

**BEFORE THE CITY COUNCIL
FOR TANGENT, OREGON**

In the matter of interim operational regulations and noise limitations for L&M Industrial Fabrication pending final land use approval by the City.

**Order on
Interim Regulations**

RECITALS

WHEREAS, L&M Industrial Fabrication ("L&M") owns and operates an industrial steel fabrication and welding operation in the City of Tangent at 31975 Rolland Drive (the "Tangent Property"), on two tax lots (TLs 101 & 107) zoned Highway Commercial/Industrial (HC/I); and

WHEREAS, L&M's Tangent Property is adjacent to multiple residential neighbors, some of whom reside on property zoned for residential use and others on land zoned HC/I; and

WHEREAS, L&M's predecessor obtained Conditional Use permit and Site Plan approval (the "2003 approval") that allowed L&M's predecessor to operate a metal fabrication and repair facility, but with significantly lower intensity and with more restricted hours of operation than is currently the case; and

WHEREAS, it recently came to the City's attention through the complaints of many residential neighbors residing near L&M's Tangent Property that L&M's operation and level of intensity exceeds what was allowed in the 2003 approval and that the noise from L&M's operation exceeds applicable city noise limits in Section 7.20.050(2) of the Tangent Municipal Code ("TMC"), which prohibits, among other things, the following (the "City Noise Standard"):

"Frequent, loud or annoying noises or vibrations made or caused to be made by a person, including but not limited to amplified music, singing or a public address system, motor and engine noise from vehicles, lawn mowers, garden tools or other machinery, horns, sirens and any other noise that can be heard beyond the property on which the noise or vibration originates and which unreasonably disturbs or interferes with the peace, comfort or repose of the owners or inhabitants of neighboring property. Where applicable, proof of violation of the noise level limitations set forth in OAR Chapter 340, Division 35 shall be prima facie evidence of a violation of this section, but proof of a violation may be made by other or additional evidence."

WHEREAS, upon notice by the City of the likely zoning and nuisance violation, L&M submitted a land use application for an amended conditional use permit and site plan to remedy the alleged violations and expand L&M's land use approval to allow the intensity and extent of its current operation; and

WHEREAS, while the land use application may resolve the zoning violation, according to near-by neighbors, the nuisance and noise violations persist, which must be eliminated now and until the City issues a final land use decision with conditions; and

WHEREAS, the City Council held a special council meeting on January 23, 2020 at the L&M facility, which was attended by many of the residential neighbors and other interested

citizens to review L&M's operation, assess the noise-generating elements of the operation, and to hear L&M's proposal for remedying the noise and nuisance impacts of L&M's operation on its residential neighbors; and

WHEREAS, at the conclusion of the January 23rd meeting, the City Council voted to adopt a set of operational regulations and limitations to govern L&M's activities at its Tangent Property until the City's land use process on L&M's pending application is complete, and the City issues a final land use decision with conditions (the "Interim Period").

NOW THEREFORE, based on the forgoing Recitals, the Tangent City Council Orders that L&M may continue its normal operations at its Tangent Property during the Interim Period subject to the following restrictions and limitations (the "Interim Regulations"):

1. Quiet Hours: 6 p.m. to 8 a.m. – L&M shall perform no outside work and no work that generates noise that would violate the City's Noise Standard in TMC 7.20.050(2) after 6 p.m. and before 8 a.m. every day, with the following specific exceptions:
 - a. Between 6 a.m. and 8 a.m., L&M may hook-up already-loaded trailers to trucks and immediately drive the loaded trucks off-site. For purposes of this exception, the loaded trailers shall only be parked and hooked-up in the northeast corner of TL 101 near the employee parking area and in the southwest corner of TL 107 near the paint shed.
 - b. Employees may walk anywhere in the yard during the quiet hours to inventory material, but shall not use any motorized vehicles to do so.
2. Case-by-case Exemption to Quiet Hours. L&M may apply to the City Council for permission to use specific equipment and machines during the Quiet Hours but only after demonstrating to the Council's satisfaction that noise from those machines, as properly conditioned and mitigated, will not violate the City's Noise Standard in TMC 7.20.050(2). L&M's request and burden under this exception shall be based on an analysis of the sound source, engineered mitigation measures, and verification by the City's acoustical engineer that the City's Noise Standard will be met if the exemption is allowed. The City shall provide public notice to affected properties and provide a public process when evaluating any such request.
3. Noise Reduction Measures. During the Interim Period, L&M will develop and implement measures to reduce noise throughout its operation, including the following:
 - a. Replace back-up beepers on all forklifts and other equipment with quiet beepers that do not exceed the City's Noise Standard;
 - b. Eliminate all outdoor AM/FM radios from the workplace and any indoor AM/FM radios that are perceptible by near-by neighbors;
 - c. Deploy rubber mats and similar pads and buffers for stacking, storing and laying steel on the round;
 - d. Improve handling techniques by fork-lift operators to eliminate dropped steel and to prevent noise and ground vibration that results from dropped steel;
 - e. Deploy haybales and other sound barriers to absorb, contain and deflect operational and equipment noise;

- f. Modify, reconstruct and contain the existing building structure and outside processing areas to eliminate or contain operational and equipment noise.
 - g. Continue working with Arthur Noxon, P.E. and the City's acoustical engineer to design and implement effective noise mitigation measures that achieve the City's Noise Standards.
4. Noise Hot Line. L&M shall establish within 7 calendar days of this Order a quick or immediate telephone communication line ("Hot Line") that near-by neighbors can use to contact L&M whenever they perceive noise or vibration that exceeds the City's Noise Standard. L&M will provide the City Manager with the Hot Line information.
5. Noise Working Group. L&M shall obtain within 7 calendar days of this Order contact information for the active and willing near-by residential neighbors and form a volunteer Noise Working Group. L&M will coordinate its sound mitigation and testing work with the members of the Noise Working Group, notify them about noise testing, and solicit feedback from them on noise tests. L&M will provide the names and contact information for the members of the Noise Working Group.
6. Amendment of the Interim Regulations. These Interim Regulations are intended to allow L&M to continue its operations while ensuring compliance with the City's Noise Standard during the Interim Period. In that light, these regulations represent the parties' best effort to maintain compliance at L&M's Tangent Property. In the event that any operation or aspect of L&M's work on the Tangent Property appears to the City Council to exceed the City's Noise Standard, the City Council shall notify L&M about the exceedance, but reserves the right, in its sole discretion, to amend unilaterally these Interim Regulations to address any such exceedance(s). In that event, the City Council will provide L&M and surrounding neighbors with notice of its intent to revise the Interim Regulations and allow L&M and the surrounding neighbors the opportunity to comment on the proposed revision(s). The City also reserves its right at any time to terminate these Interim Regulations if it appears to the City Council that L&M is not working in good faith to complete its land use permit and obtain a final decision.
7. Monitoring, Reporting and Enforcement. During the Interim Period, the City will monitor L&M's progress in assessing noise sources at its Tangent Property, designing and implementing effective mitigation for those noise sources. The City will accept any neighbor complaints about excessive noise and convey all complaints so received to L&M without undue delay so that L&M can respond to the complaint and use the information in its assessment and elimination of noise sources. The City reserves its right at any time to call a public meeting to review L&M's progress and compliance and, if necessary, commence code enforcement under TMC Chapter 2.15 (Civil Enforcement) if it appears to the City Council that L&M is not working in good faith with its residential neighbors to address, control and mitigate its noise sources and comply with the City's Noise Standards.

IT IS SO ORDERED by the Tangent City Council this ___ day of January 2020.



Loel Trulove, Mayor