

**CITY OF ROCKAWAY BEACH, OREGON
ORDINANCE NO. 19-436**

**AN ORDINANCE REGULATING THE IMPACTS OF NOISE ON RESIDENTS OF ROCKAWAY BEACH,
REPEALING CODE SECTION 131.023 AND CREATING A NEW CODE CHAPTER 95**

RECITALS

Recital 1. The City Council is concerned for the health and welfare of the residents of Rockaway Beach and find that loud noise can impact resident's enjoyment of the City and their property.

Recital 2. The City Council is also concerned with the protection of citizens' rights to speech and expression and wish to not infringe on such rights in the City's regulation of noise.

Recital 3. In order to balance the interests of residents to be free from loud and disturbing noises and the rights of citizens to expression, the City Council finds that this ordinance strikes the correct balance and directs the implementation of this ordinance to also take into account the proper balance between these interests.

Now, therefore, the City of Rockaway Beach ordains as follows:

Section 1. The City of Rockaway Beach Code of Ordinances Section 131.023 is hereby repealed.

Section 2. The City of Rockaway Beach Code of Ordinances is hereby amended to add a new Chapter 95 as follows:

SECTION 95.01. PURPOSE.

This Chapter is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Rockaway Beach through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

SECTION 95.02. FINDINGS.

The City Council of Rockaway Beach finds:

(A) Loud and raucous noise degrades the environment of the City to a degree that:

- (1) Is harmful to the health, welfare and safety of its inhabitants and visitors;
- (2) Interferes with the comfortable enjoyment of life and property;
- (3) Interferes with the wellbeing, tranquility and privacy of the home; or
- (4) Causes and aggravates health problems.

(B) Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work and communication.

(C) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace and freedom of inhabitants of, and visitors to, the City.

(D) Certain short-term easing of noise reductions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.

(E) The obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article I, section 8, of the Oregon Constitution and the First Amendment to the United States Constitution. This Chapter enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

SECTION 95.03. SCOPE.

This Chapter applies to the control of all sound originating within the jurisdictional limits of the City.

SECTION 95.05. DEFINITIONS.

(A) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

(B) "Emergency work" means any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

(C) "City" means City of Rockaway Beach.

(D) "City Manager" means the City Manager of the City or the City Manager's designee.

(E) "Noise Enforcement Officer" means an enforcement officer as defined in ORS 153.005, and a person appointed by the City Manager to enforce the provisions of this Chapter.

(F) "Noise Sensitive Area" includes, but is not limited to, real property normally used for sleeping or normally used as a school, church, hospital, or public library.

(G) "Person" means any individual, firm, association, partnership, joint venture, or corporation.

(H) "Plainly audible" means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

(I) "Public right of way" means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

(J) "Public space" means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

(K) "Residential area" means any real property that contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

(L) "Utility Service" means the normal operation of utilities within the City, whether provided by the City or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications and garbage hauling.

SECTION 95.10. GENERAL PROHIBITION.

(A) No person shall make or continue to make:

- (1) Any unreasonably loud or raucous noise;
- (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; or
- (3) Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity of the location from which that noise emanates, 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.

(B) Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:

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

SECTION 95.15. NOISES PROHIBITED.

The following acts are declared to be per se violations of this Chapter. This enumeration does not constitute an exclusive list:

(A) Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

(B) Vehicle Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle or other vehicle on any right of way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

(C) Non-Emergency Signaling Devices: Sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period.

(D) Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle or similar emergency signaling device, except in an emergency or except as provided in the following:

- (1) The testing of any emergency signaling device shall occur between 7 a.m. and 7 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
- (2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Chapter.

(E) Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device, including but not limited to computers, mp3 players, and cellular phones, that produces or reproduces sound in a manner 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 which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument or similar device that produces or reproduces sound in a manner 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 or noise sensitive areas, including multi-family or single-family dwellings.

(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 between the hours of 10 p.m. and 7 a.m. on weekdays, and 10 p.m. and 10 a.m. on weekends and recognized city holidays in the following areas:

- (1) Within or adjacent to residential or noise sensitive areas; or
- (2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This provision shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City or for which the City is hosting.

(G) Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling or singing in residential or noise sensitive areas or in public places, between the hours of 10 p.m. and 7 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. 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.

(H) Animals: Unreasonably loud and raucous noise emitted by an animal for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal.

(I) Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous and excessive noise relating to the loading or unloading of any vehicle at a place of business or residence.

(J) Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration, or repair of any building or the excavation of streets and highways other than between the hours of 7 a.m. and 7 p.m. on weekdays. In cases of emergency, construction or repair

noises are exempt from this provision. In non-emergency situations, the City Manager may issue a permit, upon application, if the City Manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7 p.m. and 7 a.m. will not be impaired, and if the City Manager 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 thirty days. The permit may be renewed once for a period of thirty days or less.

(K) Noise Sensitive Areas: The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions.

(L) Blowers, and Similar Devices: In residential or noise sensitive areas, between the hours of 7 p.m. and 7 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.

SECTION 95.20. EXEMPTIONS.

Sounds caused by the following are exempt from the prohibitions set out in Section 95.15 and are in addition to the exemptions specifically set forth in Section 95.15:

(A) Motor vehicles on traffic ways of the City, provided that the prohibitions of Section 95.15(B) and (D)(2) continue to apply.

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

(C) Sirens, whistles or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 95.15(D) continues to apply.

(D) Sounds caused by the ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property.

(E) The emission of sound to alert persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(F) Repairs or excavations of bridges, streets or highways by or on behalf of the City, the State or the federal government, between the hours of 7 p.m. and 7 a.m., when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 7 p.m.

(G) Sounds caused by demolition activities when performed under a permit issued by the appropriate governmental authorities.

(H) Sounds caused by air-, electric- or gas-driven domestic tools, including lawn mowers, edgers, saws, and other similar lawn or construction tools, between 7 a.m. and 9 p.m., Monday through Friday and between 8 a.m. and 8 p.m., Saturday and Sunday.

(I) Reasonable activities conducted on public playgrounds, parks and public or private school grounds that are conducted in accordance with the way such spaces are generally used, including but not limited to school athletic and school entertainment events.

(J) Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored by the City.

(K) Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices, from July 1 until July 5 of each year.

(L) Sounds regulated by federal law, including but not limited to sounds caused by railroads or aircraft.

SECTION 95.25. ENFORCEMENT.

The City Manager, Noise Enforcement Officer, or any law enforcement officer will have primary responsibility for the enforcement of the noise regulations contained in this Chapter. Nothing in this Chapter shall prevent the City from obtaining voluntary compliance by way of warning, notice, or education. Nothing in this Chapter affects the City's ability to protect the public against harmful effects of noise under remedies supplied in other sections of this code or other applicable provisions of law.

SECTION 95.30. PENALTIES.

(A) A person who violates a provision of this Chapter is guilty of an infraction, which is punishable by a fine not to exceed \$250.00.

(B) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate infraction, and may be punished separately.

SECTION 95.35. EVENT SOUND PERMITS; TYPES.

Any person who owns, operates or controls a sound source that will produce sound in excess of allowed levels must first obtain the applicable event sound permit as follows:

(A) Class A permit: For a single event or activity that does not exceed 24 hours in duration.

(B) Class B permit: For a single event or activity or a series of related events or activities that exceeds 24 hours in duration.

SECTION 95.40. APPLICATION FOR PERMIT.

An application for an event sound permit shall be filed with the City Manager on forms provided by the City. An application for a Class A permit shall be submitted not less than ten business days prior to the event or activity for which the permit is sought. An application for a Class B permit shall be submitted not less than 45 calendar days prior to the event or activity for which the permit is sought. The application shall contain the following information and shall be accompanied by the application fee, as set by resolution of the City Council:

(A) The type of event or activity for which the permit is sought.

(B) The anticipated duration of the event or activity.

(C) The physical characteristics of the sound involved.

(D) The times when the sound will be emitted.

(E) The efforts that will be made to mitigate the level of the sound and mitigate the effects of the sound on neighboring properties.

(F) Any other supporting information necessary to satisfy the criteria in Section 95.50.

SECTION 95.45. NOTICE.

(A) Class A permits. No notice is required for a Class A permit.

(B) Class B permit. An applicant for a Class B permit shall, not more than ten calendar days after submitting a complete permit application to the City, provide written notice that an application for a sound event permit has been submitted for consideration.

(1) Notice shall be provided to any person residing or any owner of a business within 300 feet of the planned sound source or sources. Measuring the 300 foot notice area will be based upon the distance between the property boundary of the property where the sound source is planned and the property boundary of neighboring developed properties.

(2) Written notice shall contain the following information:

(a) The nature of the event or activity for which the permit is sought and the date or dates thereof;

(b) The date by which the permit application must be acted upon by the City;

(c) That recipients of the notification may file written comments on the application with the City Recorder; and

(d) The address, including the e-mail address, where written comments may be submitted and the date by which any comments must be received in order to be considered.

SECTION 95.50. PERMIT CRITERIA AND CONDITIONS.

(A) Criteria. The City Manager shall grant an event sound permit if, after considering the application and any written comments received on the application, it appears that:

(1) The public health and safety provisions of other Chapters of the Code will not be violated if a permit is granted; and

(2) Granting the permit will not be unreasonably detrimental to the public welfare. In determining whether the permit would be "unreasonably detrimental to the public welfare," the City Manager shall consider such factors as the potential impacts on businesses and noise sensitive properties within 150 feet of the planned sound source, the time of day, the day of the week, the proposed type and amount of amplification to be used and any secondary noise consequences.

(B) Conditions. The City Manager may place conditions, including maximum decibel levels, on an event sound permit necessary to protect public health, safety and welfare. Permittees shall keep a copy of the permit at the event or activity for which the permit was sought.

SECTION 95.55. PERMIT DECISION.

An application for a Class A permit shall be granted or denied within seven business days of receipt of a completed application. An application for a Class B permit shall be granted or denied within 20 business days after notice is provided under Section 95.45. If a permit is denied, the City Manager shall state in writing the reasons why the permit was denied. If a permit is granted, a copy of the event sound permit shall be provided to the applicant and to any person who submitted written comments to the City.

SECTION 95.60. APPEAL.

Any person who has been denied an event sound permit may appeal the decision to the City's municipal court. An appeal must be filed within 14 calendar days of the City's written decision on the application. The City's municipal court judge is authorized to hear such appeals as provided in this section. The hearing on the appeal shall be set for a hearing within 30 calendar days after the appeal is received. The City's municipal court judge shall evaluate the permit application de novo and may affirm, overturn, modify, or remand the City Manager's decision.


Section 3. Severability Clause. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

Section 4. Savings Clause. A prosecution that is pending on the effective date of this ordinance and arose from a violation of an ordinance repealed by this ordinance, or a prosecution started within one year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance, shall be tried and determine exactly as if the ordinance had not been repealed.


Section 5. Effective Date. Pursuant to the Rockaway Beach Charter of 1996, Section 33, this ordinance shall become effective on the thirtieth day after its adoption.

1st reading by the Rockaway Beach City Council 9/11/19
2nd reading by the Rockaway Beach City Council 10/9/19

Adopted and Approved by the Rockaway Beach City Council 10/9/19.


Sue Wilson, Mayor.

City Council	Aye/Nay
Nathan Beeman	X/___
Tom Martine	X/___
Kristine Hayes	X/___
Terry Walhood	X/___
James Doyle	X/___

Attest:

City Manager
Lutte Shepard
Pro-Tem City Manager