ORDINANCE NO. 556-2019

AN ORDINANCE AMENDING THE UNNECESSARY NOISE SECTION OF ORDINANCE 512-06; AND REPEALING ALL CONFLICTING ORDINANCES

Whereas, loud noise exposure to humans carries with it the potential for harmful physiological and psychological effects; and

Whereas, loud noise exposure to property carries with it the potential for decreased property value, and interference with the quiet enjoyment of dwelling and business units; and

Whereas, the City Council has the responsibility and authority to protect the health and welfare of the Citizens of Falls City; and

Whereas, the reasonable regulation of noise is a necessity to ensuring health, safety, and the quiet enjoyment of property; and

Whereas, the complex and lengthy nature of the Falls City noise ordinance fails to provide notice of expectations to Citizens; and

Whereas, the Falls City noise ordinance has been rendered unenforceable by lack of resources and changes in the regulatory environment.

The City of Falls City ordains as follows:

**Note: subtractions are shown with a strikethrough line, additions are in bold print, and unchanged sections remain in standard print.*

Section 1. Section 25 of Ordinance 512-06 is amended to read:

Section 25. UNNECESSARY NOISE.

~~Standards and definitions~~.

~~A. Terminology and Standards. All terminology used in this chapter that is not defined below shall be in accordance with the Department of Environmental Quality (DEQ) Noise Control Regulations and noise emission standards outlined by Oregon Revised Statute (ORS) 467.030, and Oregon Administrative Rule (OAR) Chapter 340 Division 35.~~

~~B. Measurement of Sound Level.~~

~~1. Measurements shall be made with a calibrated sound level meter in good operating condition.~~

~~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.~~

1. Declaration of Purpose.

It is the intent of the Council to minimize the exposure of citizens to the potential negative physiological and psychological effects of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the intent of the Council to control the level of noise in a manner that promotes the use, value and enjoyment of property, the conduct of business, and sleep and repose and that reduces unnecessary and excessive sound in the environment.

~~C.~~ **2.** Definitions. ~~As used in this chapter:~~

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~"Amplifying equipment" means public address systems, musical instruments, and other similar devices that are electronically amplified.~~

~~"City" means the city of Falls City, Oregon or the area within the territorial city limits of the city of Falls City, Oregon and such territory outside of this city over that the city has jurisdiction or control by virtue of ownership or any Constitutional or Charter provision, or any law.~~

~~"Commercial land use" includes land uses zoned commercial (C), historic commercial (HC) 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 such activity.~~

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

~~"Day time period" means seven a.m. until ten p.m. of the same day, local time.~~

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"Domestic power ~~tools~~ **equipment**" means ~~any mechanically or electrically powered saw, drill, sander, grinder, lawn or garden tool, or similar device generally used out of doors in residential areas.~~ **power tools or equipment, including, but not limited to, power tools, power hand tools, lawn mowers, power blowers, garden equipment and snow removal equipment.**

"Dwelling Unit" means a single-family dwelling, duplex, triplex, multifamily dwelling, apartment, condominium or mobile home.

"Dynamic braking device" means a braking device used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.

~~"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 use zoned light industrial (LI), industrial (I), or any use of a warehouse, factory, mine, wholesale trade establishment or other use of the same general type, whether publicly or privately owned.~~

"Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion.

~~"Night time period" means ten p.m. of one day until seven a.m. the following day, local time.~~

"Noise Disturbance" means any sound that:

(a) Injures or endangers the health or safety of a human;
(b) Annoys or disturbs a reasonable person of normal sensitivities; or
(c) Injures or endangers personal or real property.

~~"Noise sensitive areas" or "noise sensitive uses" includes property on that residential housing, apartment buildings, schools, churches, hospitals, and nursing homes are located.~~

~~"Off-road recreational vehicle" means any self-propelled land use 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.~~

~~"Persons" means a person, persons, firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.~~

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"Plainly audible" means ~~unambiguously communicated sounds that 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 that are distinguishable as raised or normal.~~ **The listener can clearly hear the sound produced by a sound source with unaided hearing faculties. Sounds which may be plainly audible include, but are not limited to, musical rhythms, engine noises, spoken words or phrases even though not clearly discernable, and other vocal sounds.**

~~"Powered model vehicle" means any self-propelled airborne, waterborne, or land borne plane, vessel or vehicle, that is not designed 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, fire alarms, civil defense warning systems, and safety alarms required by law. (Ord. 424 § 4 (part), 2002; Ord. 397 § 2, 1999)~~

3. Noise Disturbance Prohibited.

It shall be unlawful for any person to intentionally, knowingly, or recklessly to create, to permit, to continue, or to assist in the creation or continuance of any noise disturbance.

4. Specific Noise Disturbances.

Except as provided in subsection 5 of this section, the following are declared to be noise disturbances per se. This section shall not be deemed to limit noise disturbances for the purposes of subsection 3, to those enumerated herein.

a. Sound producing, amplifying or reproducing equipment. It shall be unlawful to operate or use, or to permit the operation or use of, any device that produces or amplifies sound, including, but not limited to, musical instruments, radios, televisions, stereos, compact disc players, tape recorders, amplifiers and loudspeakers, in such a manner that the sound produced thereby is plainly audible:

(1) Within any dwelling unit, church, temple, synagogue, business, day care center or school, other than the source of the sound; or

(2) On public property or a public right-of-way 150 feet or more from such device, except as specifically authorized in writing by the city, county, state or federal government that owns or controls such property.

b. Dogs. It shall be unlawful to keep, or to permit the keeping of, any dog or dogs that create any bark, cry, or other sound on a frequent, repetitive or continuous basis for ten minutes or longer.

c. Domestic power equipment. It shall be unlawful to operate, or to permit the operation of, any domestic power equipment between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

d. Construction or repair of buildings, streets, sidewalks, etc. It shall be unlawful to construct, demolish, alter, excavate, rehabilitate or repair any building, street, sidewalk, driveway, sewer, or utility line between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

e. Dynamic braking devices. It shall be unlawful to use any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property.

f. Idling engines on motor vehicles. It shall be unlawful to operate any idling engine for more than ten consecutive minutes in a manner that is plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

g. Motor vehicle repair and testing. It shall be unlawful to repair or test any motor vehicle in a manner that is plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

h. Steam whistles. It shall be unlawful to blow a steam whistle attached to a stationary boiler, except to give notice of the time to begin or stop work.

i. Sirens or other aural warning devices. It shall be unlawful to sound a stationary siren or other aural warning device, except where necessary to warn of fire or imminent danger to persons or property.

j. Pile drivers, steam shovels, pneumatic hammers, etc. It shall be unlawful to operate, or permit the operation of, any pile driver, steam shovel, pneumatic hammer, derrick, hoist, or any other similar equipment between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

5. Exemptions

Notwithstanding subsections 3 and 4 of this section, the following sounds shall not be deemed noise disturbances:

a. Sounds made by work necessary to restore property to a safe condition following a natural or other disaster, or to protect persons or property from exposure to imminent danger.

b. Sounds made by burglar or fire alarms operating repetitively or continuously for not more than ten minutes.

c. Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when pursuing an actual or suspected violator of the law.

d. Sounds made by the use of land and buildings as a farm for profit through the raising, harvesting, and selling of crops; through the feeding, breeding, management, and selling of livestock, poultry, fur-bearing animals or honeybees or the products thereof; through dairying and the selling of dairy products; or through engaging in any other agricultural or horticultural activity.

e. Sounds produced by the City, Polk County, the State or their employees, agents, contractors or their subcontractors in the maintenance, construction or repair of public improvements.

f. Sounds produced pursuant to a variance granted by the Oregon Environmental Quality Commission.

g. Sounds produced pursuant to and in conformance with a valid permit issued by the City of Falls City.

h. Sounds produced by sound amplifying equipment at athletic events sponsored by Falls City School District, an educational institution registered with the Oregon Department of Education, an educational institution accredited by an accrediting agency recognized by the United States Secretary of Education, or the City.

i. Sounds made by motor vehicle exhaust systems that comply with the provisions of ORS 815.250, unless the sounds otherwise violates subsection 4(f), (g) of this section.

j. Sounds produced by a public utility, a current franchisee of the City or their employees, contractors or subcontractors in the construction, maintenance or repair of their respective facilities.

~~Responsibility and authority.~~

~~A Responsibility. The responsibility for enforcement of this chapter shall reside with the City council or their designee.~~

~~B Authority. In order to implement this chapter and for the general purpose of sound abatement and control, the city council or their designee shall have in addition to any other authority vested with them, the following powers:~~

~~1 Planning: implement a noise control strategy in agreement with the city's zoning ordinance and comprehensive plan to:~~

~~A. Assure public and private enterprises do not adversely impact existing noise-sensitive properties and properties designated for noise sensitive use,~~

~~b. Prevent the encroachment of noise-sensitive uses into high impact areas such as industrial zones and those immediately adjacent to major highways or arterials that is incompatible for such uses by virtue of existing or projected noise impacts;~~

~~2. Inspections: 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. Such inspection may include administration of any necessary tests;~~

~~3. Issue summons: direct the authorized representative of the City to issue summons, notices of violation or other legal orders to any person who allegedly violates any provision of this chapter;~~

~~4. Investigate violations: in accordance with all other provisions of this chapter, investigate and document violations and take necessary actions preparatory to enforcement. (Ord. 397 § 3, 1999)~~

~~8.04.040 Prohibited acts.~~

~~A. No person shall knowingly continue, cause or permit to be made or continued any excessive or unnecessary sounds that are listed in this section or Section 8.04.050.~~

~~B. The following acts are declared to create excessive and unnecessary sounds in violation of this chapter without regard to the maximum sound levels of Section 8.04.050:~~

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~~1. Radios, Stereos, Boom boxes, Tape Players, Television Sets. 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 ten p.m. and seven a.m. the following day, local time:~~

~~a. Within a noise sensitive area of noise sensitive use that is not the source of the sound; or~~

~~b. At a distance of one hundred (100) feet or more from the source of the sound.~~

~~2. Revving Engines. Operating any motor vehicle engine above idling speed 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 or 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. Idling more than fifteen (15) consecutive minutes between the hours of ten p.m. and seven a.m. the following day, local time, any motor vehicle with a gross vehicle weight rating (GVWR) of eight thousand (8,000) pounds or greater that exceeds fifty (50) dBA measured at 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 person 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 designated as a recreational park.~~

~~8. Motorboats. Operating or permitting the operation of any motorboat within the city's jurisdictional boundaries in such manner as to exceed eighty-four (84) dBA at a distance of fifty (50) feet or more.~~

~~9. Explosives. The discharge of fireworks and other explosive devices except as authorized by the City Council.~~

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

~~11. Animals. Owning, possessing or harboring any bird or other animal that barks, bays, cries, howls, or makes any other noise continuously for a period of ten minutes or more, other than for reasons of 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. Horns and Alarms. The sounding of a horn or signaling device on a vehicle on a street or public or private place, except as a necessary warning of danger.~~

~~14. Compressed Air Devices. The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise created is effectively muffled.~~

~~C. No person shall operate a motor vehicle on a public right-of-way unless it meets the noise emission standards promulgated by Oregon Revised Statute (ORS) 467.030 and Oregon Administrative Rule (OAR) Chapter 340, Division 35 that are adopted and incorporated by this reference. Copies of ORS 467.030 and OAR Chapter 340, Division 35 are on file in the office of the city recorder. (Ord. 424 § 4 (part), 2002; Ord. 397 § 4, 1999)~~

~~Maximum permissible sound levels.~~

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

~~B. The sound limitations established herein, as measured at or within the property boundary of the receiving land use, are as set forth in Table I and apply after any applicable adjustment, also provided for herein, are applied. When the sound limitations are exceeded, it shall constitute excessive and unnecessary sounds 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 Table I for a cumulative total of greater than five minutes in any ten (10) minute period;~~

~~2. Any sound that exceeds Table I by five dBA for a cumulative total of greater than one minute, but less than five minutes in any ten (10) minute period;~~

~~3. Any sound that exceeds Table I by ten (10) dBA at any point in time.~~

~~Table I~~

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~~Table of Maximum Allowable Sound Levels (in DBA) in any Ten (10) Minute Period~~

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~~Type of Received by Use~~

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~~Type of Source by Use~~	~~Noise Sensitive~~		~~Commercial~~		~~Industrial~~	
–	~~Day~~	~~Night~~	~~Day~~	~~Night~~	~~Day~~	~~Night~~
–	–	–	–	–	–	–
~~Noise sensitive~~	~~55~~	~~45~~	~~70~~	~~65~~	~~75~~	~~70~~
~~Commercial~~	~~55~~	~~50~~	~~70~~	~~65~~	~~75~~	~~70~~
~~Industrial~~	~~55~~	~~50~~	~~70~~	~~65~~	~~75~~	~~70~~

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~~Exceptions~~

~~A. Exceptions. The following sounds are exempted from 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, DFR of the Environmental Protection Agency' s railroad emission standards, incorporated herein by reference;~~

~~4. Sounds produced by sound amplifying equipment at activities permitted by the city;~~

~~5. Sounds created by the tires or motor to propel or retard any vehicle on the public right-of-way in compliance with ORS 815.025 and OAR Chapter 340 Division 35, incorporated herein by reference;~~

~~6. Notwithstanding Section 8.04.050(C), sounds created by refuse pickup operations during the operations during the period of four a.m. to ten p.m. local time;~~

~~7. Sounds created by domestic power tools during the period of seven a.m. to ten p.m., local time, provided sound dissipation devices on tools are maintained in good repair;~~

~~8. Sounds made by warning devices operating continuously for three minutes or less;~~

~~9. Idling motor vehicles with a gross vehicle weight rating (GVWR) of eight thousand (8,000) pounds or greater between the hours of seven a.m. to ten p.m., local time provided they are equipped with an exhaust system that is in good working order and in constant operation;~~

~~10. Construction activities during the period of seven a.m. to six p.m. local time (seven a.m. to eight p.m. during summer months of June through August), provided equipment is maintained in good repair and equipped with sound dissipating devices in good working order.~~

6. 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; nor unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance, or regulation relating to noise or sound. The provision of this chapter shall be deemed additional to existing legislation and common law on such subject.

7. ~~Penalties~~ **Violation**.

A violation of any provision of this chapter is a Class A infraction, punishable upon conviction by a fine of not more than five hundred dollars ($500.00). Each and every day during that any provision of this chapter is violated shall constitute a separate offense.

All subsequent violations of this chapter within thirty (30) days after any conviction for a violation of this chapter is a Class A infraction, punishable upon conviction by a fine of not more than one thousand dollars ($1000.00). Each and every day during that any provision of this chapter is violated shall constitute a separate offense.

The city council, acting in the name of the city, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this chapter.

FIRST READ by the City Council of the City of Falls City this 10th day of January, 2019.

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SECOND READ AND ADOPTED by the City Council of the City of Falls City this 14th day of February, 2019.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENTS: 0

2/14/19

Jeremy Gordon, Mayor Date

ATTEST:

2/14/19

JoHanna Birr, City Clerk Date