

**GLADSTONE PLANNING COMMISSION AGENDA
GLADSTONE CITY HALL, 525 PORTLAND AVENUE**

Tuesday, June 17, 2014

**7:00 P.M. CALL TO ORDER
ROLL CALL
FLAG SALUTE**

CONSENT AGENDA

All items listed below are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a commission member or person in the audience requests specific items to be removed from the Consent Agenda for discussion prior to the time the commission votes on the motion to adopt the Consent Agenda.

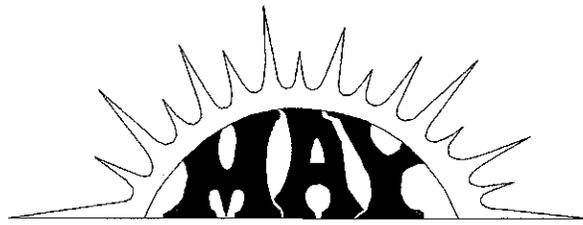
1. Minutes of May 20, 2014 meeting

REGULAR AGENDA

2. Work Session: Gladstone Code Review

BUSINESS FROM THE PLANNING COMMISSION

ADJOURN



CONSENT AGENDA

MINUTES OF PLANNING COMMISSION MEETING – May 20, 2014

Call to Order at 7:02 p.m.

Roll Call: The following Planning Commission members answered the roll call: Vice Chair Kim Sieckmann, Kevin Johnson, Michele Kremers, Pat McMahon, Craig Seghers and Kirk Stempel.

Absent: Chair Tamara Stempel

Staff: David Doughman, City Attorney; and Jolene Morishita, Assistant City Administrator.

Vice Chair Kim Sieckmann lead the flag salute.

Consent Agenda:

1. Minutes of March 18, 2014 Meeting

Correction on page 1-2: change the word “regarding” to “re-grading.”

Commissioner Pat McMahon moved and Commissioner Kevin Johnson seconded a motion to approve the consent agenda consisting of the minutes of April 15, 2014 as revised.

Motion carried unanimously.

Regular Agenda:

2. Work Session: Gladstone Code Review. Vice Chair Kim Sieckmann explained this is a worksession to review, discuss and come to a consensus on the codes being reviewed tonight. The changes will be compiled into a formal recommendation to Council at the next Planning Commission meeting.

Section IV, Title 17 Zoning & Development – Review Section 17.54, Clear Vision Codes

- Question: 25 mph in residential area means 280' site distance at intersection. How far back is the side street that you have to have the 280'; it's not a perfect triangle? Staff was asked to provide a diagram showing the triangle?
- The first chart has the right-of-way in feet, which is not the width of the street. Should it be the width of the street and not the right-of-way? City Attorney David Doughman said you would measure from the right-of-way in order to accommodate any future widening or changes that would potentially measure it from the road. The triangle established is based on the road width.
- If that road width were to essentially get bigger to accommodate all the right-of-way in the future, that triangle may be too small relative to that wider road? If the right-of-way is widened, the clear vision on the lot lines goes down? If the street widens, why wouldn't the right-of-way?
- Who enforces the site lines? Maybe code enforcement if there is a complaint.
- The posted speed limit is a graph. Does it have anything to do with the right-of-way and measurement? On corner lots there should be 40' each way. The clear vision makes more sense.
- Where are the minimum intersection sites distances measured from; center one direction or center both directions? In last month's materials a graph shows the

triangle moves depending on the direction you travel. The site distance would turn depending on which way you are traveling.

- Commissioner Michele Kremers noted Page 5-4 shows Milwaukie's explanation and regulations for clear vision. It is simple and easy to understand.
- Suggestion to use Milwaukie's explanation and Gladstone's text of the code.
- Commissioner Pat McMahon asked for more clarification on what the numbers mean.
- Commissioner Kevin Johnson suggested doing away with first chart altogether.
- Should there be language included for clear vision distance from driveways; RV's, hedges, or other plantings. It may be appropriate to put language in Residential R-7.2 Chapter 7.10.030(3) fences and walls between front lot line and front building line, R-5 fences and the commercial section, page 5-9 definition of site line and clear vision definition of fence.

Request for Staff (City Planner/City Attorney) to bring to June Planning Commission meeting:

- (1) develop a map that meets the criteria with triangles,
- (2) a one-page description on 5-4 of April packet
- (3) an explanation about the two charts with the minimum intersection site distance, posted speed limits, right-a-way in feet measurements, each lot line in feet
- (4) An actual figure that spells out Gladstone's code.
- (5) (City Attorney) Definition for fences/hedges that can be used in all chapters that address this issue.

Section V – Title 8 Health and Safety – Review Section 8.04 Nuisances and Section 8.12 Noise Control. Concerns were raised about the Abatement procedures which have the appeals process going through City Council. It was suggested that the hearings officer should make the final decision. In many instances these enforcement issues are time sensitive (example of waiting over 60 days for Council to hear an appeal because of timing of enforcement.) City Attorney Doughman agrees that taking out the Council's jurisdiction and putting it in municipal court reduces the political aspect of the situation.

- City Attorney Doughman stated it is possible to change Section Chapter 8.04.160 and to reflect "municipal court" rather than "City Council." Assistant City Administrator Morishita she will make the changes and send it to the City Attorney for approval. City Attorney Doughman stated he will do a global search on Chapter 8.04 and 8.12 to see if there are any other instances that need to be changed for consistency.
- Vice Chair Sieckmann asked if 8.04.10, General Provisions applied to compost bins. It was the consensus that if did become a problem there are other independent reasons in the code that would address it (rubbish, smell, animal attraction).
- Vice Chair Sieckmann questioned whether yard debris should be added in the description of Section 8.04.10.2. He suggested yard debris as it would cover vegetative trimmings of any kind. It was the consensus of the Commission to leave as is.
- Vice Chair Sieckmann suggested changing Section 8.04.020, Scattering of Rubbish as there is a list of things that can be removed and use the term solid waste. City Attorney

Doughman stated he didn't see any reason for changing it. It was the consensus of the Commission to leave it as is.

- Vice Chair Sieckmann suggested changing Section 8.04.060(3), "...stagnant water that affords a breeding place for "mosquitoes and other insects" to "mosquitoes or other insects." City Attorney Doughman agreed it should be "or." It was the consensus of the Commission to make that change.

Michele Kremers left the meeting at 8:10 p.m.

- Vice Chair Sieckmann asked if Section 804.070, Abandoned Iceboxes, refrigerators or similar container which has an airtight door which may not be released from the inside should be expanded to include microwaves, stoves, and other appliances. City Attorney Doughman stated that "similar container" covers all concerns. It was the consensus of the Commission to make no change. Vice Chair Sieckmann asked if Section 804.100(3), Sidewalk Repair..."or as determined by the City Administrator." Does the City Administrator have the authority to allow a 1-1/2 foot vertical up-lift? City Attorney Doughman stated he will bring something to the next Commission meeting that would address this issue.
- Vice Chair Sieckmann asked in Section 804.141(E), Noxious Vegetation, if the vegetation listed does not harbor rodents, are they okay to have. The section also includes, "...contributes to noxious pollen, constitutes a fire hazards or unreasonably interferes with the use and enjoyment of abutting or private property. City Attorney Doughman suggested changing the text to read, "...uncontrolled or uncultivated growth of weeds, brush, berry vines, poison oak, poison ivy, ragwort, or grasses. For the purposes of this subsection, uncontrolled or uncultivated (examples...)." City Attorney Doughman will prepare clearer text for this section.
- Section 804.141.2(1), "...the term noxious vegetation does not include vegetation that is part of natural topographical conditions of city or state parks are greenway areas." Why do the city and state have different regulation rules than a private property owner? He would like the see the second sentence removed. Assistant City Administrator Morishita explained the City owns vacant lands in the City and if this is changed, tax dollars will have to be used to maintain these lands. It was the consensus of the Commission to leave the text as stated.

Section 8.12 – Noise Control – Review

- In Code Enforcement Boyle's email he recommends noise variance requests not go through Council. He feels the process should go through staff with an appeals process through a designated hearings officer. Assistant City Administrator Morishita explained the turn-around time is not really feasible for Council.
- It was suggested that Vice Chair Sieckmann attend the Adjourned Council meeting and ask Council to review 8.12.070 to see if there are specific reasons that the variance process needs to be so detailed and whether it can be an administrative decision rather than a Council decision.

- It was suggested to reword 8.12.070.1(I), Sound Stage Entertainment and Music Performances; 2(A), Variances; and 2(L) to reflect the event permit rather than the festival.
- Vice Chair Sieckmann noted 8.12.070(E) references document ORS-483.499 and OAR-340-35030 asked if staff to include these documents as part of the code. It was the consensus of the Commission to include the documents.

Other Business: Recently there was a hearing on the reimbursement of a sewer problem that the city took care of. Assistant City Administrator Morishita explained there was an issue with the process that the Code allows. Which process is followed in the Code determines if: (1) The City is reimbursed for all charges in connection with the repair and (2) The City only is reimbursed the cost of the repair. City Attorney Doughman stated he would look into the sewer incident to see what part of the process needs to be changed so that all costs incurred by the City is reimbursed.

Upcoming Commission Considerations: None.

Business from the Commission: None.

Adjourn:

Commissioner Pat McMahon moved to adjourn the May 15, 2014 Planning Commission meeting. Commissioner Kevin Johnson seconded the motion. Motion carried unanimously.

Vice Chair Kim Sieckmann closed the Planning Commission meeting of May 15, 2014 at 9:35 p.m.

Minutes approved by the Planning Commission this _____ day of _____, 2014.

_____, Kim Sieckman, Vice Chair

WORK SESSION

Chapter 8.12 NOISE CONTROL

8.12.010 Declaration of purpose.

The City Council has determined that excessive sound is a serious hazard to the public health, welfare and the quality of life and it shall be the policy of the city to prevent excessive sound which may jeopardize the health, welfare and safety of citizens or degrade the quality of life.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983.

8.12.020 Scope.

This chapter shall apply to the regulation of all sounds originating within the city limits.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983.

8.12.030 Standards and definitions.

(1) Terminology and Standards. All terminology used in this chapter that is not defined below shall be in accordance with the American National Standards Institute (ANSI.)

(2) Measurement of Sound Level:

(a) Measurements shall be made with a calibrated sound level meter in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971(R1976) or S1.4-1983, "Specifications for Sound Level Meters." For purposes of this chapter, a sound level meter shall contain at least an "A" weighting network, and both fast and slow meter response capability;

(b) Persons conducting sound level measurements shall have received training in the techniques of sound measurement and the operation of sound measuring instruments prior to engaging in any enforcement activity;

(c) Procedures and tests required by this chapter and not specified herein shall be placed on file with the City Recorder.

(3) Definitions:

(a) "Amplifying equipment" means public address systems, musical instruments and other similar devices which are electronically amplified.

(b) "City" means the City of Gladstone, Oregon, or the area within the territorial city limits of the City of Gladstone, Oregon, and such territory outside of this city over which the city has jurisdiction or control by virtue of ownership, or any Constitutional or charter provision, or any law.

(c) "Commercial land use" includes land uses zoned C-1, C-2 and C-3 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.

(d) "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.

(e) "Continuous sound" means any steady sound with a deviation no greater than plus or minus 2 dBA of its mean, or total fluctuation of 4 dBA, during the period of observation when measured with a sound level meter set on fast response.

(f) "Daytime period" means seven a.m. until ten p.m. of the same day, local time.

(g) "Domestic power tools" means any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device generally used out of doors in residential areas.

(h) "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.

(i) "Industrial land use" includes land use zoned LI or any use of a warehouse, factory, mine, wholesale trade establishment, or other use of the same general type, whether publicly or privately owned.

(j) "Nighttime period" means ten p.m. of one day until seven a.m. the following day, local time.

(k) "Noise sensitive land use" includes property on which residential housing, apartment buildings, schools, churches, hospitals, and nursing homes are located.

(l) "Off-road recreational vehicle" means any self-propelled land 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.

(m) "Persons" means a person, persons, firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

(n) "Plainly audible" means unambiguously communicated sounds which 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 which are distinguishable as raised or normal.

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(o) "Powered model vehicle" means any self-propelled airborne, waterborne or landborne plane, vessel or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

(p) "Recreational park" means a facility open to the public for the operation of off-road recreational vehicles.

(q) "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.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983; Ord. 1400, 2008.

8.12.040 Responsibility and authority.

(1) Responsibility. The responsibility for enforcement of this chapter shall reside with the City Administrator or his designee.

(2) Authority. In order to implement this chapter and for the general purpose of sound abatement and control, the City Administrator or his designee shall have, in addition to any other authority vested with him, the following powers:

(a) Planning. Implement a noise control strategy in consonance with the city's zoning ordinance and comprehensive plan to assure public and private enterprises do not adversely impact existing noise sensitive properties and properties designated for noise sensitive use and to prevent the encroachment of noise sensitive uses into high impact areas such as industrial zones and immediately adjacent to major highways or arterials which are incompatible for such uses by virtue of existing or projected noise impacts;

(b) 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

(c) Issue Summons. Issue summons, notices of violation or other legal orders to any person in alleged violation of any provision of this chapter;

(d) Investigate Violations. In accordance with all other provisions of this chapter, investigate and document violations and take necessary actions preparatory to enforcement;

(e) Amendments and Modifications. Develop and recommend amendments and modifications to this chapter so as to maintain or enhance the effectiveness of the noise control program;

(f) Education. Develop programs for public education regarding the requirements and remedies available through the noise control ordinance.

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Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983.

8.12.050 Prohibited acts.

(1) No person shall knowingly continue, cause or permit to be made or continue to make any excessive or unnecessary sounds which are listed in Subsection (2) of this Section or GMC Section 8.12.060.

(2) The following acts are declared to create excessive and unnecessary sounds in violation of this chapter without regard to the maximum sound levels of GMC Section 8.12.060:

(a) Radios, Phonographs, Tapeplayers, Television Sets, Stereo Systems. 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*i*) within a noise sensitive unit which is not the source of the sound, or

(B*ii*) at a distance of one hundred feet or more from the source of the sound.

(b) Amplified sounds, external speakers, paging systems. Sounds produced by sound amplification equipment, specifically including but not limited to external speaker and paging systems, in such a manner so as to be plainly audible at any time between seven p.m. and seven a.m. the following day, local time:

(A*i*) within a noise sensitive unit which is not the source of the sound, or

(B*ii*) at a distance of one hundred feet or more from the source of the sound.

(c) Revvng 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;

(d) Compression braking devices. Using compression brakes, commonly referred to as jake brakes, on any motor vehicle except fire engines, causing noise in violation of federal Interstate Motor Carrier Operations Standards (see 43 U.S.C. 4917(c) and 40 C.F.R. 202.20), and except to avoid imminent danger to persons or property.

(e) 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;

(f) 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 pounds (8,000 lbs) or greater which exceeds 50 dBA on the nearest occupied noise sensitive property;

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(g) Vehicle tires. Squealing tires by excessive speed or acceleration on or off public right-of-way except when necessary to avoid imminent danger to persons or property;

(h) 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;

(i) Motorboats. Operating or permitting the operation of any motorboat within the city's jurisdictional boundaries in such manner as to exceed 84 dBA at fifty feet (50') or more;

(j) Powered model vehicles. Operating or permitting the operation of powered model vehicles, with the exception of gliders, aircraft and ground vehicles propelled by electric motors, in areas not designated by the City Administrator or City Council for such use;

(k) Explosives. The discharge of fireworks and other explosive devices;

(l) Tampering. The removal or rendering inoperative for purposes other than maintenance, repair or replacement, of any noise control device;

(m) Animals. Owning, possessing or harboring any bird or other animal, for reasons other than being provoked by a person trespassing or threatening to trespass, which barks, bays, cries, howls or makes any other noise continuously for a period of ten (10) minutes or more;

(n) Steam whistles. Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work;

(o) Horns. 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;

(p) Compressed air devices. The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise thereby created is effectively muffled.

(3) 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 483.449 and Oregon Administrative Rule 340-35-030 (l)(a) and (c), which are adopted by reference. Copies of ORS 483.449 and (OAR 340-35-030) are on file in the office of the City Administrator.

(4) The Municipal Court in its discretion may dismiss a citation issued under this subsection pursuant to the presentation to the clerk of the court, one day prior to the scheduled arraignment date, a certificate of compliance issued by the Department of Environment Quality.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983; Ord. 1139 §1, 1990; Ord. 1241 §1, 1997, Ord. 1400, 2008; Ord. 1423, 2009.

[Ed. Note: The publication(s) referred to or incorporated by reference in this ordinance are available from the office of the City Recorder.]

8.12.060 Maximum permissible sound levels.

(1) No person shall cause or permit sound(s) to intrude onto the property of another person which exceeds the maximum permissible sound levels set forth below in this section.

(2) 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 after any applicable adjustments provided for herein are applied. When the sound limitations are exceeded, it shall constitute excessive and unnecessary sound(s) and shall be violations in their own right as well as being prima facie evidence of noise.

(3) This section is violated if any of the following occur:

(a) Any continuous sound that exceeds Table I for a cumulative total of greater than one minute in any five-minute period; or

(b) Any sound that exceeds Table I by 5 dBA for any point in time.

TABLE I

TABLE OF ALLOWABLE SOUND LEVELS IN ANY TEN-MINUTE PERIOD (in dba)

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

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983, Ord. 1400, 2008.

8.12.070 Exceptions and variances.

(1) Exceptions. The following sounds are exempted from provisions of this chapter:

(a) Sounds caused by the performance of emergency work, vehicles and/or equipment;

(b) Aircraft operations in compliance with applicable federal laws or regulations;

(c) Railroad activities as defined in Subpart A, Part 201 of Title 40, CFR of the Environmental Protection Agency's railroad emission standards, incorporated herein by reference;

(d) Sounds produced by sound amplifying equipment at activities sponsored by Gladstone School District No. 115 between seven a.m. and twelve midnight, local time;

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(e) Sounds created by the tires or motor to propel or retard any vehicle on the public right-of-way in compliance with ORS 483.449 and OAR 340-35-030, incorporated herein by reference;

TABLE 2

TABLE OF IN-USE ROAD VEHICLE STANDARDS FOR STATIONARY TESTING

Vehicle Type	Model Year	Maximum Noise Level, dBA	Minimum Distance From Vehicle to Measurement Point
All vehicles described in ORS 481.205(2)(a)	Before 1976	94	25 feet (7.6 meters)
	1976 and after	91	25 feet (7.6 meters)
All other trucks in excess of 8,000 pounds (3629 kg) GVWR	Before 1976	94	25 feet (7.6 meters)
	1976-1981	91	25 feet (7.6 meters)
	After 1981	88	25 feet (7.6 meters)
Motorcycles	1975 and Before	102	20 inches (1/2 meter)
	After 1975	99	20 inches (1/2 meter)
Front-engine automobiles, Light trucks and all other front-engine road vehicles	All	95	20 inches (1/2 meter)
Rear-engine automobiles and light trucks and mid-engine automobiles and light trucks	All	97	20 inches (1/2 meter)
Buses as defined under ORS 481.030	Before 1976	94	25 feet (7.6 meters)
	1976 and after	91	25 feet (7.6 meters)

Statutory Reference: OAR 340-35-030

(f) Notwithstanding GMC Section 8.12.070(5), sounds created by refuse pickup operations during the period of four a.m. to ten p.m., local time;

(g) Sounds created by domestic power tools during the period of seven a.m. to ten p.m., local time, provided sound dissipating devices on tools so equipped, are maintained in good repair;

(h) Sounds made by warning devices operating continuously for three minutes or less;

(i) Idling motor vehicles with a Gross Vehicle Weight Rating (GVWR) of eight thousand pounds (8,000 lbs) or greater between the hours of seven a.m. to ten p.m., local time, provided they are equipped with an exhaust system which is in good working order and in constant operation;

(j) Construction activities during the period of seven a.m. to six p.m., local time, provided equipment is maintained in good repair and equipped with sound dissipating devices in good working order.

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(k) Construction activities during the period 6:00 p.m. to 7:00 a.m. on rights of way owned by the Oregon Department of Transportation provided typical measures for work in urban areas are used to mitigate noise, including notification of affected property owners and the city.

(l) Sounds produced by stage entertainment and music performance between ten a.m. and twelve thirty a.m., local time, as part of ~~the annual Chautauqua Festival~~ an approved Special Event Application.

(2) Variances. Any person who owns, controls or operates any sound source which violates any of the provisions of this chapter may apply to the ~~City Council~~ City Administrator or his/her designee for a variance from such provisions. Any person who is planning a noise source which is expected to violate any provision of this chapter may apply to the ~~City Council~~ City Administrator or his/her designee for a variance from such provision. Any person granted a variance under this chapter may apply for renewal of that variance upon its expiration. Such renewal application shall be processed just as if it was an initial application.

(a) Application. The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought and any other supporting information which the ~~City Council~~ City Administrator or his/her designee may reasonably require.

(b) Review Standards. In establishing exceptions or granting variances, the ~~City Council~~ City Administrator or his/her designee shall consider:

(A*i*) The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;

(B*ii*) The past, present and future patterns of land use;

(C*iii*) The relative timing of land use changes;

(D*iv*) The acoustical nature of the sound emitted;

(E*v*) Whether compliance with the provision would produce a benefit to the public.

(c) Time Duration of Variance. Any variance shall be granted for a specific time interval, not to exceed one (1) year.

(d) Public Notification and Public Hearing:

(A*i*) Public notice shall be given in the manner provided for by city ordinance for all variance applications;

(B*ii*) A public hearing shall be held before the granting of a variance if such hearing is requested by any affected party.

(e) Conditions for Granting:

(A*i*) ~~The City Council~~ City Administrator or his/her designee may grant specific variances from the particular requirements of any rule, regulation or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulations or order is inappropriate because of conditions beyond the control of the persons requesting such variance or because of special circumstances which would render strict compliance unreasonable or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant or operation, or because no other alternative facility or method of handling is yet available.

(B*ii*) Procedure for Requesting. Any person requesting a variance shall make his request in writing to the city for consideration by the ~~City Council~~ City Administrator or his/her designee and shall state in a concise manner the facts to show cause why such variance should not be granted.

(C*iii*) Revocation or Modification. A variance granted may be revoked or modified by the ~~City Council~~ City Administrator after a public hearing ~~before the City Council, held upon~~ with not less than twenty (20) days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the ~~City Council~~ City Administrator a written request for such notification.

(f) Emergency and Safety Hazard. In the case of an emergency or safety hazard, the City Administrator or his designee, may revoke a variance by setting forth the nature of the emergency or hazard in a letter mailed to the holder of the variance. A public hearing before the City Council shall be held at the next regularly scheduled City Council meeting following the revocation to reverse, affirm or modify the revocation action.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983; Ord. 1330, 2002; Ord. 1335,, 2002.

[Ed. Note: The publication(s) referred to or incorporated by reference in this ordinance are available from the office of the City Recorder.]

8.12.080 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, but shall be deemed additional to existing legislation and common law on such subject.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983.

8.12.090 Penalties.

(1) A violation of any provision of this chapter is a Class "A" infraction as specified in GMC 1.08.010 through 1.08.100.

(2) Each and every day during which any provision of this chapter is violated shall constitute a separate offense.

(3) ~~The City Council Municipal Court~~, 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 as additional remedy.

Statutory Reference: ORS 467.100

History: Ord. 1023 §2, 1983; Ord. 1344, 2004.

Chapter 8.04 NUISANCES

I. General Provisions

8.04.010 Interpretation and definitions.

For the purpose of this chapter, except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following mean:

(1) "City Administrator" means the City Administrator or person authorized by the City Administrator.

(2) "Solid waste" means all putrescible and non-putrescible wastes, as defined by ORS 459.005(24), including but not limited to garbage, rubbish, refuse, waste paper, cardboard and, grass clippings.

(3) "Junk," as used in this chapter, includes all motor vehicles which may not be operated due to lack of legal requirements and/or are not capable of being operated or driven, motor vehicle parts, abandoned motor vehicles, machinery, machinery parts, appliances or parts thereof, scrap iron, or other metal, glass, paper, lumber, wood, or other abandoned or discarded material.

(4) "Owner" means "to have or hold real or personal property or to have power or mastery over such property."

(5) "Person in charge of property" means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of real or personal property.

(6) "Public place" means a building, place of accommodation, whether publicly or privately owned, open and available to the general public.

Statutory Reference: ORS 221.410.

History: Ord. 670 §1, 1964; Ord. 1387, 2007.

II. Nuisances Affecting Public Health

8.04.020 Scattering rubbish.

No owner or person in charge may throw, dump, deposit, or allow to remain upon public or private property an injurious or offensive substance or any kind of rubbish, trash, debris, or refuse or any substance which would mar the appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

Statutory Reference: ORS 221.410.

History: Ord. 670 §2, 1964; Ord. 1387, 2007.



8.04.030 Junk keeping.

(1) Keeping of Junk a Nuisance. It is determined and declared that the keeping of any junk out-of-doors on any street, lot or premises within the city, or in a building that is not wholly or entirely enclosed except doors for use for ingress and egress, is a nuisance and unlawful.

(2) Keeping of Junk Without Enclosure Unlawful. No owner or person in charge of property may keep or allow to be kept any junk out-of-doors, on any street, or on any lot, or premises within the city; or, in a building that is not wholly or entirely enclosed except doors used for ingress and egress.

Statutory Reference: ORS 221.410.

History: Ord. 1035 §2, 1984; Ord. 1162 §1, 1992, Ord. 1387, 2007.

8.04.060 Prohibited and designated.

No owner or person in charge of property may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

(1) Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Oregon State Board of Health regulations.

(2) Debris on Private Property. Accumulations of debris, rubbish, manure and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city.

(3) Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests.

(4) Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.

(5) Food. Decayed or unwholesome food which is offered for human consumption.

(6) Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition.

(7) Surface Drainage. Drainage of liquid wastes from private premises.

(8) Solid Waste.

(a) Solid waste not contained in a closed container stored in a manner not unreasonably offensive to surrounding neighbors.

(b) Storage of solid waste for more than 10 days from the date of deposit, except that leaves and trimmings may be stored in a manner not unreasonably offensive to surrounding neighbors.

(9) Smoke, Etc. Dense smoke, noxious fumes, gas soot or cinders in unreasonable quantities.

(10) Harborage for Rats. Accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for rats.

(11) Properties Declared "Unfit for Use." Property placed on the Oregon Health Division "unfit for use list" because it has been used for the manufacture of illegal drugs, until the property has been issued a "Certificate of Fitness" by the Oregon Health Division.

Statutory Reference: ORS 221.410.

History: Ord. 670 §6, 1964; Ord. 1387, 2007.

III. Nuisances Affecting Public Safety

8.04.070 Abandoned ice boxes.

No owner or person in charge of property may leave in a place accessible to children an abandoned, unattended or discarded ice box, refrigerator or similar container which has an airtight door with a snap lock or lock or other mechanism which may not be released for opening from the inside, without first removing such lock or door from such ice box, refrigerator or similar container.

Statutory Reference: ORS 221.410.

History: Ord. 670 §7, 1964; Ord. 1387, 2007.

8.04.080 Attractive nuisances for playing children.

(1) No owner or person in charge of property may permit:

(a) Unguarded machinery, equipment or other devices on such property which are attractive, dangerous and accessible to children;

(b) Lumber, logs or piling placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children; or

(c) An open pit, quarry, cistern or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children.

(2) This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.

Statutory Reference: ORS 221.410.

History: Ord. 670 §8, 1964.

8.04.090 Snow and ice removal.

No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk may permit:

(1) Snow to remain on the sidewalk for a period longer than the first two hours of daylight after the snow has fallen;

(2) Ice to cover or remain on a sidewalk, after the first two hours of daylight after the ice has formed. Such person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes or other suitable material to assure safe travel.

Statutory Reference: ORS 221.410.

History: Ord. 670 §9, 1964.

8.04.100 Sidewalk repair.

(1) Owner Responsibility. It is the duty of all property owners in the city to keep the sidewalks on the streets thereof adjacent to or abutting on their respective real property in a good state of repair so as to eliminate the hazard of injuries to pedestrians using the same.

(2) Owner Liability. The owner or owners of real property in the city shall be liable to any person suffering injury by reason of any defect in the sidewalk adjacent to or abutting on the real property of the respective owner or owners.

(3) Maintenance and Repair Required. Real property owners in the city shall maintain and keep in repair all sidewalks, curbs and driveways, not to exceed one-half-inch vertical uplift or as determined by the City Administrator, along the streets and highways of the city in front of and as are adjacent to or abut on such owner's or owners' real property.

Statutory Reference: ORS 221.410.

History: Ord. 1398, 2008.

8.04.120 Certain fences.

(1) No person may construct or maintain a barbed wire fence or allow barbed wire to remain as a part of a fence along a sidewalk or public way, unless such wire is placed not less than six inches above the top of a board of picket fence which is not less than six feet high.

(2) No person may install, maintain or operate an electric fence within the city except to enclose livestock as such are defined in Section 17.06.250. In no event shall such an electric fence be located within a required yard setback area.

Statutory Reference: ORS 221.410.

History: Ord. 670 §12, 1964; Ord. 1048 §1, 1985.

8.04.130 Falling ice or snow from structures—Drainage of surface waters—Obstructing natural water course.

(1) No owner or person in charge of any building or structure may suffer or permit rain water, ice or snow to fall from such building or structure onto a street or public sidewalk or to flow across such sidewalk.

(2) The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk.

(3) No person may construct or maintain any fence, dam or other obstruction of any kind in a natural water course such that water backed up by the obstruction would significantly affect any other property or improved public street.

Statutory Reference: ORS 221.410.

History: Ord. 670 §13, 1964; Ord. 1354, 2004.

8.04.140 Clear-vision area.

(1) Obstructions Prohibited. On property at any corner formed by the intersection of two streets, or a street and a railroad, it is unlawful to install, set out or maintain, or to allow the installation, setting out or maintenance of any sign, fence, hedge, shrubbery, natural growth or other obstructions to the view higher than three feet above the level of the center of the adjacent intersection with that triangular area between the property line and a diagonal line joining points on the property lines at the distance from the intersection specified in this regulation. In the case of rounded corners, the triangular areas shall be between the lot lines extended in a straight line to a point of intersection and so measured, and a third side which is a line across the center of the lot joining the nonintersecting ends of the other two sides. The following measurements shall establish clear-vision areas:

Right-of-Way (in feet)	Measurement Each Lot Line (in feet)
80	20
60	30
50 or less	40

(2) Exceptions. The provisions set out in subsection (1) of this section shall not apply to:

(a) Public utility poles; trees trimmed (to the trunk) to a line at least eight feet above the level of the intersection; provided that the remaining limbs and foliage of the trees must be trimmed as to leave, at all seasons, a clear and unobstructed cross-view of the intersection; saplings, or plant species of open growth habits and not planted in the form of a hedge, which are so planted and trimmed as to leave at all seasons a clear and unobstructed cross-view of the intersection; supporting members of appurtenances to permanent buildings existing on the date

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when the ordinance codified in this chapter becomes effective; official warning signs or signals; places where the contour of the ground is such that there can be no cross-visibility at the intersection; or to signs mounted 10 or more feet above the ground and whose supports do not constitute an obstruction as defined in subsection (1) of this section.

(b) At corners of an intersection of a street controlled by stop signs or a traffic signal if the intersection has an unobstructed sight distance specified in a 2001 publication titled, "A Policy on Geometric Design of Highways and Streets" prepared by the American Association of State Highway and Transportation Officials (AASHTO), summarized in the table below.

Minimum Posted Speed	Intersection Sight Distance
20	225 ft.
25	280 ft.
30	335 ft.
35	390 ft.
40	445 ft.
45	500 ft.

Statutory Reference. ORS 221.410.

History: Ord. 670 § 15A, 1964; Ord. 844 § 1, 1975; amended during 1980 codification; Ord. 1359 §1, 2005.

IV. Other Nuisances

8.04.141 Noxious vegetation.

No owner or person in charge of property may maintain or allow noxious vegetation on any property or within public rights-of-way adjacent to that property:

- (1) The term "noxious vegetation" includes:
 - (a) Weeds more than 10 inches high;
 - (b) Grass more than 10 inches high;
 - (c) Trees, bushes, roots, other natural growth, soil or solid waste that obstructs public sidewalks or roadways;
 - (d) Dead or decaying trees or tree limbs, dead bushes, stumps, and any other thing likely to cause a fire or that presents a safety hazard to the public or to abutting property owners;
 - (e) Uncontrolled or uncultivated growth of weeds, brush, berry vines, poison oak, poison ivy, tansy ragwort, or grasses which offer vector or rodent harborage, contribute noxious pollens to the atmosphere, constitute a fire hazard or unreasonably interfere with the use and enjoyment of abutting public or private property;
 - (f) Vegetation that is a health hazard;

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(g) Trees, bushes, hedges, shrubbery, natural growth or other obstructions, weeds, grass or debris on property, or on adjoining street or public right-of-way, which interfere with street or sidewalk traffic, impair the view of a public thoroughfare, or otherwise make use of the thoroughfare hazardous. This includes trees and bushes on property and on the adjoining right-of-way which are not trimmed to a height of not less than seven and one-half feet above sidewalk level, over the street area at an elevation of not less than 11 feet above the street level and to a height of not less than 14 feet above the street level on any street designated as an arterial or one-way street, and where parking has been prohibited.

(2) The term “noxious vegetation” does not include vegetation that constitutes an agricultural crop, unless that vegetation is a fire, health or traffic hazard and is vegetation within the meaning of subsection (1) of this section. The term “noxious vegetation” does not include vegetation that is part of the natural topographic condition of city or state parks and greenway areas.

Statutory Reference: ORS 221.410.

History: Ord. 670 § 110, 1964; Ord. 1387, 2007.

8.04.143 Garage, estate and yard sales.

No owner or person in charge of property shall conduct or allow to be conducted garage, estate, yard or similar sales for more than five days in any calendar month or for more than three consecutive days in any one week; otherwise sales are regulated as second hand dealers pursuant to Chapter 5.40 of the Gladstone Municipal Code.

Statutory Reference: ORS 221.410.

History: Ord. 1378 §1, 2006.

8.04.144 Radio and television interference.

(1) No person may operate or use an electrical, mechanical or other device apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.

(2) This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

Statutory Reference: ORS 221.410

History: Ord. 1035 §2, 1984.

8.04.146 Notices and advertisements.

(1) No person may affix or cause to be distributed any placard, bill, advertisement or poster upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs or advertising.

(2) No person, either as principal or agent, may scatter, distribute or cause to be scattered or distributed on public or private property any placards or advertisements or other similar material.

(3) This section does not prohibit the distribution of advertising material during a parade or approved public gathering.

Statutory Reference: ORS 221.410.

History: Ord. 1035 §2, 1984.

8.04.148 Declaration of nuisance.

(1) The acts, conditions or objects specifically enumerated and defined in this chapter are declared to be public nuisances and such acts, conditions or objects may be abated by any of the procedures set forth in this chapter.

(2) In addition to those nuisances specifically enumerated within this chapter, every other thing, substance or act which is determined by the ~~council~~ Municipal Court to be injurious or detrimental to the public health, safety or welfare of the city is declared to be a nuisance and may be abated in this chapter.

Statutory Reference: ORS 221.410.

History: Ord. 1035 §2, 1984.

V. Abatement Procedure

8.04.149 Options for abatement.

The City Administrator or designee may abate nuisances through the municipal court in accordance with procedures as prescribed in Chapter 1.08 and/or as described in Sections 8.04.150 through 8.04.200 of this chapter.

Statutory Reference: ORS 221.410.

History: Ord. 1387, 2007.

8.04.150 Notice—Posting and mailing—Contents.

(1) Upon determination by the City Administrator that a nuisance as defined in this chapter and Chapter 9.12 (cruelty to animals) or any other ordinance of the city exists, the City Administrator shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.

(2) At the time of posting, the City Recorder shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner or person in charge of the property at the last-known address of such owner or other person.

(3) The notice to abate shall contain:

- (a) A description of the real property, by street address or otherwise, on which such nuisance exists;
 - (b) A direction to abate the nuisance within 10 days from the date of the notice;
 - (c) A description of the nuisance;
 - (d) A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property; and
 - (e) A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the City Recorder within 10 days from the date of the notice.
- (4) Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file a certificate stating the date and place of such mailing and posting.
- (5) An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or other person shall not make the notice void and in such a case the posted notice shall be sufficient.

Statutory Reference: ORS 221.410.

History: Ord. 670 §18, 1964.

8.04.160 Abatement by owner.

(1) Within 10 days after the posting and mailing of the notice as provided in Section 8.04.150, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

(2) The owner or person in charge protesting that no nuisance exists shall file with the ~~City Recorder~~ Municipal Court a written statement which shall specify the basis for so protesting.

(3) The statement shall be referred to the ~~council~~ Municipal Court as a part of the ~~and placed on the council's regular agenda at the next succeeding meeting~~ Court's docket. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the ~~council~~ Municipal Court and the ~~council~~ Judge shall thereupon determine whether or not a nuisance in fact exists and ~~such determination shall be entered in the official minutes of the council~~ such determination shall be entered in the official Court record by court order or judgment. Council determination shall be required only in those cases where a written statement has been filed as provided.

(4) If the ~~council~~ Municipal Court determines that a nuisance does in fact exist, the owner or other person shall within 10 days after such ~~council~~ Court determination abate such nuisance.

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(5) An owner or person in charge of property may not protest a determination of a public nuisance when the nuisance has been already determined by the ~~City Council~~ Municipal Court.

Statutory Reference: ORS 221.410.

History: Ord. 670 §19, 1964; Ord. 1354, 2004.

8.04.170 Abatement by city.

(1) If within the time allowed the nuisance has not been abated by the owner or person in charge of the property, the City Administrator may cause the nuisance to be abated.

(2) The officer charged with abatement of such nuisance shall have the right at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance.

(3) The City Recorder shall keep an accurate record of the expense incurred by the City in abating the nuisance and shall include therein a charge of 20% of the expense for administrative overhead.

Statutory Reference: ORS 221.410.

History: Ord. 670 §20, 1964.

8.04.180 Assessment of costs.

(1) The City Recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

(a) The total cost of abatement including administrative overhead, including, but not limited to, the costs of police services incurred in city abatement of nuisances;

(b) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice; and

(c) That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he or she may file a notice of objection with the City Recorder not more than 10 days from the date of the notice.

(2) Upon the expiration of 10 days after the date of the notice, the ~~Council~~ Court in the regular course of business shall hear and determine the objections to the costs to be assessed.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs as stated or as determined by the ~~Council~~ Court shall be made by the City Administrator and shall thereupon entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.

(4) The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of eight percent per year. Such interest shall commence to run from the date of the entry of the lien in the lien docket.

(5) An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

Statutory Reference: ORS 221.410.

History: Ord. 670 §21, 1964; Ord. 872 §1, 1976; Ord. 1435 §1, 2011.

8.04.190 Not exclusive.

The procedure provided by this chapter is not exclusive but is in addition to procedure provided by other ordinances and the health officer, the chief of the fire department and chief of police may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property.

Statutory Reference: ORS 221.410.

History: Ord. 670 §22, 1964.

VI. Penalty

8.04.200 Violation—Penalty.

Violation of any provision of this chapter shall be a Class “A” infraction.

(1) Each day’s violation of a provision of this chapter constitutes a separate offense.

(2) The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.

Statutory Reference: ORS 221.410.

History: Ord. 670 §§23, 24, 1964; Ord. 1035 §3, 1984.

