



City of Canby

PO Box 930 Phone: 503.266.4021
222 NE 2nd Ave Fax: 503.266.7961
Canby, OR 97013 www.canbyoregon.gov

Dear Noise Variance Applicant:

Attached is a City of Canby Noise Variance Application along with a copy of Canby Municipal Code Chapter 9.48. Once you have completed the application you will need to take it to the Police Department to obtain the Police Chief's signature.

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. This information can be obtained from a title company or the Clackamas County Assessor's Office.

When you have the list of property owners, please return it, along with the completed application, and a \$75.00 application fee to City Hall. The City Recorder will schedule the noise variance request for a public hearing before the City Council, publish a Notice of Public Hearing, and mail a Notice of Public Hearing to the property owners that are within 200' of the request. The notice must be published and mailed at least 10 days prior to the Public Hearing, therefore it is imperative to return the information several weeks prior to the event in order to meet the deadlines. The City Council meets the 1st and 3rd Wednesdays of each month.

Please feel free to contact the City Recorder at 503.266.0733 if you have further questions.



CITY OF CANBY
NOISE VARIANCE
APPLICATION
\$75.00

Receipt No: _____
Date Paid: _____
Amount Paid: _____

Attn: City Recorder - PO Box 930 -222 NE 2nd Avenue - Canby, OR 97013 - 503.266.0733

Applicant Name _____

Address _____

City _____ State _____ Zip _____ Phone _____

Address of Noise Variance Request _____

Name of Property/Business Owner of Variance Request _____

Type of Event _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Acoustical Nature of Sound to be Emitted _____

Will you be continually present at this activity ____ Yes ____ No If No is marked, who is to be the contact should the need arise? _____

Additional Comments _____

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. Canby Municipal Code Chapter 9.48 requires that any person who owns, controls or operates any source which violates provisions of that chapter apply to the City Council for a noise variance.

By signing below, I acknowledge that I have read the attached Canby Municipal Code Chapter 9.48 and understand that violations of this chapter are subject to a fine of \$500. Signature of Police Chief or Designee must be obtained prior to submitting Application for Council Approval.

Signature of Applicant

Date

Police Chief or Designee

Date

Mayor

Date

B. Upon good cause shown, the Chief of Police may grant an extension not to exceed 10 additional business days.

C. If the owner does not comply with the provisions of this chapter, the Chief of Police may refer the matter to the Municipal Judge for hearing in the Municipal Court. The Municipal Court Clerk shall give notice of the hearing date to the owner and occupants, if the occupants are different from the owner.

D. At the time set for a hearing, the owner and occupants may appear and be heard by the Municipal Judge.

E. The Municipal Judge shall determine whether the property is graffiti nuisance property and whether the owner has complied with this chapter.

F. The city has the burden of proving by a preponderance of the evidence that the property is graffiti nuisance property.

G. The owner has the burden of proving by a preponderance of the evidence that there is good cause for failure to abate the nuisance within 10 business days of the personal service or mailing of the notice. (Am. Ord. 1166, passed 1-5-2005)

§ 9.44.090 Remedies of the city.

A. In the event that the Municipal Judge determines that the property is graffiti nuisance property, the Judge may order that the nuisance be abated. This order may include conditions under which abatement is to occur.

B. The Municipal Judge may also employ any other legal remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing the filing of a civil complaint in a court of competent jurisdiction.

C. The remedies provided in this section are in addition to those otherwise provided by law. (Am. Ord. 1166, passed 1-5-2005)

§ 9.44.100 Penalty.

Permitting graffiti nuisance property is a violation punishable by a fine not to exceed \$500, pursuant to § 1.08.010. Violators may be cited into Canby Municipal Court when charged with this violation. (Am. Ord. 1166, passed 1-5-2005)

§ 9.44.110 Abatement by the city.

If the owner fails to abate the nuisance as ordered by the Municipal Judge, the city may cause the nuisance to be abated as provided in Chapter 8.12 of this code of ordinances.

(Am. Ord. 1166, passed 1-5-2005)

CHAPTER 9.48: NOISE CONTROL

Section

- 9.48.010 Standards and definitions.
- 9.48.020 Responsibility and authority.
- 9.48.030 Prohibited acts.
- 9.48.040 Maximum permissible sound levels.
- 9.48.050 Exceptions and variances.
- 9.48.060 Chapter additional to other law.

Appendix A: Table 1: Allowable Sound Levels

§ 9.48.010 Standards and definitions.

A. Terminology and Standards. All terminology used in this chapter that is not defined below shall be in accordance with the American National Standards Institute (ANSI).

B. Measurement of Sound Level.

1. Measurements shall be made with a calibrated sound level meter in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standards 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an "A" weighting network, and both fast and slow meter response capability.

2. Persons conducting sound level measurements shall have received training in the techniques of sound measurement and the operation of sound measuring instruments from the Department of Environmental Quality or other competent body prior to engaging in any enforcement activity.

3. Procedures and tests required by this chapter and not specified herein shall be placed on file with the City Recorder.

C. Definitions.

Ambient Noise means all-encompassing noise associated with a given environment, being usually a composite of sounds from any sources near or far.

Amplifying Equipment means public address systems, musical instruments and other similar devices which are electronically amplified.

Commercial Land Use includes land uses zoned C-1, C-2 and C-M, or any use of an office, service establishment, retail store, park, amusement or recreation facility, or other use of the same general type, whether publicly or privately owned.

Construction means any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair or equipping of buildings, roadways and utilities. It shall include land clearing, grading, excavating and filling, before, during or following that activity.

Continuous Sound means any steady sound with a deviation no greater than plus or minus 2 dBA of its mean, or total fluctuation of 4 dBA, during the period of observation when measured with a sound level meter set on fast response.

Day Time Period means 7:00 a.m. until 10:00 p.m. of the same day, local time.

Domestic Power Tools means any mechanical powered nail gun, stapler, saw, drill, sander, grinder, lawn or garden tool, lawn mowers, generators or similar devices generally used out of doors in residential areas.

Emergency Work means work made necessary to restore property to a safe condition following severe inclement weather and natural disasters, work required to restore public utilities or work required to protect persons or property from imminent exposure to danger.

Industrial Land Use includes land uses zoned M-1 and M-2 or any use of a warehouse, factory, mine, wholesale trade establishment or other use of the same general type, whether publicly or privately owned.

Night Time Period means 10:00 p.m. of one day until 7:00 a.m. the following day, local time.

Noise Sensitive Land Use includes property on which residential housing, apartment buildings,

schools, churches, hospitals and nursing homes are located.

Off-Road Recreational Vehicle means any self-propelled land vehicle designed for or capable of traversing over natural terrain, including but not limited to racing vehicles, mini-bikes, motorcycles, go-karts and dune buggies, when operated off the public right-of-way for noncommercial purposes.

Plainly Audible means unambiguously communicated sounds which disturb the comfort, repose or health of 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.

Powered Model Vehicle means any self-propelled airborne, waterborne or land-borne plane, vessel or vehicle, which is not designated to carry persons, including but not limited to any model airplane, boat, car or rocket.

Recreational Park means a facility open to the public for the operation of off-road recreational vehicles.

Warning Devices means electronic devices used to protect persons or property from imminent danger, including but not limited to firearms, civil defense warning systems and safety alarms required by law.

§ 9.48.020 Responsibility and authority.

A. Responsibility. The responsibility for enforcement of this chapter shall reside with the City Administrator or his or her designee.

B. Authority. In order to implement this chapter and for the general purpose of sound abatement and control, the City Administrator or his or her designee shall have, in addition to any other authority vested with him or her, the following powers:

1. Planning. Implement a noise control strategy in consonance with the city's zoning ordinance and comprehensive plan to assure public and private enterprises do not adversely impact existing noise sensitive properties and properties designated for noise sensitive use and to prevent the encroachment of noise sensitive uses into high impact areas, such as industrial zones and immediately

adjacent to major highways or arterials, which are incompatible for the uses by virtue of existing projected noise impacts.

2. Inspection. Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or record at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. The inspection may include administration of any necessary tests.

3. Issue Summons. Issue summons, notices of violations or other legal orders to any person in alleged violation of any provision of this chapter.

4. Investigate Violations. In accordance with other provisions of this chapter, investigate and document violations and take necessary actions preparatory to enforcement.

5. Amendments and Modifications. Develop and recommend amendments and modifications to this chapter so as to maintain or enhance the effectiveness of the noise control program.

6. Education. Develop programs for public education regarding the requirement and remedies available through the noise control chapter.

§ 9.48.030 Prohibited acts.

A. No person shall knowingly continue, cause or permit to be made or continue to make any excessive or unnecessary sounds which are listed in division B. of this section or § 9.48.040.

B. The following acts are declared to create excessive and unnecessary sounds in violation of the chapter without regard to the maximum sound levels of § 9.48.040.

1. Radios; Phonographs; Tape Players; Television Sets; Stereo Systems. The playing, using or operating of any radio, tape player, television set or stereo system, including those installed in a vehicle, in such a manner so as to be plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day, local time, either:

a. Within a noise-sensitive unit which is not the source of the sound; or

b. At a distance of 100 feet or more from the source of the sound.

2. Revsing Engines. Operating any motor vehicle engine above idling speed on or off the public right-of-way, so as to create excessive or unnecessary sounds within a noise-sensitive area.

3. Compression Braking Devices. Using compression brakes, commonly referred to as Jake brakes, on any motor vehicle, except to avoid imminent danger to persons or property.

4. 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.

5. Idling Engines on Motor Vehicles or Compressors on Refrigerated Trailers. Idling more than 15 consecutive minutes between the hours of 10:00 p.m. and 7:00 a.m. the following day, local time, any motor vehicle with a Gross Vehicle Weight Rating (GVWR) of 8,000 pounds or greater which exceeds 50 dBA on the nearest occupied noise-sensitive property.

6. Vehicle Tires. Squealing tires by excessive speed or acceleration on or off public right-of-way, except when necessary to avoid imminent danger to persons or property.

7. Motorcycles; Go-Karts; Dune Buggies. Operating motorcycles, go-karts, dune buggies and other off-road recreational vehicles off the public right-of-way on property not specifically designated as a recreational park for off-road recreational use in such a manner as to exceed 75 dBA at 50 feet or more.

8. Powered Model Vehicles. Operating or permitting the operation of powered model vehicles, with the exception of gliders and aircraft propelled by electric motors, in areas not designated by the City Administrator or City Council for that use, in such a manner as not to exceed 75 dBA at 50 feet or more.

9. Explosives. The discharge of fireworks and other explosive devices unless pursuant to a locally permitted display or program.

10. Tampering. The removal or rendering inoperative for purposes other than maintenance, repair or replacement of any noise control device.

11. Animals. Owning, possessing or harboring any bird or other animal, which barks, bays, cries, howls or makes any other noise continuously for a period of 10 minutes or more, for reasons other than being provoked by a person trespassing or threatening to trespass.

12. Steam Whistles. Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work.

13. Compressed Air Devices. The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise thereby created is effectively muffled.

14. Warning Devices. The sound created by warning devices that are not reset within 5 minutes after being triggered.

§ 9.48.040 Maximum permissible sound levels.

A. No person shall cause or permit sound(s) to intrude onto the property of another person which exceeds the maximum permissible sound levels set forth below in this section.

B. The sound limitation established herein, as measured at or within the property boundary of the receiving land use, are as set forth in Table 1 appended to this chapter after any applicable adjustments provided for herein are applied. When the sound limitations are exceeded, it shall constitute excessive and unnecessary sound(s) and shall be violations in their own right as well as being prima facie evidence of noise.

C. This section is violated if any of the following occur:

1. Any continuous sound that exceeds the limits of Table 1 for a cumulative total of greater than 5 minutes in any 10-minute period;

2. Any sound that exceeds the limits of Table 1 by 5 dBA for a cumulative total of greater than 1 minute, but less than 5 minutes in any 10-minute period;

3. Any sound that exceeds the limits of Table 1 by 10 dBA at any point in time; or

4. Any sound that exceeds the ambient noise levels existing by 10 dBA created by a new industrial or commercial noise source on a previously unused industrial or commercial site.

§ 9.48.050 Exceptions and variances.

A. Exceptions. The following sounds are exempted from the provisions of this chapter:

1. Sounds caused by the performance of emergency work, vehicles and/or equipment;

2. Aircraft operations in compliance with applicable federal laws or regulations;

3. Railroad activities as defined in Subpart A, Part 201 of Title 40, CER of the Environmental Protection Agency's railroad emission standards, incorporated herein by reference;

4. Sounds produced by sound-amplifying equipment at activities sponsored by Canby School District between 7:00 a.m. and 12:00 p.m. midnight, local time;

5. Sounds created by refuse pickup operations during the period of 6:00 a.m. to 10:00 p.m., local time;

6. Sounds created by domestic power tools during the period 7:00 a.m. to 10:00 p.m., local time, provided sound-dissipating devices on tools so equipped are maintained in good repair;

7. Sounds made by warning devices operating continuously for 5 minutes or less;

8. Idling motor vehicles, including compressors on refrigerated trailers, within a Gross Vehicle Weight Rating (CVWR) of 8,000 pounds or greater between the hours of 7:00 a.m. to 10:00 p.m., local time, provided they are equipped with an exhaust system which is in good working order and in constant operation;

9. Sounds created at the Clackamas County Fairgrounds as a result of events sanctioned by the Clackamas County Fair Board;

10. Sounds caused by business operations in the commercial and industrial zones, provided the sounds result from lawful commercial business activity or manufacturing operations;

11. Construction activities during the period of 7:00 a.m. to 10:00 p.m., local time, provided equipment is maintained in good repair and equipped with sound dissipating devices in good working order; and

12. Sounds caused by city maintenance equipment between the hours of 7:00 a.m. and 10:00 p.m.

provisions of this chapter may apply, in writing, to the City Council for a variance from the provisions. Any person who is planning a noise source which is expected to violate any provision of this chapter may apply to the City Council for a variance from the provisions. Any person granted a variance under this chapter may apply for renewal of that variance upon its expiration. The renewal application shall be processed just as if it was an initial application.

1. Application. An application for a noise variance shall be made on forms provided by the City Recorder's Office. The application shall be accompanied by all the required information and fees. If more than 1 date is being requested for a noise variance at 1 location, they can be on 1 application. The written 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 City Council may reasonably require. A list of property owners within 200 feet of the location of the variance shall be provided by the applicant with the application.

2. Review Standards. In establishing exceptions or granting variances, the City Council shall consider:

- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The surrounding type of existing land use;
- c. The acoustical nature of the sound emitted; and
- d. Whether compliance with the provision would produce a benefit to the public.

3. Time Duration of Variance. Any variance shall be granted for a specific time interval, not to exceed 1 year.

4. Public Notification and Public Hearing.

a. Notice of the public hearing shall be published in a newspaper at least 10 days prior to the public hearing.

b. Notice of the public hearing shall be mailed to all property owners within 200 feet of the location for the variance at least 10 days prior to the public hearing.

c. The City Council shall hold a public hearing before the granting of a variance.

5. Variances.

a. Conditions for Granting. The City Council may grant specific variances from the particular requirements of any rule, regulation or order, to specific persons, class of persons or specific noise source upon those conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule, regulations or order is inappropriate because of conditions beyond the control of the persons requesting the variance; because of special circumstances which would render strict compliance unreasonable or impractical due to special physical conditions or cause; because strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or because no other alternative facility or method of handling is yet available. Granting of the variance shall not be materially detrimental to other property within the same vicinity and the variance requested shall be the minimum which will alleviate the hardship.

b. Revocation or Modification. A variance granted may be revoked or modified by the City Council after a public hearing held upon not less than 20 days' notice. The notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the City Council a written request for this notification.

6. Emergency and Safety Hazard. In the case of an emergency or safety hazard, the City Administrator or his or her designee may revoke a variance immediately by setting forth the nature of the emergency or hazard in a letter mailed or hand-delivered to the holder of the variance. A public hearing before the City Council shall be held at the next regularly scheduled City Council meeting following the revocation to reverse, affirm or modify the revocation action.

(Am. Ord. 1373, passed 5-1-2013)

§ 9.48.060 Chapter additional to other law.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; not unless specifically provided shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on the subject.

APPENDIX A

TABLE 1: ALLOWABLE SOUND LEVELS

<i>Allowable Sound Levels (in dBA) in any 10-minute Period</i>						
<i>Type of Source by Use</i>	<i>Type of Noise Received by Use</i>					
	<i>Noise Sensitive</i>		<i>Commercial*</i>		<i>Industrial*</i>	
	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>
Noise sensitive	55	45	70	65	75	70
Commercial	55	50	70	65	75	70
Industrial	55	50	70	65	75	70
* NOTE: Sounds caused by lawful business activity or manufacturing are exempt. See § 9.48.050.A.10.						