construction performed by contractors requiring a permit Monday through Friday and restrict work on weekends and holidays. Do

it yourself projects and interior work as well as allowance for emergency repairs would not be impacted. Please refer to the attached proposal.

As a result of Covid-19 a limited number of residents were able to be contacted, but we feel confident there is considerable support for this proposal. Thank you for your consideration.

Sincerely,

Sheila Nolan

Jeanne & Wilson Mark

Penny & Rick Sabol

Lisa Cerveney & David Russell

Chris Bell

Dianne Widdop

Maxine & Joel Johnson

Betty & David Smith

Bebe Michel & Eric Halperin

Sarah & Rob Murphy

Steve & Kelly Scott

Bradley Wenger



**Gearhart Proposed Construction Limits.docx**

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## Gearhart Construction Regulation Proposal

The use of any mechanical device, operated by compressed air, steam, gasoline or otherwise, unless the noise created thereby is effectively muffled.

The erection, excavation, demolition, alteration or repair of any building or structure at any time other than during the following hours, except by special permit granted by the City Manager.

1. Permissible Hours and Noise Level – From 8 am to 6 pm Monday through Friday in residential zones, or Monday through Saturday in other than residential zones, the City permits a very liberal standard for construction noise (85 dBA at 50' distance). This means that, provided your equipment is in good repair and muffled (if possible), it will be compliant. The few kinds of equipment that cannot meet this level (for example: jackhammers, concrete saws, and pile drivers) are exempt from this standard during this period.

Between the hours of 10 am and 6 pm on Saturday and Sunday and the following holidays, if such work **does not** require a permit New Year's Day (January 1); Labor Day (the first Monday in September); Thanksgiving Day (the fourth Thursday in November); Christmas Day (December 25); Monday, when New Year's Day or Christmas Day falls on the preceding Sunday; and Friday, when New Year's Day or Christmas Day falls on the succeeding Saturday.

2. Outside Permissible Hours – But, outside of these hours, different rules apply. Work at other hours must meet the "baseline permitted decibel levels" of the area in which the work is taking place. You will likely be in violation of the code for exterior work (e.g., clearing, grading, excavating, framing, roofing, etc.) before 8 am after and 6 pm Monday through Friday, or on Saturday, or on Sundays and the days on which New Year's Day (January 1); Labor Day (the first Monday in September); Thanksgiving Day (the fourth Thursday in November); Christmas Day (December 25); Monday, when New Year's Day or Christmas Day falls on the preceding Sunday; and Friday, when New Year's Day or Christmas Day falls on the succeeding Saturday.

Absent a special permit granted by the City Manager, performance of such work at any time on Saturday, Sunday or on any of the holidays listed in this section if the work is of the type that requires a permit.

3. Complaints – When complaints are received, it is usually because of the hours of operation rather than the amount of noise. The 8 am start time includes noise generated by warm up and maintenance. If we receive a complaint, we will contact you, and request that you take care of it. Most complaints stop here.

4. Possible Citations – If additional legitimate complaints are received be aware that each individual or organization responsible can receive a citation and fine up to \$5,000.00 for each violation. If needed, a court-ordered “stop work” order can also be obtained.
  
5. Variances – There are times that work must occur outside of the permissible hours. Noise regulations do not apply for emergency work. Necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from imminent exposure to danger. For non-emergency work outside of the permitted hours, you may apply for a variance. Construction noise variances may be issued if the need is valid and there is ample notification to nearby neighbors accelerated review fees will be required for applications submitted fewer than ten business days prior to the event.