

ORDINANCE NO. 2017-06

AN ORDINANCE TO PROTECT, PRESERVE, AND PROMOTE THE HEALTH, SAFETY, WELFARE, PEACE, AND QUIET OF THE CITIZENS OF LA PINE 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 THAT CAUSES PUBLIC INCONVENIENCE, ANNOYANCE, OR ALARM TO REASONABLE PERSONS OF ORDINARY SENSITIVITY, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

WHEREAS, noises are becoming a more pervasive issue for inhabitants and visitors as the City of La Pine ("City") continues to grow; and

WHEREAS, the La Pine City Council ("City Council") desires to adopt an ordinance that will provide effective control and will eliminate loud and raucous noise within the City.

NOW, THEREFORE, the City of La Pine ordains as follows:

1. Findings. In addition to the findings set forth above, which are incorporated herein by reference, the City Council makes the following findings:

1.1 Loud and raucous noise degrades the environment of the City to a degree that (a) is harmful to health, welfare, and safety; (b) interferes with the comfortable enjoyment of life and property; (c) interferes with wellbeing, tranquility, and privacy; and (d) causes and aggravates health problems.

1.2 Both effective control and 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.

1.3 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.

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

1.5 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 of the United States Constitution. This Ordinance No. 2017-06 (this "Ordinance") enacts narrowly drawn, content-neutral regulations that will be interpreted as such so as not to infringe upon constitutionally protected rights.

2. Purpose. This Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the community 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.

3. Definitions. Unless the context requires otherwise, or where defined elsewhere in this Ordinance, when used in this Ordinance the following terms and phrases have the meanings assigned to them below:

“City Manager” means City’s city manager and his or her designee.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

“Emergency Work” means any work performed for preventing or alleviating physical trauma or property damage, whether caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

“Noise Sensitive Area” includes, without limitation, real property normally used for sleeping or a school, church, hospital, or public library.

“Person” means any individual, firm, association, partnership, joint venture, corporation, or other entity.

“Plainly Audible” means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

“Public Right-of-Way” means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public that is owned or controlled by a government entity.

“Public Space” means any real property or structures on real property, owned by a government entity and normally accessible to the public, including, without limitation, parks and other recreational areas.

“Residential Area” means any real property within a residential zoning district established by the City’s Zoning Map, as amended from time to time, and any other property dedicated exclusively for residential purposes.

4. Scope. This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

5. General Prohibition.

5.1 No person will make, continue, or cause to be made or continued (a) any unreasonably loud or raucous noise; (b) any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or (c) any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any person within the neighborhood from which said noises emanate, 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.

5.2 Factors for determining whether a sound is unreasonably loud and raucous include, without limitation, the following: (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.

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

6.1 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 on any property, or upon any public street, park, or other area within the City. The ordinary and usual sounds, noises, commotion, or vibrations incidental to the lawful use of any property when conducted in accordance with the usual standards of practice and in a manner that will not unreasonably disturb the peace and comfort of adjacent residences or that will not detrimentally affect the owners or occupants of adjacent properties are exempted from this provision.

6.2 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.

6.3 Non-Emergency Signaling Devices. Sounding or permitting sounding of 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. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors, or by the City for traffic control purposes are exempt from this prohibition.

6.4 Emergency Signaling Devices. The intentional sounding or permitting the sounding outdoors of any emergency signaling device, including, without limitation, fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections 6.4.1 and 6.4.2, below.

6.4.1 Testing of an emergency signaling device will only occur between 7:00 a.m. and 7:00 p.m. Any testing will use only the minimum cycle test time. In no case will such test time exceed five minutes. Testing of the emergency signaling system will not occur more than once in each calendar month.

6.4.2 Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm will terminate within fifteen 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 will be in violation of this Ordinance.

6.5 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 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 persons in residential or noise sensitive areas, including multi-family or single-family dwellings.

6.6 Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. Except for any public performance, gathering, or parade for which a permit has been obtained from the City, 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 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:

6.6.1 Within or adjacent to residential or noise-sensitive areas;

6.6.2 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.

6.7 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 10:00 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. This prohibition 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.

6.8 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.

6.9 Loading or Unloading Merchandise, Materials, Equipment. The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

6.10 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 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of 10:00 a.m. and 7:00 p.m. on weekends. 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 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of 10:00 a.m. and 7:00 p.m. on weekends will not be unreasonably impaired, and if the city manager further determines that loss or inconvenience would otherwise result. The permit will grant permission in non-emergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

6.11 Noise Sensitive Areas - Schools, Courts, Churches, Hospitals, and Similar Institutions. The creation of any unreasonably loud or 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; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.

6.12 Blowers and Similar Devices. In residential or noise sensitive areas, between the hours of 7:00 p.m. and 7:00 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.

6.13 Commercial Establishments Adjacent to Residential Property. Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishments, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential area.

6.14 Unmuffled Braking. The use of unmuffled compression release engine brakes (jake brakes, dynamic braking systems, exhaust brakes), except in an emergency or except when used by a person operating an emergency services vehicle, is prohibited regardless of noise level.

7. Exemptions. Sounds caused by the following are exempt from the prohibitions set out in Section 6 and are in addition to the exemptions specifically set forth in Section 6:

7.1 Motor vehicles on traffic ways of the City; provided, however, the prohibitions of Section 6 continue to apply.

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

7.3 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, however, the prohibition contained in Section 6.4 continues to apply.

7.4 The emission of sound for alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

7.5 Repairs or excavation of bridges, streets, or highways by or on behalf of the City, the State, or federal government between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.

7.6 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, without limitation, school athletic and school entertainment events.

7.7 Outdoor gatherings, public dances, shows, and sporting events, and other similar outdoor events, provided a permit has been obtained from the appropriate permitting authority.

8. Penalties. Any violation of this Ordinance is punishable by a fine not to exceed \$500.00 per violation. Each occurrence of a violation or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

9. Interpretation; Severability; Errors. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not

limiting. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors.

This Ordinance was PASSED and ADOPTED by the La Pine City Council and APPROVED by the Mayor on this ____ day of July, 2017.

Dennis Scott, Mayor

ATTEST:

Cory Misley, City Manager