

City of Tukwila, Washington

Ordinance Number 2002, dated 11/18/02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING TUKWILA MUNICIPAL CODE CHAPTER 8.22, "NOISE," REPEALING ORDINANCE NOS. 1363 SECTION 1 (PART), 1468 SECTIONS 1, 2, AND 3, 1796 SECTION 3 (PART) AND 1838 SECTION 4; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the policy of the City to minimize the exposure of its citizens to the physiological and psychological dangers of excessive noise, and to protect, promote and preserve the public health, safety and welfare; and

WHEREAS, it is the express intent of the City Council to control the level of noise in a manner that promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment; and

WHEREAS, it is the express intent of the City Council that noise be prohibited when it is in excess of specified decibel levels as well as noise be prohibited when it unreasonably disturbs the peace, comfort and repose of others; and

WHEREAS, the problem of noise in the City has been investigated by the Director of Community Development and on the basis of the results of these investigations, the City Council, pursuant to the authority granted it in Chapter 70.107 RCW, finds that special conditions exist within the City that make necessary any and all differences between this chapter and the regulations adopted by the Department of Ecology in Chapters 173-58, 173-60, and 173-62 WAC; and that make necessary the provision for criminal as well as civil penalties for violation of this chapter; and

WHEREAS, it is demonstrated that enforcement of noise regulations is often difficult or impractical if a noise measuring device is required under every circumstance; and

WHEREAS, it is the express intent of the City Council that the City implement noise regulations which provide for and promote the health, safety and welfare of the general public, and do not create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance; and

WHEREAS, the City has received numerous and repeated complaints from its citizens regarding the noise generated from the Seattle Police firing range, City Council has considered these complaints in its Finance and Safety Committee, and has determined that the sound generated from the Seattle Firing Range has significantly increased over the years due to greater use of the facility and due to the use of modern, high-powered weapons; and

WHEREAS, it is the intent of the City Council to adopt or set forth noise regulations that will best carry out the City's policy;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Tukwila Municipal Code Chapter 8.22 entitled "Noise" is hereby amended to read as follows:

**Chapter 8.22
NOISE**

Sections:

- 8.22.010 Policy – findings of special conditions.
- 8.22.020 Definitions.
- 8.22.030 Environmental sound levels – unlawful sounds.
- 8.22.040 Maximum permissible sound levels.
- 8.22.050 Modifications to maximum permissible sound levels.
- 8.22.060 Motor vehicle sound levels – created by operation.
- 8.22.070 Muffler requirements.
- 8.22.080 Modification of motor vehicles.
- 8.22.090 Tire noise.
- 8.22.100 Motor vehicle exemptions.
- 8.22.110 Public disturbance noises.
- 8.22.120 Exempted noises.
- 8.22.130 Sounds exempt at all times.
- 8.22.140 Sounds exempt during daytime hours.
- 8.22.150 Sounds exempt from nighttime reduction.
- 8.22.160 Variance procedure.
- 8.22.170 Types of variances.
- 8.22.180 Variances – administrator’s authority.
- 8.22.190 Authority of administrator.
- 8.22.200 Duties of administrator.
- 8.22.210 Measurement of sound.
- 8.22.220 Measurement – technical correction.
- 8.22.230 Receiving properties within more than one district.
- 8.22.240 Enforcement - Civil.
- 8.22.250 Right of Appeal - Civil Enforcement - Timeliness.
- 8.22.260 Appeal Procedure - Civil Enforcement.
- 8.22.270 Enforcement - Criminal. Sound Level Measurement Not Required.
- 8.22.280 Penalties – Civil and Criminal.
- 8.22.290 Provisions Not Exclusive - Public Nuisance Declared.
- 8.22.300 Purpose - liability

8.22.010 Policy – findings of special conditions.

A. Policy: It is declared to be the policy of the City to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise, and to protect, promote and preserve the public health, safety and welfare. It is the express intent of the City Council to control the level of noise in a manner that promotes commerce; the use, value and enjoyment of property; sleep and repose; and the quality of the environment. It is also the express intent of the City Council that noise be prohibited when it is in excess of specified decibel levels, as well as when it unreasonably disturbs the peace, comfort and repose of others.

B. Findings of special conditions: The subject of noise in the City has been investigated by the Director of Community Development. On the basis of the results of these investigations, and based upon citizen complaints and the information provided at Council Committee meetings related to those complaints, the City Council, pursuant to the authority granted it in Chapter 70.107 RCW, finds that special conditions exist within the City that make necessary any and all differences between this chapter and

the regulations adopted by the Department of Ecology in Chapters 173-58, 173-60, and 173-62 WAC; and that make necessary the provision for criminal as well as civil penalties for violation of this chapter.

8.22.020 Definitions.

All technical terminology used in this chapter, not defined in this section, shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971 as may be amended. Words used in the masculine gender include the feminine, and words used in the feminine gender include the masculine.

1. "Administrator" means the Director of Community Development or his authorized representative, except in the case of vehicle (TMC 8.22.060 through 8.22.100) and public disturbance noise (TMC 8.22.120) in which case "administrator" shall mean the Chief of the Police Department or his authorized representative.

2. "Administrator's action" means an order, decision, ruling or interpretation by the administrator, including a variance decision, but not including any action that initiates process for the commencement of criminal proceedings.

3. "Construction" means any site preparation, assembly, erection, demolition, substantial repair, alteration, or similar action for or of public or private rights-of-way, structures, utilities or similar property.

4. "dB(A)" means the sound level measured in decibels, using the A-weighting network.

5. "District" or "noise control district" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter:

a. "Residential district" includes zones designated as LDR, MDR, and HDR;

b. "Commercial district" includes zones designated as MUO, O, RCC, NCC, RC, RCM, and TUC; and

c. "Industrial district" includes zones designated as C/LI, LI, HI, MIC/L, MIC/H, and TVS.

6. "Emergency work" means work required to restore property to a safe condition following a public calamity, work required to protect persons or property from an imminent exposure to danger, or work by private or public utilities for restoring immediately necessary utility service.

7. "Equipment" means any stationary or portable device or any part thereof capable of generating sound.

8. "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle or combination of vehicles (GCWR).

9. "Impulsive sound" means sound having the following qualities: The peak of the sound level is less than one second and short compared to the occurrence rate, the onset is abrupt, the decay is rapid, and the peak value exceeds the ambient level by more than 10 dB(A).

10. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except that farm equipment and vehicles powered by engines of less than five

horsepower shall not be included.

11. "Motor vehicle" means any vehicle that is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16.010. (Aircraft, watercraft and vehicles used exclusively on stationary rails or tracks are not "motor vehicles" as that term is used herein.)

12. "Muffler" means a device, consisting of a series of chambers or other mechanical designs for the purpose of receiving exhaust gas from an internal combustion engine, and designed to reduce the sound resulting therefrom.

13. "Noise" means the intensity, duration and character of sounds from any and all sources.

14. "Off-highway vehicle" means any self-propelled motor-driven vehicle not used primarily for transporting persons or property upon public highways, nor required to be licensed under RCW 46.16.010. The term "off-highway vehicle" shall not include special construction vehicles.

15. "Periodic sound" means sound having the following qualities: the sound level varies repetitively, within a period of one minute or less, and the peak value is more than five dB(A) above the minimum value.

16. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

17. "Powered model vehicles" means any powered vehicles, either airborne, waterborne or landborne, that are designed not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, and that can be propelled by mechanical means.

18. "Public highway" means the entire width between the boundary lines of every way publicly maintained by the Department of Highways or any county or city, when any part thereof is generally open to the use of the public for purposes of vehicular travel or a matter of right.

19. "Public disturbance noise" means any sound as defined in TMC 8.22.110.

20. "Pure tone component" means a sound having the following qualities: a 1/3 octave band sound pressure level in the band with the tone that exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by five decibels for center frequencies of 500 Hz and above, by eight decibels for center frequencies and between 160 Hz and 400 Hz, and by 15 decibels for center frequencies less than or equal to 125 Hz.

21. "Real property" means an interest or aggregate of rights in land that is guaranteed and protected by law; for purposes of this chapter, the term "real property" includes a leasehold interest.

22. "Receiving property" means real property within which the maximum permissible sound levels specified herein shall not be exceeded from sources outside such property.

23. "Sound level" means the weighted sound pressure level measured by the use of a metering characteristic and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971. The sound pressure level of a sound expressed in decibels is 20 times the logarithm to the base ten of the ratio of the pressure of the sound to the reference sound pressure of 20 micropascals. In the absence of any specific modifier, the level is understood to be that of a mean-square pressure.

24. "Sound level meter" means a sound level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.

25. "Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.

26. "Warning device" means any device intended to provide public warning of potentially hazardous, emergency or illegal activities, including, but not limited to, a burglar alarm or vehicle backup signal, but not including any fire alarm.

27. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

8.22.030 Environmental sound levels - unlawful sounds.

It is unlawful for any person to cause sound, or for any person in possession of property to permit sound originating from such property to intrude into the real property of another person, whenever such sound exceeds the maximum permissible sound levels established by this chapter.

8.22.040 Maximum permissible sound levels.

For sound sources located within the City, the maximum permissible sound levels are as follows:

District of Sound Source	District of Receiving Property Within City		
	<i>Residential</i>	<i>Commercial</i>	<i>Industrial</i>
Residential	55 dB(A)	57 dB(A)	60 dB(A)
Commercial	57 dB(A)	60 dB(A)	65 dB(A)
Industrial	60 dB(A)	65 dB(A)	70 dB(A)

8.22.050 Modifications to maximum permissible sound levels.

The maximum permissible sound levels established by this chapter shall be reduced or increased by the sum of the following:

1. Between the hours of 10:00 p.m. and 7:00 a.m. during weekdays, and between the hours of 10:00 p.m. and 8:00 a.m. on weekends and State-recognized holidays, the levels established by TMC 8.22.040 are reduced by 10 dB(A) where the receiving property lies within a residential district of the City.

2. For any source of sound that is periodic, that has a pure tone component, or that is impulsive and is not measured with an impulse sound level meter, the levels established by this chapter shall be reduced by 5 dB(A); provided, however, that this 5 dB(A) penalty for the emission of sound having a pure tone component shall not be imposed on sounds listed as exempt under TMC 8.22.140 and 8.22.150.

3. For any source of sound that is of short duration, the levels established by this chapter are increased by:

- a. 5 dB(A) for a total of 15 minutes in any one-hour period; or
- b. 10 dB(A) for a total of five minutes in any one-hour period; or
- c. 15 dB(A) for a total of 1.5 minutes in any one-hour period.

8.22.060 Motor vehicle sound levels - created by operation.

It is unlawful for any person to operate upon any public highway any motor vehicle or any combination of motor vehicles under any conditions of grade, load, acceleration or deceleration in such manner as to exceed the following maximum permissible sound levels for the category of vehicle, as measured at a distance of 50 feet from the center of the lane of travel pursuant to WAC 173-62-030:

Vehicle Category	45 mph or less	Over 45 mph
Motor vehicles over 10,000 Pounds GVWR or GCWR	86 dB(A)	90 dB(A)
Motorcycles	78 dB(A)	82 dB(A)
All other motor vehicles	72 dB(A)	78 dB(A)

8.22.070 Muffler requirements.

It is unlawful for any person to operate, or for any owner to permit any person to operate, any motor vehicle upon the public highways that is not equipped with a muffler in good working order and in constant operation.

8.22.080 Modification of motor vehicles.

It is unlawful for any person to operate a vehicle that has been modified or changed in any way or has had installed any device thereon in any manner that permits sound to be emitted by the motor vehicle in excess of the limits prescribed by this chapter. It is unlawful for any person to remove or render inoperative, or cause to be removed or rendered inoperative -- other than for purposes of maintenance, repair, or replacement -- any muffler or sound dissipative device on a motor vehicle that is operated on the City's streets.

8.22.090 Tire noise.

It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason; provided, that sound resulting from emergency braking to avoid imminent danger shall be exempt from this section.

8.22.100 Motor vehicle exemptions.

Sounds created by motor vehicles are subject to the provisions of TMC 8.22.060 through 8.22.090 and are exempt from the maximum permissible sound levels of TMC 8.22.030 through 8.22.050; except for sounds created by any motor vehicles when the sounds are declared public disturbance noises pursuant to TMC 8.22.120; and except for sounds created by any motor vehicle operated off public highways when the sounds are received within a residential district of the City.

8.22.110 Public disturbance noises.

In addition to sounds that exceed the maximum permissible sound levels described in this chapter, it is unlawful for any person to cause, or for any person to allow to be emitted, or for any person in possession of property to allow to originate from the property, a sound that unreasonably disturbs or interferes with the peace, comfort and repose of owners or possessors of real property without regard to sound level measurement. Such noises are determined to be public disturbance noises. The following sounds are determined to be public disturbance noises.

1. Frequent, repetitive or continuous sounds, including, but not limited to, barking or howling, made by any animal; except, that such sounds made in animal shelters, commercial kennels, veterinary hospitals, pet shops, or pet kennels licensed under and otherwise in compliance with the Tukwila Municipal Code shall be exempt from this subsection;

2. Frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

3. Frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, watercraft, powered model vehicle, or internal combustion engine so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;

4. Yelling, shouting, hooting, whistling or singing on or near the public streets, or using voice amplification to amplify one's voice, particularly between the hours of 10:00 p.m. and 7:00 a.m., or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property, regardless of the content of any speech that may be conveyed;

5. Frequent, repetitive or continuous sounds including, but not limited to, sounds from musical instruments, audio sound systems, band sessions or social gatherings, that emanate from any building, structure, apartment, condominium or yard or parking lot adjacent thereto; or sounds that emanate from vacant lots so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;

6. Amplified sounds upon public streets for the purpose of attracting the attention of the public to the speaker, any vehicle, structure, or property or the contents therein, except those vendors whose sole method of selling is from a moving vehicle licensed to operate in the City of Tukwila, shall be exempt from this subsection;

7. Sounds from any motor vehicle audio sound system, including but not limited to, sounds from a tape player, radio or compact disc player, operated at a volume so as to be audible at a distance greater than 50 feet from the vehicle itself;

8. Sounds from any portable audio equipment, including but not limited to, sounds from a tape player, radio or compact disc player, operated at a volume so as to be audible at a distance greater than 50 feet from the source. This provision shall not apply to such sounds from regularly scheduled events or activities at recreational facilities, including but not limited to, public address systems for park and game events or concerts or similar park or recreation activities;

9. Frequent, repetitive or continuous sounds in connection with construction, maintenance, repair of structures and grounds, or the movement of construction-related materials including, but not limited to, striking or cutting sounds from hammers, saws, or equipment with electrical or internal combustion engines so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property; provided, however, such sounds shall be exempt from this provision under the following circumstances:

a. If emanating from commercial and industrial areas if the receiving property is not located within the residential district of the City; or

b. If emanating from temporary construction sites during the hours of 7:00 a.m. through 10:00 p.m., Mondays through Fridays and during the hours of 8:00 a.m. through 10:00 p.m., Saturdays, Sundays, and State-recognized holidays; provided the

receiving property is located within the residential district of the city;

c. If emanating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances during the hours of 7:00 a.m. through 10:00 p.m., Mondays through Fridays and during the hours of 8:00 a.m. through 10:00 p.m. Saturdays, Sundays, and State-recognized holidays;

10. Sounds created by emergency equipment when not activated in the interest of law enforcement, when not activated to perform emergency work as defined in TMC 8.22.020, or when not activated in response to a power outage requiring activation to preserve the health and safety of persons or to prevent harm to property; and when such sounds unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property.

8.22.120 Exempted noises.

No sound source specifically exempted from a maximum permissible sound level by this chapter shall be a public disturbance noise, insofar as the particular source is exempted.

8.22.130 Sounds exempt at all times.

The following sounds are exempt from the provisions of this chapter at all times:

1. Sounds originating from aircraft in flight and sounds that originate at airports and that are directly related to flight operations;
2. Sounds created by safety and protective devices, such as relief valves, where noise suppression would defeat the safety release intent of the device;
3. Sounds created by fire alarms;
4. Sounds created by emergency equipment activated in the interest of law enforcement, activated to perform emergency work as defined in TMC 8.22.020, or activated in response to a power outage where it is necessary to activate such equipment to preserve the health and safety of persons or to prevent harm to property;
5. Sounds created by auxiliary equipment on motor vehicles used for highway maintenance;
6. Sounds created by warning devices not operated continuously for more than five minutes per incident;
7. Sounds created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;
8. Sounds caused by natural phenomena;
9. Sounds originating from City-sanctioned parades, sporting events, and other City-sanctioned public events.

8.22.140 Sounds exempt during daytime hours.

A. The following sounds are exempt from the provisions of this chapter between the hours of 7:00 a.m. through 10:00 p.m. Mondays through Fridays and during the hours of 8:00 a.m. through 10:00 p.m., Saturdays, Sundays, and State-recognized holidays:

1. Sounds created by bells, chimes, or carillons operating for not more than five minutes in any one hour;

2. Sounds created by construction or the movement of construction-related materials including, but not limited to, striking or cutting sounds from hammers, saws, or equipment with electrical or internal combustion engines emanating from temporary construction sites, if the receiving property is located in a residential district of the City;

3. Sounds created by the installation or repair of essential utility services;

4. Sounds created by hand or powered equipment used in temporary or periodic maintenance or repair of residential homes, grounds and appurtenances, including, but not limited to, striking or cutting sounds from hammers, saws, or equipment with electrical or internal combustion engines such as lawnmowers, powered hand tools, snow removal equipment, and composters;

5. Sounds created by aircraft engine testing and maintenance not related to flight operations; provided, that aircraft testing and maintenance shall be conducted at remote sites whenever possible.

B. Pursuant to the special findings adopted at TMC 8.22.010(B), the following sounds are exempt from the provisions of this chapter between the hours of 7:00 a.m. and 9:00 p.m., Monday through Friday and during the hours of 8:00 a.m. through 6:00 p.m., Saturdays, Sundays, and State-recognized holidays:

Sounds originating from the discharge of firearms on shooting ranges authorized under state and local law.

8.22.150 Sounds exempt from nighttime reduction.

The following sounds are exempt from the provisions of TMC 8.22.050(2):

1. Sounds created by existing or new stationary equipment used in the conveyance of water, waste water, and natural gas by a utility;

2. Sounds created by existing or new electrical substations;

3. Sounds created by existing sources in industrial districts that, over the previous three years, have consistently operated in excess of 15 hours per day as a demonstrated routine normal operation or as a consequence of process necessity. Changes in working hours or activity, which would increase the noise emitted under this exemption, require a variance pursuant to TMC 8.22.160.

8.22.160 Variance procedure.

A. Any person who owns or is in possession of any property or use, or any process or equipment, may apply to the administrator for relief from the requirements of this chapter or rules or regulations promulgated hereunder governing the quality, nature, duration or extent of discharge of noise. In a case where a person has met the criteria for a variance under this chapter, the variance may apply to all sources of a particular class or type. The application shall be accompanied by such information and data as the administrator may require. The administrator shall promulgate rules and regulations governing the application for such variances, including public hearings and notice. The administrator shall be governed by the provisions of this section, TMC 8.22.170, and 8.22.180 in granting or denying of such variances.

B. A variance or its renewal shall not be a right of the applicant or holder thereof, but shall be at the reasonable discretion of the administrator.

C. No variance shall be granted pursuant to this chapter until the administrator has considered the relative interests of the applicant, other owners or possessors or

property likely to be affected by the noise, and the general public. A technical or economic variance may be granted only after a public hearing on due notice. The administrator may grant a variance, if he finds that:

1. The noise occurring or proposed to occur does not endanger public health or safety; and

2. The applicant demonstrates that the criteria required for a temporary, technical or economic variance under TMC 8.22.170 are met.

D. An implementation schedule for achieving compliance with this chapter shall be incorporated into any variance granted.

E. No variance shall be granted for a period greater than one year, plus a possible one year extension provided that:

1. Upon application, variances, except temporary variances, granted pursuant to this chapter may be renewed on terms and conditions and for periods that would be appropriate on the initial granting of a variance; and

2. No renewal shall be granted except on application made at least 60 days prior to the expiration of the variance.

F. Any person aggrieved by the denial, grant, or the terms and conditions on the grant of an application for a variance or renewal of a variance by the administrator may appeal such decision to the Hearing Examiner, pursuant to TMC 8.22.250, under procedures contained in TMC 8.22.260.

G. Any person or source granted a variance pursuant to the procedures of this section or on appeal shall be exempt from the maximum permissible sound levels established by this chapter to the extent provided in the variance.

8.22.170 Types of variances.

A. *Temporary Variance* - The administrator may grant a temporary variance, not to exceed 60 days, for any activity, use, process or equipment that the administrator determines, in accordance with rules and regulations, does not annoy a substantial number of the people and does not endanger public health or safety.

B. *Technical Variance* - A technical variance may be granted by the administrator on the grounds that there is no practical means known or available for the adequate prevention, abatement or control of the noise involved. Any technical variance shall be subject to the holder's taking of any alternative measures that the administrator may prescribe. Upon application, each technical variance shall be renewable, pursuant to TMC 8.22.160E, until such practical means for prevention, abatement or control become known or available. The holder of a technical variance, as required by the administrator, shall make reports to the administrator detailing actions taken to develop a means of noise control or to reduce the noise involved, and must relate these actions to pertinent current technology.

C. *Economic Variance* - An economic variance may be granted by the administrator on the grounds that compliance with the particular requirement or requirements from which the variance is sought will require the taking of measures that, because of their extent or cost, must be spread over a period of time. The duration of an economic variance shall be for a period not to exceed such reasonable time as is required in the view of the administrator for the taking of the necessary measures. An economic variance shall contain a timetable for the taking of action in an expeditious manner, and shall be conditioned on adherence to the timetable.

8.22.180 Variances - administrator's authority.

A. No variance in the provisions or requirements of this chapter shall be authorized by the administrator unless the administrator finds that all of the following facts and conditions exist:

1. That there are exceptional or extraordinary circumstances or conditions applying to the appellant's property, or as to the intended use thereof, that do not apply generally to other properties in the same noise control district; and
2. That such variance is necessary for the preservation and enjoyment of a substantial personal or property right of the appellant, such right being possessed by the owners of other properties in the same noise control district; and
3. That the authorization of such variance does not endanger public health or safety of named persons in the same or adjacent noise control districts; and
4. That the granting of such variance will not adversely affect the general policy and purpose of this act as set forth in TMC 8.22.010;

B. In authorizing a variance, the administrator may attach thereto such conditions regarding noise level, duration, type and other considerations as the administrator may deem necessary to carry out the policy and purpose of this chapter, and that are not in conflict with any provision of TMC 8.22.160 and 8.22.170.

8.22.190 Authority of administrator.

The administrator, as defined in TMC 8.22.020-1 is authorized and directed to administer and enforce the provisions of this chapter. Upon request by the administrator, all other City departments and divisions are authorized to assist the administrator in enforcing this chapter.

8.22.200 Duties of administrator.

The duties of the administrator shall include, but are not limited to:

1. Obtaining assistance from other appropriate City department and divisions;
2. Training field inspectors and police officers;
3. Acquiring measuring instruments and training inspectors in their calibration and use;
4. Promulgating and publishing rules and procedures in accordance with this chapter, to establish techniques for measuring or reducing noise, and to provide for clarification, interpretation, and implementation of this chapter;
5. Granting or denying variances pursuant to TMC 8.22.160 through 8.22.180.
6. Investigating citizens' noise complaints;
7. Issuing orders for the reduction or elimination of noise in accordance with TMC 8.22.250, and/or initiating process for the commencement of criminal proceedings pursuant to TMC 8.22.270;
8. Assisting citizens and City departments in evaluating and reducing the noise impact of their activities;

9. Assisting City planning officials in evaluating the noise component in planning and zoning actions;
10. Instituting a public education program on noise;
11. Reviewing at least every three years the provisions of this chapter and recommending revisions consistent with technology to reduce noise.

8.22.210 Measurement of sound.

If the measurement of sound is made with a sound level meter, it shall be an instrument in good operating condition and shall meet the requirement for a Type I or Type II instrument, as described in American National Standards Institute Specifications, Section 1.4-1971. If the measurements are made with other instruments, or assemblages of instruments, the procedure must be carried out in such manner that the overall accuracy shall be at least that called for in Section 1.4-1971 for Type II instruments.

8.22.220 Measurement – Technical correction.

When the location, distance or technique prescribed in this chapter for measurement of sound is impractical or would yield misleading or inaccurate results, measurements shall be taken at other locations or distances using appropriate correction factors, as specified in the rules promulgated by the administrator.

8.22.230 Receiving properties within more than one district.

Where a receiving property lies within more than one district, the maximum permissible sound level shall be determined by the district within which the measurement is made.

8.22.240 Enforcement - Civil.

A. *Complaint and investigation.* After a complaint has been received from an identifiable person who owns, rents or leases property that is affected by a noise source and said complaint has been investigated by the administrator, the administrator may initiate proceedings as provided in 8.22.240B; provided, that provisions of this chapter relating to motor vehicles and public disturbance noises shall be subject to enforcement proceedings regardless of whether a complaint has been received.

B. *Administrative Proceeding.* Whenever the administrator has received a valid complaint from an identifiable person who owns, rents or leases property that is affected by a sound source, and as a result has reason to believe that an unlawful act under this chapter has been committed, he may serve a written notice of violation and order directed to the owner or operator of the source, the owner or person in possession of the property where the sound originated, or the holder of a variance. Service shall be made by either personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. One copy shall also be posted on the property or source if reasonably possible, and another copy shall be mailed to each complainant about the sound; additional copies may be mailed to other interested or affected persons as the administrator deems appropriate.

1. The notice of violation shall contain a brief and concise description of the conditions alleged to be in violation or to be a public nuisance noise; the provisions of this chapter alleged to have been violated; and sound level readings, if taken, including the time and place of their recording.

2. The order shall contain a statement of the corrective action required, and shall specify a reasonable time within which the action must be accomplished.

3. The notice of violation and order shall contain an explanation of the appeal process and the specific information required to file an appeal.

C. *Final Orders.* Any order issued by the administrator pursuant to this chapter shall become a final order unless, no later than ten calendar days after the order is served, any person aggrieved by the order files an appeal with the administrator in accordance with TMC 8.22.250 and 8.22.260. Three days shall be added to ten calendar days for appeal where service of the final order is accomplished by mail.

D. *Separate Offenses.* For enforcement purposes, each day, defined as the 24-hour period beginning at 12:01 a.m., in which violation of this chapter occurs, shall constitute a separate violation.

8.22.250 Right of appeal -Civil Enforcement - Timeliness.

A. Any person aggrieved by an administrator's action (defined, in part, as an order, decision, ruling or interpretation by the administrator, including a variance decision; see TMC 8.22.020(2)) may appeal the administrator's action by filing a written request for appeal with the administrator within ten calendar days after receiving or otherwise being served with notice of the administrator's action. When the last day of the period so computed is a Saturday, Sunday, or State-recognized holiday, the period shall run until 4:30 p.m. on the next business day. Failure to file a written request for appeal within the time prescribed will result in the administrator's action becoming a final order, and the appellant shall be bound thereby.

B. The appeal will be heard by the Hearing Examiner, as established by Chapter 2.76 TMC, following procedures set in TMC 8.22.260. Any appeal of an administrator's action may be affirmed, reversed or modified in the Hearing Examiner's final order. The decision of the Hearing Examiner shall be a final order and the appellant and the administrator shall be bound thereby unless, within 21 days from the date of the issuance of the Hearing Examiner's final order, a person with standing to appeal files a petition to the superior court. The cost for transcription of all records ordered certified by the superior court for such review shall be borne by the appellant.

8.22.260 Appeal procedure - Civil Enforcement.

A. Any aggrieved person, as defined in TMC 8.22.250(A), who desires to file an appeal of an administrator's action must do so pursuant to the provision set forth in this section. The appellant shall file a written appeal to the administrator within the time period prescribed in TMC 8.22.250A, and shall pay a filing fee of \$10. The written appeal shall contain the following information:

1. The names of all appellants participating in the appeal;
2. A brief statement of the specific administrator's action protested, together with any material facts claimed to support the contentions of the appellant;
3. A brief statement of the relief sought, and the reason why it is claimed the protested administrator's action should be reversed, modified or otherwise set aside;
4. The signatures of all parties named as appellants and their mailing addresses; and
5. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. Upon the receipt of the appeal and the filing fee, the administrator shall schedule an appeal hearing before the Hearing Examiner and give due notice thereof to

the appellants and general public.

C. At or after the appeal hearing, the Hearing Examiner may affirm, reverse, or modify the administrator's action, or continue the hearing to a date certain for receipt of additional information.

D. The Hearing Examiner shall issue a written decision within 14 days after the hearing, and shall cause copies thereof to be sent to the administrator and appellants.

E. All written orders by the Hearing Examiner pursuant to this section and TMC 8.22.250 shall include a report giving findings of fact, conclusions, and the Hearing Examiner's decision.

F. The written decision of the Hearing Examiner shall be a final order, and the appellant and the administrator shall be bound thereby, unless the order is appealed to superior court within the time period prescribed in TMC 8.22.250B by a person with standing to appeal.

8.22.270 Enforcement, Criminal -- Sound level measurement not required.

A. Every offense defined by this chapter or conduct made unlawful hereby shall constitute a misdemeanor crime.

B. In any criminal prosecution under this chapter, evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

8.22.280 Penalties - Civil and Criminal.

A. *Civil Penalty for Failure to Comply with Final Orders.* In addition to any other sanction or remedial injunctive procedure that may be available at law or equity, any person failing to comply with a final order issued by the administrator or Hearing Examiner, shall be subject to a cumulative civil penalty in an amount not to exceed \$100 per day from the date set for compliance until such order is complied with. The civil penalty shall be collected by such action brought in the name of the City.

B. *Criminal Penalty.* Persons convicted of criminal misdemeanor crimes under this chapter shall be punished by a fine not to exceed \$1,000 or by imprisonment in the jail not to exceed 90 days, or both imprisonment and a fine.

8.22.290 Provisions not Exclusive -- Public Nuisance Declared.

A. The provisions of this chapter shall be cumulative and nonexclusive, and shall not affect the City's right to any other claim, cause of action, or remedy available at law or equity.

B. Any violation of any provision of this chapter is hereby declared to be a public nuisance. The administrator may request that the City Attorney, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such public nuisance in the manner provided by law or remove such public nuisance and restrain and enjoin any person from causing sound or permitting sound to originate that constitutes a violation under this chapter.

8.22.300 Purpose - liability.

A. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

B. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, its officers, employees or agents, for any injury or damage resulting from the failure of anyone to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement pursuant to this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees or agents.

Section 2. Repealer. Ordinance No. 1363 Section 1 (part), 1468 Sections 1, 2, and 3, 1796 Section 3 (part) and 1838 Section 4 are hereby repealed.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 4. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2002.

Steven M. Mullet, Mayor

ATTEST/AUTHENTICATED:

Jane E. Cantu, CMC, City Clerk

APPROVED AS TO FORM BY:

Office of the City Attorney

Filed with the City Clerk: _____
Passed by the City Council: _____
Published: _____
Effective Date: _____
Ordinance Number: _____