

ARTICLE III. - NOISE^[3]

Footnotes:

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Charter reference— Authority to restrain noisy activities, art. II, § 22.

DIVISION 1. - GENERALLY

Sec. 46-76. - Definitions.

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

dB(A) means a commonly-utilized measure of the sound pressure level in decibels, as measured on the A filter.

Device means and includes any mechanical or electrical device, machine, apparatus or instrument to intensify or to amplify or to reproduce the human voice or any other sound.

Source means the point from which a noise originates.

Unreasonable noise means any disturbing and unnecessary noise which is at an excessive sound level and which is of such character, intensity and duration as is reasonably calculated to be detrimental to the life or health of any ordinary reasonable person or offend the sensibilities of any ordinary reasonable person.

(Code 1971, § 22-13; Ord. No. 2010-1526, § 1, 8-3-2010)

Cross reference— Definitions generally, § 1-2.

Sec. 46-77. - Unreasonable noise prohibited.

- (a) No person shall make unreasonable noise in a public place or near a private residence that such person has no right to occupy.
- (b) The provisions of this section do not apply to the sounds generated by authorized emergency vehicles; to vehicle horns sounded as a danger warning signal; to sound made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body; to audible alarm police alarm devices operated in conformity with local and state law.

(Code 1971, § 22-1; Ord. No. 2010-1526, § 2, 8-3-2010)

Sec. 46-78. - Enumeration of excessive sound levels.

- (a) No person shall:
 - (1) Operate any type of vehicle, machine, or device;
 - (2) Carry on any activity; or
 - (3) Promote or facilitate the carrying on of any activity which makes sound in excess of the levels specified in this section.
- (b) Sound from a moving vehicular source located within the public right-of-way shall not exceed 80 decibels on the "A" weighting scale (dB(A)), except that sound from a vehicle with a manufacturer's gross weight rating of 10,000 pounds and above operated on a prescribed truck route at all times or elsewhere within the city during the hours of 7:00 a.m. to 6:00 p.m. on Monday through Saturday may exceed eight dB(A) but shall not exceed 88 dB(A). Such sound shall be measured at a distance of at least 25 feet from a vehicle located within the public right-of-way.

(c) Sound from any source, other than a moving vehicular source located within the public right-of-way, shall not exceed any of the following limits for its appropriate zone:

(1) The zone limits prescribed by this section are set forth in the following table:

| Zoning Designation of the Property (source) on Which the Sound is Received | Maximum Number of Decibels Permitted from 8:00 a.m. until 12:00 a.m. | Maximum Number of Decibels Permitted from 12:00 a.m. to 8:00 a.m. |
|--|--|---|
| D, DR, A | 63 dB(A) | 50 dB(A) |
| 1C, 2C, 3C, 4C, 5C, 6C | <u>70</u> dB(A) | 60 dB(A) |
| 7C, 8C, 9C | 72 dB(A) | 72 dB(A) |

(2) Sound from construction work for which a building permit has been issued shall be permitted in an industrial zoning district during the hours of 7:00 a.m. to 5:00 p.m. for work of any type, and until 9:00 p.m. for light construction work that uses only hand tools and power tools (but not including nail guns) with no more than five horsepower. Under no circumstances shall amplified sound be considered as construction work activity.

(3) No person shall make any trash pickup with a truck [that] has a compactor or the capacity to raise and dump dumpsters in any area zoned for residential or business uses between the hours of 11:00 p.m. and 7:00 a.m., and no employer shall fail to prevent its employee from violating this subsection while the employee is driving a trash truck owned by or under the control of the employer. For the purposes of this subsection, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash was owned by or was under the control of the employer so identified.

Trash haulers may apply to the city manager for variance of the provisions of subsection (3) above for business district locations. Possession of a valid variance shall be a specific defense to any change under subsection (3) above if the act complied of was within the variance granted. The manager may grant all or a part of any requested variance, and may place such conditions upon any variance granted as are reasonably suited to limit the harmful effects of the variance. Such variances shall be granted only if the applicant can demonstrate to the manager's satisfaction:

- a. That the location in question is sufficiently removed from any residential use that the noise of trash removal will not disturb anyone in their residence, including, without limitation, hotel and motel accommodations; or
- b. That the location cannot feasibly be serviced during permitted hours, and that the variance is the least necessary to permit trash removal while still assuring nearby residents reasonable nocturnal quiet.

(4) For all complaints regarding sounds from a source regulated by this subsection:

- a. The compliance of sounds shall be ascertained by measuring the decibel level of said sounds (utilizing the dB(A) scale) from the sound source and within the property lines on which the sound source is located.
 - i. If, after measurement as described in subsection a. above, the sound decibel level falls within the guidelines as indicated by the chart in subsection (c)(1), said sound shall be deemed in compliance with this chapter.

- ii. If, after measurement as described in subsection a. above, the sound decibel level falls higher than the guidelines as indicated by the chart in subsection (c)(1), said sound shall then be measured from the property line of the complaining property. If the sound decibel level then falls within the guidelines as indicated by the chart in subsection (c)(1), said sound shall be deemed in compliance with this chapter. If the sound decibel level falls higher than the guidelines as indicated by the chart in subsection (c)(1), said sound shall be deemed in violation of this chapter.
- b. For the purposes of this paragraph, a leasehold shall be deemed a property, and its boundary shall be deemed a property line.
- (d) All sound measurements shall be made on a sound level that meets ANSI specification SI.4-1974 for Type I or Type II equipment. The manufacturer's published indication of compliance with such specifications is prima facie evidence of compliance with this subsection.
- (e) It is a specific defense to a charge of violating this section that:
 - (1) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
 - (2) The sound was made within the terms of a parade, fireworks display, or temporary street closure permit issued by the city manager, or was made by rendering of military honors at a funeral by a military funeral honors detail;
 - (3) The sound was made by an animal;
 - (4) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device required by law;
 - (5) The sound was made on property belonging to or leased or managed by a federal, state or county governmental body other than the city and was made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body; or
 - (6) The sound was made within the terms and conditions of a sound level variance granted by the city manager or the manager's authorized representative. A variance shall be granted after application is made if the manager finds that compliance will cause an undue hardship and further finds that:
 - a. Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or
 - b. The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this section. In either case, the manager must also find that no reasonable alternative is available to the applicant. If the manager grants a variance, the manager shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.
- (f) This section shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state.
- (g) Each offense of violation of this section constitutes a separate and distinct violation.

(Code 1971, § 22-2; Ord. No. 2010-1526, § 3, 8-3-2010; Ord. No. 2013-1526-A, pt. 1, 11-19-2013)

Sec. 46-79. - Reserved.

Editor's note— Ord. No. 2010-1526, § 4, adopted Aug. 3, 2010, repealed § 46-79 which pertained to use of sound amplifying equipment by businesses and derived from § 22-3 of the 1971 Code.

Sec. 46-80. - Reserved.

Editor's note— Ord. No. 2010-1526, § 4, adopted Aug. 3, 2010, repealed § 46-80 which pertained to portable radios and derived from Ord. No 99-1347, § 22-24, adopted March 16, 1999.

Secs. 46-81—46-105. - Reserved.

DIVISION 2. - PERMIT

Sec. 46-106. - Required.

It shall be unlawful for any person to use or operate or cause to be used or operated any device, as defined in section 46-76, on any public street within the city without first securing a permit.

(Code 1971, § 22-14)

Sec. 46-107. - Application.

Any person desiring to operate any device shall make application to the city manager for a permit upon such forms as he may prescribe. The following information shall be required on the application:

- (1) The street address where the device will be located;
- (2) The type and make of such device;
- (3) The name and address of the person who will be responsible for the operation of the device;
- (4) The number of speakers or amplifiers to be connected to the device; and
- (5) Such other information as the city manager may deem pertinent.

(Code 1971, § 22-15)

Sec. 46-108. - Fee.

At the same time an application is filed for a permit required by this division, the applicant shall pay to the city a permit fee of \$5.00.

(Code 1971, § 22-16)

Sec. 46-109. - Issuance.

The city manager shall consider each application for a permit required by this division and, at his discretion, may or may not issue such permit.

(Code 1971, § 22-17)

Sec. 46-110. - Cancellation.

Each permit issued under this division may be cancelled at any time by the city manager prior to its expiration.

(Code 1971, § 22-18)

Sec. 46-111. - Expiration.

Each permit issued under this division shall expire 12 months after its date of issuance.

(Code 1971, § 22-19)

Sec. 46-112. - Revocation or suspension.

Each permit issued under this division may be revoked or suspended by the city manager for the violation of any applicable section of this Code; state law; or city ordinance, rule or regulation.

(Code 1971, § 22-20)

Sec. 46-113. - Retention of application and copy.

The application and a copy of each permit issued under this division shall be kept on file in the city hall.

(Code 1971, § 22-21)

Sec. 46-114. - Transferability.

Any permit issued under this division shall not be transferable to another location nor shall any device be moved to another location or replaced without first securing another permit.

(Code 1971, § 22-22)

Sec. 46-115. - Approval of chief of police before use.

After the permit has been secured under this division, the person responsible for the operation of the device shall place the device in the location where it is to be used, together with all amplifiers and other equipment, but shall not begin the use of the device until such device has been approved by the chief of police.

(Code 1971, § 22-23)

Sec. 46-116. - Volume control.

All devices shall be so equipped with some character of control whereby the sound may be increased or decreased, and this sound control shall be so located that the control may be kept locked. It shall be unlawful for any person to tamper with the lock on the sound control or tamper with the sound control or increase the sound coming from the device.

(Code 1971, § 22-24)

Secs. 46-117—46-145. - Reserved.