

ATTACHMENT 2

ORDINANCE NO. -----

AN ORDINANCE RELATING TO NUISANCES, INCLUDING CERTAIN LIGHTING,
PROJECTILES, AND NOISE, ADDING WLMC SECTIONS 5.426 AND 5.427,
AND AMENDING WLMC SECTIONS 5.487 AND 5.260

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers;

WHEREAS, the above referenced grant of power has been broadly interpreted as affording all legislative powers that home rule constitutional provisions can grant to Oregon Cities, City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop, 20 Or. App. 293, 531 P 2d 730, 734 (1975);

WHEREAS, there have been complaints that lights, trespassing objects, and noise associated with recreational activities on adjacent properties are affecting the livability of those in neighboring residences;

WHEREAS, the City Council finds it is necessary to adopt provisions to place limits on lighting on adjacent properties that intrudes into dwellings making it difficult to sleep;

WHEREAS, the City Council finds it is necessary to declare that objects thrown onto neighboring residential properties are a nuisance because those objects can result in damage to landscaping and property;

WHEREAS, the City Council finds it is necessary to amend the noise ordinance to clarify the standard used for determining if a noise is unnecessary and to amend the standard quiet hours to be comparable to those in neighboring jurisdictions; and

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1: New Sections. West Linn Municipal Code Sections 5.426 [Light Trespass] and 5.427 [Trespass by object] are added to read as follows:

5.426 Light trespass.

(1) All outdoor lights that trespass onto lots with a dwelling shall be turned off between the hours of 10:00 p.m. and 7:00 a.m. For purposes of this section "trespass"

means light that falls beyond the property line of the property it is intended to illuminate. Trespass shall be confirmed if a bulb is visible when evaluated from a point six feet above ground elevation at an adjacent property line. This restriction shall not apply to:

- (a) Lights mounted on a structure at its main entry, rear entry, or beside garage doors;
- (b) Lights used for safety or security purposes, as long as any motion-activated lighting does not remain on for more than 15 minutes;
- (c) Any lighting regulated or permitted pursuant to the Community Development Code;
- (d) Temporary holiday lighting.

(2) Light trespass is a Class A violation.

5.427 Trespass by object.

(1) Objects that trespass into neighboring residential properties and unreasonably interfere with the use of the adjacent property, or cause damage to any vegetation or structure on the adjacent property, are declared a nuisance. For purposes of this section "objects" include sports equipment such as balls, birdies, racquets, and bats, and all other inanimate objects and projectiles for which motion was initiated by a person.

(2) Trespass by object is a Class D violation. Before a citation is issued the complainant and the alleged violator shall engage in mediation. If the alleged violator refuses mediation, a citation may be issued immediately.

SECTION 2: West Linn Municipal Code Section 5.487 [Sound Levels and Noise] are amended to read as follows:

5.487 Sound Levels and Noise.

(1) Purpose. The City Council of the City of West Linn finds that low and moderate ambient noise levels are a significant City amenity. They find further that the level of noise that exists in a community directly affects the livability of the community and the health, comfort and welfare of its residents. It is, therefore, the express intent and purpose of this section to establish noise level standards that protect and improve the quality of life of West Linn's residents at work, rest and play and that can be objectively measured and enforced.

(2) General Prohibition. No person shall make, continue, or assist in making:

- (a) Any unreasonably loud, disturbing, or raucous noise;
- (b) Any noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, safety, or peace of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
- (c) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

(3) The standard for judging loud, disturbing and unnecessary noises shall be that of an average, reasonable person with ordinary sensibilities after taking

into consideration:

- (a) The proximity of the sound to sleeping facilities, whether residential or commercial;
- (b) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- (c) The time of day or night the sound occurs;
- (d) The duration of the sound; and
- (e) Whether the sound is recurrent, intermittent, or constant.

~~(2)(4)~~ Prohibited Noises Making Acts. It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any loud, disturbing or unnecessary noise in the City at any time of day. The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list. It shall ~~also~~ be unlawful for any person to commit, create, assist in creating, permit, continue, or permit the continuance of any of the following:

- (a) Radios, televisions, stereos, musical instruments and similar devices. The use or operation of any device designed for sound production or reproduction, including, but not limited to, any radio, musical instrument, television set, stereophonic equipment, or similar device that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential areas, including multi-family or single-family dwellings, ~~loud speaker, sound production or reproduction device, bell, drum, or chime such as to be audible at the property edge between the hours of 7:00 p.m. and 7:00 a.m. that is not the source of the sound.~~
- (b) Animals or birds. Notwithstanding Section 5.260 of this Code, the owning, possessing or keeping of any animal that by frequent or continuing noise for a period of 15 minutes in any hour emitted by an animal or bird for which a person is responsible disturbs the comfort and repose of any person in the vicinity, except for animals provoked by a person trespassing, threatening to trespass, or unambiguously taunting the animal. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird.
- (c) Mechanical devices. The use of any mechanical device, fixed or mobile, operated by compressed air, steam, gasoline, electricity or otherwise, including the use of domestic power tools for lawn care, landscaping, and gardening, as well as hobby, craft, and household maintenance, at any time other than during between the following hours of 10:00 p.m. and 7:00 a.m., except by special permit granted by the City Manager:
 - ~~(i) Between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday;~~
 - ~~(ii) Between the hours of 8:00 a.m. and 5:00 p.m. on Saturday and Sunday and the following holidays:~~
 - ~~New Year's Day (January 1st);~~
 - ~~Labor Day (the first Monday in September);~~
 - ~~Thanksgiving Day (the fourth Thursday in November);~~
 - ~~Christmas Day (December 25th);~~
 - ~~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.~~

~~(iii) Exception. Domestic power tools for outside use, such as lawnmowers, may be used from 7:00 a.m. until sunset on weekdays only when performed by paid professionals and from 7:00 a.m. until sunset on weekdays and 8:00 a.m. until sunset on weekends and the holidays listed in subsection (2)(c)(ii) of this section by homeowners.~~

~~(d) Construction or repair of building, excavation of streets and highways.~~

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

~~(i) Between the hours of 7:00 p.m.a.m. and 7:00 a.m.p.m. Monday through Friday;~~

~~(ii) Between the hours of 95:00 p.m.a.m. and 59:00 a.m.p.m. on Saturday, and Sunday and federal the following holidays.‡~~

~~In non-emergency situations, the City Manager may issue a construction noise permit, upon application, if the City Manager determines that the public health and safety will not be impaired by the loud and raucous noise, and if the City Administrator further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than seven days. The permit may be renewed once for a period of seven days or less.~~

~~New Year's Day (January 1st);~~

~~Labor Day (the first Monday in September);~~

~~Thanksgiving Day (the fourth Thursday in November);~~

~~Christmas Day (December 25th);~~

~~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.~~

~~(e) The gathering of any number of persons upon premises, whether public or private, and the creation of noise from such person or persons so as to be audible within a dwelling that is not the source of the sound at any time other than during the following hours, except by special permit granted by the City Manager:~~

~~(i) Between the hours of 7:00 a.m. and 7:00 p.m. all days, Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, singing, or creation of noise in residential areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities, unless a special permit is granted by the City Manager. 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 not based on content.~~

~~However, unamplified sounds, including those of unamplified musical instruments, produced at sporting events sponsored by any school located within the boundaries of the City, are not subject to this section. Sirens, air-~~

~~horns, whistles (excepting those used by officials), cannons, and other mechanical noise making devices are not considered to be unamplified and are, therefore, subject to the provisions of this section.~~

(f) Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices.

The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound is prohibited without a permit from the City Manager. The City Manager may grant a special permit to responsible persons or organizations for the broadcast or amplification of sound as a part of a national, state, or city event, public festival, or special events of a noncommercial nature. This permit shall not be required for any public performance, gathering, or parade for which a permit authorizing the event has been obtained from the City.

~~(f)(g)~~ Emergency signaling devices. Owning, installing or causing to be installed any fire or anti-theft alarm system that produces an audible alarm on any building or any motor vehicle, unless such alarm terminates shall automatically cease sounding after 15 minutes of activation when there is no emergency. Existing systems shall be altered to conform to this section if the City or any of its officers receives a written complaint from a person disturbed by a nonconforming alarm. Nonconforming alarm owners shall have 60 calendar days to bring such alarm into compliance after receipt of written notification of its noncompliance.

~~(g)(h)~~ The use of any compression or dynamic braking device, commonly referred to as "jake brakes," for reasons other than to avoid imminent danger to persons or property, with the exception of vehicles traveling in transit through the City on I-205.

~~(h)~~ Allowing any motor vehicle with a gross vehicle weight rating (GVWR) of 8,000 pounds or greater to idle for more than 15 consecutive minutes between the hours of 7:00 p.m. and 7:00 a.m. in any one-hour period.

~~(i)~~ Removal or collection of leaf material by commercial or paid operators between 7:00 p.m. and 7:00 a.m. weekdays and 7:00 p.m. and 8:00 a.m. weekends and federal holidays. Includes collection and removal by sweeping, blowing or vacuum equipment.

~~(j)(i)~~ Vehicle horns, signaling devices, and similar devices. The sounding of any horn, siren, gong, or signal device on any automobile, motorcycle, or other vehicles on any street, except as a necessary warning of danger to property or person, or as permitted to be used by authorized emergency vehicles.

~~(k)(i)~~ The removal or rendering inoperative by any person other than for the purposes of maintenance, repair, or replacement, of any noise control device or element of, especially but not limited to the following:

~~(i)~~ Any product manufactured to meet specified noise emission limits under federal law pursuant to the Noise Control Act of 1972 (PL 92-574).

~~(ii)~~ Motor vehicles of model year 1975 and subsequent that were sold new in the state of Oregon. These vehicles include all trucks, buses, automobiles, motorcycles and snowmobiles excepting those racing vehicles used only in sanctioned racing events pursuant to OAR, Chapter 340, Section 35-025, Noise Control Regulations for the Sale of New Motor Vehicles.

~~(h)(i)~~ The following forms of unnecessary vehicle noise:

- (i) Causing the squealing of tires by excessive acceleration or speed except to avoid imminent danger to person or property.
- (ii) Revving of an engine excessively or in a way unnecessary to the operation of the vehicle.

~~(iii) The playing of a radio or other vehicle sound system must meet the requirements of ORS [815.232](#) or shall be deemed in violation of this section.~~

~~{ORS [815.232](#) Unreasonable sound amplification from a vehicle; penalty. (1) A person commits the offense of causing unreasonable sound amplification from a vehicle if the person operates, or permits the operation of, any sound amplification system which is plainly audible outside of a vehicle from 50 or more feet when the vehicle is on a public highway or on premises open to the public, unless that system is being operated to request assistance or warn of a hazardous situation.~~

~~(2) Subsection (1) of this section does not apply to:~~

- ~~(a) Vehicles being operated outside of an urban growth boundary;~~
- ~~(b) Emergency vehicles as defined in ORS [801.260](#);~~
- ~~(c) Vehicles operated by utilities defined under ORS [757.005](#), [758.505](#) or [759.005](#), or telecommunications carriers as defined in ORS [133.721](#);~~
- ~~(d) Sound systems of vehicles used for advertising, or in parades, political or other special events, except that the use of sound systems on those vehicles may be prohibited by a local authority by ordinance or resolution;~~
- ~~(e) Audio alarm systems installed in vehicles; or~~
- ~~(f) Federal Communications Commission licensed two-way radio communications systems.~~

~~(3) As used in subsection (1) of this section, "plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal or comprehensible musical rhythms or vocal sounds.~~

~~(4) The offense described in this section, causing unreasonable sound amplification from a vehicle, is a Class D traffic violation. (1991 c.601 Sec.3; 1995 c.383 Sec.27; 1999 c.1093 Sec.19)}~~

~~(m)(k) Loading or unloading merchandise, materials, and equipment. Sounds Unreasonably loud and excessive noise produced by the loading, or unloading of any vehicle at a place of business or residence. ~~, opening or otherwise handling of boxes, crates, containers, garbage cans or other similar objects so as to be audible at the property edge that is not the source of the sound at any time other than during the following hours, except by special permit granted by the City Manager:~~~~

- ~~(i) Between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday;~~
- ~~(ii) Between the hours of 8:00 a.m. and 5:00 p.m. on Saturday and Sunday and the following holidays:~~

~~New Year's Day (January 1st);~~

~~Labor Day (the first Monday in September);~~

~~Thanksgiving Day (the fourth Thursday in November);~~

~~Christmas Day (December 25th);~~

~~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.~~

~~(3)(5) Exemptions for Emergency Services. Sounds caused by the following are exempt from this section:~~

~~(a) Sounds used for the purpose of alerting persons to the existence of an emergency or produced by the performance of emergency work, vehicles or equipment, including police, fire and ambulance, are exempt from the provisions of this section.~~

~~(b) Sounds of regular vehicular traffic upon premises open to the public.~~

~~(c) Operations of the Oregon Department of Transportation (ODOT) in constructing or maintaining any state highway, or operations required by ODOT to take place outside of the hours allowed in WLMC 5.487(4)(d).~~

~~(d) Operations required to take place outside of the hours allowed in WLMC 5.487(4)(d) by any federal or state agency for the construction, excavation or maintenance of any structure or roadway, whether public or private.~~

~~(e) Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.~~

~~(f) Noise from temporary construction activities that take place between hours allowed in WLMC 5.487(4)(d), or those construction activities that are allowed due to a construction noise permit from the City Manager.~~

~~(g) Outdoor school and playground activities. Reasonable activities conducted on public playgrounds and 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.~~

~~(h) Other outdoor events. Athletic events, outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that any required permits have been obtained from the appropriate permitting authority.~~

~~(4)(6) Penalties. A violation of this section is a Class A Violation ~~infraction~~ and a public nuisance.~~

~~(5) Product Selection. When two or more products, including supplies, materials, and equipment are being considered for purchase by a City bureau, and excessive sound levels are a factor, the product which has the lowest sound level shall be selected for purchase; provided, that:~~

~~(a) Fitness and quality are judged to be equal; and~~

~~(b) The procurement cost of such product not exceed the total cost required to purchase a competing product and reduce the sound emission level of that competing product to the lowest level of the product being considered; and~~

~~(c) The total cost of the purchase being considered not exceed 115 percent of the cost prior to silencing of the most advantageous product of the types being considered; and~~

~~(d) The quieter product will produce at least 15 dBA less sound level than the most cost advantageous product of the types being considered.~~

~~(6)~~(7) Special Permits.

(a) The City Manager may grant a special permit to any person or organization if findings are made that immediate compliance with any requirement of this section cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source or because of the unavailability of feasible technology or control methods.

(b) Any such special permit shall be granted only for the minimum time period found to be necessary under the facts and circumstances. ~~Special permits may normally be issued for a period not to exceed six months and may be renewed once. Except as discussed in subsection (6)(7)(c) of this section, permanent special permits may only be granted for uses that existed prior to the adoption of the ordinance codified in this section and then only if compliance would prove so costly as to seriously threaten the economic viability of the person requesting the special permit.~~

~~(c) Special permits for the loading, unloading, opening or otherwise handling of boxes, crates, containers, garbage cans or other similar objects by a commercial business or civic use may be granted on a permanent basis, subject to ongoing conditions of approval to mitigate noise impacts to surrounding properties.~~

~~(d) The City Manager shall adopt administrative procedures for the consideration of special permits. At least 10 days prior to issuing a decision, the City Manager shall provide notice to all property owners within 100 feet of the property where the special permit is being requested. For special permit applications within public right-of-way, all property owners within 100 feet of the special use permit area shall be provided notice.~~

~~(e)~~ (e) The City Manager may attach conditions of approval to a special permit to mitigate noise impacts to surrounding properties.

~~(f)~~ (f) The decision of the City Manager may be appealed to the City Council within 14 days of the issuance of the decision. The City Council shall conduct a public hearing on the special permit within 60 days of the filing of the appeal. The City Manager shall provide notice of the public hearing to all property owners noticed prior to the original decision, and all other parties who commented on the application. The City Council may uphold, modify, or reverse the City Manager's decision. The City Council's decision shall be final.

~~(7) Enforcement. The City Council of the City of West Linn shall have the prerogative to appoint or authorize any City personnel deemed appropriate to enforce the provisions of this section including, but not limited to, the City police and the Planning Code enforcement officer. Other governmental entities, such as the Clackamas County Sheriff's Department, may be requested to enforce this section when appropriate. 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 an acceptable noise level. This shall not apply to organized athletic events. When complaints are received at the above location, those responding to enforce this section shall seek out the responsible person to contact.~~

~~(8) Additional to Other Law. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; nor, 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 such subject.~~

~~(9) Severability. If any provision or subsection of this section shall be held to be invalid by a court of competent jurisdiction, then such provision or subsection shall be considered separately and apart from the remaining provisions or subsections of this section which shall remain in full force and effect.~~

SECTION 3: West Linn Municipal Code Section 5.260 [Violations] is amended to read as follows:

5.260 Violations.

It shall be a violation for a keeper of any dog to:

- (1) Permit any such dog to run at large, as defined in Section [5.250](#), upon any public street, highway or public place, or upon private property owned by a person or persons other than the keeper of the dog within the corporate limits of the City.
- (2) Permit a dog to chase a vehicle or person.
- (3) Permit a dog to scatter garbage.
- (4) Permit a dog to damage or destroy property of persons other than the keeper of the dog.
- (5) Permit any dog to make noise in violation of WLMC 5.487(2)(b). ~~cause unreasonable annoyance, alarm or noise disturbance at any time of the day or night by repeated barking, whining, howling or other like sounds which may be heard beyond the boundary of the keeper's property.~~
- (6) Keep a dangerous dog. It shall be an affirmative defense that a dog bites, attacks, or menaces a trespasser on the property of its keeper or anyone wrongfully assaulting that dog or its keeper.
- (7) To leave a dog unattended for more than 24 consecutive hours without adequate food, water, shelter, care or supervision. Shelter shall include a structure or other means of protection from the weather and injury.
- (8) Physically mistreat any dog, either by deliberate abuse or neglect to furnish adequate care, including medical attention.

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 6. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections ~~[4-7]~~) need not be codified

and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

SECTION 7. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the ____ day of _____, 2012, and duly PASSED and ADOPTED this ____ day of _____, 2012.

JOHN KOVASH, MAYOR

ATTEST:

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY