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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 8.08, Noise Control,
of the Deschutes County Code. *
*
* ORDINANCE NO. 2024-005

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from the Road Department have identified a need to amend DCC 8.08 to address noise issues associated with construction activities and the issuance of permits; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed Board meeting on June 12, 2024, and determined that DCC 8.08 should be amended; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 8.08 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.


Section 2. EMERGENCY. This Ordinance being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on June 12, 2024.

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Dated this 12th of June, 2024

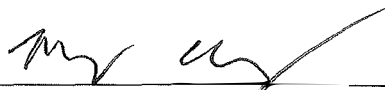
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


PATTI ADAIR, Chair


ANTHONY DeBONE, Vice Chair

ATTEST:


Recording Secretary


PHIL CHANG, Commissioner

Date of 1st Reading: 12th day of June, 2024.

Date of 2nd Reading: 12th day of June, 2024.

Commissioner

Yes

No

Record of Adoption Vote

Abstained

Excused

Patti Adair
Phil Chang
Anthony DeBone

X
X
X

Effective date: 12th day of June, 2024.

EXHIBIT A

(To Ordinance No. 2024-005)

CHAPTER 8.08 NOISE CONTROL

8.08.010 Title

DCC 8.08 shall be known as the County Noise Control Ordinance.

HISTORY

Adopted by Ord. 203.11 §2 on 1/2/1980

8.08.020 Authority

DCC 8.08 is adopted pursuant to the provisions of ORS 467.100, 203.010, and 203.035.

HISTORY

Adopted by Ord. 203.11 §1 on 1/2/1980

Amended by Ord. 2020-005 §1 on 1/1/2021

8.08.030 Purpose

The purpose of DCC 8.08 is to promote the public peace, health, safety and general welfare, which the Board finds to be adversely affected by unreasonably loud or raucous noises.

HISTORY

Adopted by Ord. 203.11 §3 on 1/2/1980

8.08.040 Definitions

For the purposes of DCC 8.08, unless otherwise apparent from the context, certain words and phrases used in DCC 8.08 are defined as set forth in DCC 8.08.040.

"Board" means the Board of County Commissioners.

"Direct transportation" means travel between different locations separated by a distance not substantially different than the length of a trip with a destination where the rider leaves the vehicle before resuming travel. "Direct transportation" includes parking places in streets and parking lots, but excludes speed contests, motocross contests, rallies and practice therefore, repair and testing of motors, accelerating the motors of stopped motor vehicles, and vehicular traffic wherein the same vehicle may be heard for more than five minutes from the same location.

"Department" means the Community Development Department.

"Director" means the Deschutes County Community Development Director, or his or her duly authorized deputies and representatives.

"Motor vehicle" means every self-propelled vehicle and vehicle designed for self-propulsion, except road rollers, farm tractors, traction engines; provided however, that police vehicles, ambulances, fire engines and other emergency vehicles responding to emergency calls are not subject to DCC 8.08.

"Off-road motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a trailer. This includes motorcycles suitable for use off any road or on dirt trails, regardless of whether it may also be used on public streets or highways under state law. "Off-road motorcycle" includes motorcycles sold or commonly described as dirt bikes, motocross bikes, trail bikes, enduro bikes and trail bikes which in operation make crackling or explosive noises that would disturb the sleep, comfort or repose of persons 30 or more feet away.

"Public Agency" means a state agency or department, special district, joint powers authority, city, county, or other political subdivision of the state.

"Unreasonably loud or raucous noise" means:

- A. Motor vehicle noise which is louder or heard for a longer period than that produced by use in direct transportation by motor vehicles with mufflers supplied by the manufacturer with the vehicle, which disturbs, injures or endangers the comfort, repose, health, peace or safety of persons 30 or more feet away, if such noise is not emitted in order to make the motor vehicle move up to the maximum speed limit on public streets, roads, and/or highways for the purpose of direct transportation; or
- B. Noise, which violates the standards of the Environmental Quality Commission, adopted pursuant to ORS 467.030 which are not exempt under ORS 467.035 or permitted by a variance issued under ORS 467.060;
- C. The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle except as a reasonable signal required by the exigencies of vehicular or pedestrian traffic; the creation by means of any such signaling device of any sound which disturbs the sleep, peace, quiet, comfort or repose of other persons; the sounding of any such device for an unnecessary or unreasonable period of time;
- D. The playing, using or operating of any radio, musical instrument, phonograph, television set, tape recorder or other machine or device for the producing or reproducing of sound in such a manner as to disturb the sleep, peace, quiet, comfort or repose of other persons, or at any time with louder volume than is necessary for convenient hearing by the person or persons who are in the room, vehicle or chamber in which the machine or device is operated and others who are voluntary listeners thereto. The operation of any such machine or device in such a manner so as to be plainly audible to a peace officer at a distance of 50 feet from the building, room, structure or vehicle in which it is located shall be prima facie proof of a violation of DCC 8.08.040;
- E. Using, operating or permitting to be used or operated any mechanical or electrical loudspeaker or sound amplifier, either stationary or mobile, for producing or reproducing sound which is cast upon the public streets or other public property. DCC 8.08.040 does not prohibit the reasonable use of mechanical loudspeakers or sound amplifiers in the course of noncommercial public addresses or emergency announcements required by public safety; provided however, that repetitive mechanically or electrically amplified political advertising shall not be allowed in zoned residential neighborhoods between 10:00 p.m. and 7:00 a.m. if it disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;
- F. Yelling, shouting, hooting, whistling or singing on the public streets, between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to disturb the sleep, peace, comfort or repose of persons more than 30 feet away. DCC 8.08.040 shall not apply to applause and cheering at public meetings, lectures, sports events and shows held at schools, stadiums, auditoriums, churches, meeting halls, public parks and public playgrounds;
- G. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, as a warning of fire or danger, or upon request of proper authorities;
- H. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises there from;
- I. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded, or in such a manner as to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;
- J. The loading or unloading of any vehicle or the opening, closing or destruction of bales, boxes, crates and containers, so as to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;

- K. The construction, including excavation, demolition, alteration or repair of any building, ~~street~~road, sidewalk, driveway, sewer or utility line between the hours of 10:00 p.m. and 7:00 a.m., except as provided in DCC 8.08.055 and DCC 8.08.080;
- L. The creation of any sound on any street adjacent to any school, institution of learning, church or court, while the same is in use, or adjacent to any hospital, nursing home or other institution for the care of the sick or infirm, which would tend to unreasonably interfere with the operation of the same or disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away. "Adjacent" means within 500 feet of any of such institutional building;
- M. The operation between the hours of 10:00 p.m. and 7:00 a.m. of any ~~pile driver, earthmoving equipment, pneumatic hammer, derrick, steam or electric hoist or other~~equipment, appliance, or machinery, the use of which creates a sound which disturbs the sleep, peace, quiet, comfort or repose of persons more than 30 feet away;
- N. The use of any off-road motorcycle or snowmobile where it is heard by the occupant from the premises of an inhabited residence not owned by the user. If the user has a permit issued under DCC 8.08.080(B), such person may operate the motorcycle or snowmobile within the terms of the permit;
- O. The operation of any blower, power fan, internal combustion engine, electric motor or compressor, or the compression of air, unless the sound from each machine is sufficiently muffled so as not to disturb the sleep, peace, quiet, comfort or repose of persons more than 30 feet away.

HISTORY

Adopted by Ord. 203.11 §4 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

Amended by Ord. 2015-012 §2 on 2/7/2016

8.08.050 Exception For Certain Farming And Forestry Practices

Generally accepted, reasonable and prudent farming and forest practices as described in ORS 30.930 to 30.937 and DCC 9.12 do not constitute nuisances and are not subject to the provisions of ~~under~~ DCC 8.08, excepting therefrom for sustained noise from operation of mechanical equipment associated with marijuana production and processing used for heating, ventilation, air condition, odor control, fans and similar functions associated with marijuana production and processing.

HISTORY

Adopted by Ord. 95-024 §12 on 4/26/1995

Amended by Ord. 2016-013 §1 on 7/1/2016

8.08.055 Exception For Certain Public Road Maintenance and Construction Noise

Noise resulting from routine maintenance and cleaning of public roads performed or administered by a public agency on a public road between the hours of 10:00 p.m. and 7:00 a.m. do not constitute a nuisance and are not subject to the provisions of DCC 8.08.

8.08.060 Construction8.08.060 Interpretation

For the purpose of DCC 8.08, words used in the present tense include the future, the singular includes the plural, the word "shall" is mandatory and directory, and the term "this chapter" shall be deemed to include all amendments hereafter made hereto.

HISTORY

Adopted by Ord. 203.11 §10 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

8.08.070 Acts Prohibited

Except as permitted in DCC 8.08, no person shall make ~~or~~ cause to make any unreasonable loud or raucous noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others and constitutes a nuisance within the legal boundaries of the County.

HISTORY

Adopted by Ord. 203.11 §5 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

8.08.080 Permits; Issuance

- A. In cases of an emergency which creates or may result in an unsafe, dangerous or hazardous condition, a person may request permission from the Sheriff may give permission to allow activities in DCC 8.08.040(L) to take place at any hour for a period of time not to exceed three (3) days. A person may request a single three (3) day renewal of permission from the Sheriff. Emergency permission from the Sheriff may not exceed three days, but may be renewed for an additional three-day period. If the emergency extends past six (6) days, further extension of permission must be granted by obtained from the Board.
- B. ~~At a public meeting noticed in accordance with ORS 192.640, an agency contracting for scheduled construction or maintenance~~ Activities between the hours of 10:00 p.m. and 7:00 a.m. that are not exempted under DCC 8.08.050 and DCC 8.08.055 shall request require a noise permit from the Board ~~Community Development Department Director.~~
1. Complete applications for a noise permit shall be submitted at least 90 days in advance of the date they will be needed.
 2. 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.
 3. Within five (5) days of submitting a noise permit application, the applicant shall provide notice in a form approved by the County to property owners and residents within 1,000 feet of the location where the noise will be generated. Notice may be provided by email, hand delivery, door-hangers, regular mail or other means reasonably calculated to provide individual notice.
 4. The applicant shall provide a statement to the County within five (5) days of submitting a noise permit application that notices have been provided as required by this section.
 5. Any person may provide comments to the County regarding the noise permit application within 15 days of the applicant's submission of the noise permit application.
 6. The Director may waive any of the deadlines or timelines established by this section and may issue a noise permit notwithstanding the timelines based on his or her assessment of the factors outlined in this section. The director shall consider written comments in making the decision whether to issue the noise permit, except in the rare instance where waiving a timeline makes it difficult to do so.
- ~~B.7.~~ Upon finding that the peace, quiet, comfort or repose of other persons will not be unreasonably disturbed, or can be mitigated to an acceptable degree, or upon finding a public necessity exists, the Board Director may issue a noise permit allowing activities in DCC 8.08.040(L) to take place between such hours and for such periods as they the Director deems proper. In granting such a permit, the Board Director shall consider the following:
- 1-i. the location of the road repair, construction, building or other site,
 - 2-ii. the potential nature of the sound from the activity,
 - 3-iii. the potential nature of the sound from vehicular traffic to and from the site and the relative loss or inconvenience that would result to the persons affected.

~~8. Permits~~ Noise permits issued by the ~~Board~~ Director shall be in writing. Noise permits may also include such restrictions or conditions that are necessary to safeguard the public peace, including but not limited to maximum noise levels and time of day restrictions.

~~C.9.~~ Notice of the Director's decision on a noise permit application shall be mailed to the applicant and all parties that commented in writing on the noise permit application.

~~10. Granting of such~~ Noise permits issued by the Director may be appealed to the Board at any time by any person who resides or works within hearing of the noise generated as a result of the granting of the permit, 1,000 feet of the location where the noise will be generated within 12 days after permit issuance. If timely appealed, a noise permit shall not take effect until the Board decision on the appeal is issued. Appeals of permits may result in the temporary or permanent revocation of the permit, pending a review of the appeal at the next regularly scheduled public meeting of the Board.

~~D.11.~~ Failure to obtain a noise permit when one is required under DCC 8.08.080, or failure to comply with an issued noise permit, is a violation of DCC 8.08 and constitutes a nuisance.

~~E.C.~~ DCC 8.08.080 shall not apply to emergency work performed on public improvements and public utilities. Such activities may be conducted without restriction on the hours of operation.

HISTORY

Adopted by Ord. 203.11 §11 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

Amended by Ord. 2005-004 §1 on 6/14/2005

8.08.090 Variances

The Board may grant personal non-assignable variances of expressly limited duration and covering a defined geographical area from the operation of DCC 8.08 after public hearing and satisfaction of the variance burden of proof under the current County zoning ordinance. In addition to the standards provided therein, the Board shall apply the relevant provisions of ORS 467.060.

HISTORY

Adopted by Ord. 203.11 §12 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

Amended by Ord. 2005-004 §1 on 6/14/2005

8.08.100 Amendments

DCC 8.08 may be amended, supplemented or changed by Order of the Board. A proposal for change or amendment may be initiated by the District Attorney, County Counsel, Sheriff or by petition of 10 or more persons to the Board.

HISTORY

Adopted by Ord. 203.11 §7 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

8.08.110 Publication And Effect Of Rules

- A. To the extent that DCC 8.08 conflicts with rules of procedure established by any earlier Deschutes County ordinance, DCC 8.08 shall apply control.
- B. A copy of DCC 8.08 shall be made available for the cost of reproduction to any person requesting it.
- C. DCC 8.08 supersedes any previous noise control ordinance of Deschutes County.

HISTORY

Adopted by Ord. 203.11 §9 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995

8.08.120 Violation; Enforcement

- A. Violation of any provision of DCC 8.08 is a Class A violation.
- B. It shall be the responsibility of the Deschutes County Sheriff to enforce DCC 8.08.

HISTORY

Adopted by Ord. 203.11 §6 on 1/2/1980

Amended by Ord. 83-018 §1 on 2/23/1983

Amended by Ord. 95-032 §1 on 5/17/1995

Amended by Ord. 2003-021 §15 on 4/9/2003

8.08.130 Abatement And Removal

In addition to and not in substitution for any other remedies provided by law for enforcement of DCC 8.08, the Board may institute proceedings for injunction, mandamus, abatement or other appropriate proceedings to prevent temporarily, or permanently enjoin, abate or remove any activity or use of real or personal property which it has probable cause to believe does or will violate DCC 8.08.

HISTORY

Adopted by Ord. 203.11 §13 on 1/2/1980

Amended by Ord. 95-032 §1 on 5/17/1995



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: June 12, 2024

SUBJECT: Public Hearing to consider Ordinance No. 2024-005 which would amend Deschutes County Code section 8.08, Noise Control

RECOMMENDED ACTIONS:

Following the public hearing, close the record and move approval of first and second reading of Ordinance No. 2024-005 by title only, then move emergency adoption of Ordinance No. 2024-005.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Code section 8.08 addresses the issue of noise control. Under the current provisions, the Deschutes County Road Department is ostensibly prohibited from engaging in routine road maintenance activities in the unincorporated areas of the County between the hours of 10:00 pm and 7:00 am except by permit. Routine road maintenance activities that must be performed during nighttime or early morning hours include:

- Winter operations, including snow plowing and ice prevention;
- Pavement preservation, sign and guardrail replacement, and other maintenance work;
- On high traffic volume road segments where traffic control operations would cause significant congestion and hazardous work zone conditions;
- On road segments that approach state highways where traffic control operations would cause traffic queuing onto the highway; and
- On days where heat and/or air quality indexes are forecast to be above OSHA-mandated exposure limits during late morning and afternoon hours.

The permitting process provided in DCC 8.08.080 requires a noticed public meeting before the Board of County Commissioners, requiring several weeks of County staff preparation.

The proposed text amendments to DCC 8.08 would exempt routine public road maintenance activities conducted between the hours of 10:00 pm and 7:00 am from noise variance permitting requirements and would provide for an administrative process through the Deschutes County Community Development Department for the issuance of noise variance permits for public road improvement activities conducted between the hours of 10:00 pm and 7:00 am.

BUDGET IMPACTS:

None

ATTENDANCE:

Road Department