

## ARTICLE 11-02 - NOISE CONTROL AND RADIO INTERFERENCE

## 11-0201. - Definitions.

For purposes of this article, certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighting network. The unit measurement is the dB(A). "dB" is the abbreviation for decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound  $10^{-12}$  watts per square meter).
4. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
5. "Downtown Business District" means the area described as follows: Beginning at the corner of Second Street and Seventh Avenue North; thence westerly along Seventh Avenue North to its intersection with Tenth Street; thence southerly along Tenth Street to its intersection with Fifth Avenue South; thence easterly along Fifth Avenue South (which becomes Sixth Avenue South as it runs along the south of Island Park) until its intersection with Fourth Street; thence northerly to its intersection with Second Street South; thence east and northerly along Second Street South to the point of beginning. The boundary line described herein shall run along the outermost edge of the rights-of-way corresponding with the streets and avenues described herein, and shall include all the right-of-way identified herein.
6. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
7. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.
8. "Outdoors" shall include any location not inside of a totally enclosed permanent structure.
9. "Sound amplifying equipment" is:
  - A. Equipment that uses alternating current (AC) or direct current (DC) to amplify any sound.
  - B. Equipment that amplifies sound to a level that equals or exceeds 85 dB(A) measured at or corrected to 25 feet.
10. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.
11. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.
12. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
13. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

Source: 2017 (1981), 4839 (2012).

## 11-0202. - Unlawful noise prohibited.

It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city of Fargo.

Source: 2017 (1981), 4839 (2012).

11-0203. - Unlawful noise—Determination.

The standards which shall be considered in determining whether a violation of § 11-0202 exists shall include, but shall not be limited, to the following:

- A. The volume of the noise.
- B. The intensity of the noise.
- C. Whether the nature of the noise is usual or unusual.
- D. Whether the origin of the noise is natural or unnatural.
- E. The volume and intensity of the background noise, if any.
- F. Within the Downtown Business District and all residential zoning districts, the following noises between the hours of 10:00 p.m. and 6:00 a.m. Sunday evening through Friday morning and 11:00 p.m. and 7:00 a.m. Friday evening through Sunday morning are specifically prohibited:
  - 1. Radios, tape players or other sound amplifiers, whether portable or installed in vehicles, at a level which can be heard by a person more than 10 feet away from said vehicle or amplifier.
  - 2. Any horn, bell or other noise-making device except burglar alarms or similar emergency warning devices.
  - 3. Shouting or yelling where the voice is clearly audible at a distance of more than 10 feet.

Source: 2017 (1981), 2372 (1987), 4392 (2004), 4839 (2012).

11-0204. - Projection of sound unlawful.

It shall be unlawful to project a sound or noise excluding noise emanating from a moving motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table 1 below, except as permitted under section 11-0208 and 11-0209.

- A. Sound or noise projecting from one use district, into another use district with a different noise level limit, shall not exceed the limits of the district into which the noise is projected.
- B. The permissible levels in decibels set forth in Table 1 shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

TABLE 1. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

| Zoning District   |  |                       |                   |
|---|--|-----------------------|-------------------|
|   | Residential AG, SR-0, SR-1, SR-2, SR-3, SR-4, MR-1, MR-2, MR-3, MHP, NO, NC, DMU | Commercial GO, LC, GC | Industrial LI, GI |
| Maximum number of decibels permitted from 6:00 a.m. to 10:00 p.m., Monday through Thursday and 6:00 a.m. to 11:00 p.m. on Friday and 7:00 a.m. to 11:00 p.m. Saturday and 7:00 a.m. to 10:00 p.m. on Sunday | 55   | 65                    | 80                |

|   |    |    |    |
|---|----|----|----|
| Maximum number of decibels permitted from 10:00 p.m. to 6:00 a.m. Sunday evening through Friday morning and 11:00 p.m. to 7:00 a.m. Friday evening through Sunday morning | 50 | 60 | 75 |
|---|----|----|----|

For purposes of the decibel levels listed in Table 1, zoning districts that are comprised of a mixed use, having a residential land-use component, shall be designated as residential and the more restrictive decibel levels applicable for residential zoning shall apply.

Source: 2017 (1981), 4553 (2006), 4839 (2012).

11-0205. - Motorized vehicles—compression brakes prohibited.

It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table 2, as follows:

TABLE 2. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

- A. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of 10,000 pounds or more: Maximum allowable limit: 88 dB(A) measured at or corrected to 25 feet.
- B. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than 10,000 pounds: Maximum allowable limit: 80 dB(A) measured at or corrected to 25 feet.
- C. Interstate Motor Carrier:  
Maximum allowable limit:
  1. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of 35 mph or less.
  2. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of more than 35 mph.
- D. Notwithstanding any other provision of the Fargo Municipal Code, it shall be unlawful for any person within the city limits to make, or cause to be made, loud or disturbing noises with any mechanical devices operated by compressed air and used for purposes of assisting braking on any semi-tractor.

Source: 2017 (1981), 4731 (2010).

11-0206. - Aircraft.

It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding 88 dB(A) within the city.

Source: 2017 (1981).

11-0207. - Exemptions.

The following uses and activities shall be exempt from noise level regulations:

- A. Noises of safety signals, warning devices, and emergency relief valves.
- B. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.
- C. Noises resulting from emergency work as defined in § 11-0201(10).

- D. Any construction or maintenance activities at the construction or maintenance site.
- E. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with § 11-0208 or § 11-0209.
- F. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with the duly adopted federal air regulations shall be exempt from the provisions of § 11-0206 as well as other regulations of this section. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of § 11-0206 as well as the other regulations of this section.
- G. Any regulation of railroad noise will be subject to the following:  
Title 40, Code of Federal Regulations, part 201:
  - 1. 201.1 (c), (m), (p), (t), (aa), (dd), (ee)
  - 2. 201.10
  - 3. 201.11 (a), (b)
  - 4. 201.12 (a), (b)
  - 5. 201.13
  - 6. 201.22, 201.23, 201.24
- H. Non-amplified sound generated at a scheduled stadium event, which includes noise generated by parade spectators and participants on the parade route during a lawful parade.
- I. Amplified announcements at scheduled stadium events or other lawful outdoor events.

Source: 2017 (1981), 4839 (2012).

11-0208. - Application for special permit for construction or demolition equipment.

In the event certain construction or demolition equipment noise will exceed prohibited noise levels, the owner or operator of such equipment may apply for relief from this article on the basis of undue hardship. Applications for a permit for relief from the noise level designated in this section on the basis of undue hardship may be made to the city engineer or a duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if the city engineer finds:

- A. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this section; or
- B. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other provisions within this article; and
- C. That no other reasonable alternative is available to the applicant.

The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Source: 2017 (1981), 4839 (2012).

11-0209. - Application for permit for sound amplifying equipment used outdoors- Permit Required.

No person shall use or maintain any sound amplifying equipment outdoors without first having obtained a permit.

- A. Application— A complete application for a permit must be submitted to the chief of police or his authorized designee in a form established by the chief of police, along with a non-refundable fee that has been established by resolution of the board of city commissioners. The application must be made at

least 30 days in advance of the requested permit date unless a waiver is granted by the chief of police. The application shall contain the following information or, in lieu thereof, a detailed statement of the reason why such information cannot be furnished:

1. The name, address and telephone number of the applicant;
  2. The address and a site plan showing the location of the property where the sound amplifying equipment will be used, a listing of the type of sound amplifying equipment and the direction to which the the amplified sound will be directed.
  3. The date and time period the sound amplifying equipment will be used.
  4. A statement that the applicant understands the requirements of this chapter and agrees to comply with all applicable requirements.
- B. Regulations for Use.— The following regulations apply to all permits issued pursuant to Section 11-0209.
1. The only sound permitted shall be music or human speech or both.
  2. No permits shall be issued for any property located within a residential zoning district. For the purpose of this section the Downtown Mixed-Use Zoning District is not considered residential.
  3. Permits are valid for the day or days listed on the permit only.
  4. Permits issued for any property where the source of the sound is located within 500 feet of a residential zoning district shall be valid for no longer than one day.
  5. With respect to any permit for a property where the source of the sound is within 500 feet of a residential zoning district, no more than one permit may be issued every 30 days.
- C. Waiver—The requirement of filing an application at least 30 days before the event may be waived by the chief of police upon a showing that the 30-day period may substantially burden protected rights, including rights of speech and assembly as to matters of public concern.
- D. Issuance of Permit— The chief of police has the discretion to grant or deny a permit that pertains to a property for which a permit has been revoked within the prior 24-month period. In deciding whether to deny a permit on such grounds, the chief of police shall consider:
1. Whether the ownership of the property has changed since a prior permit was denied.
  2. What steps, if any, the property owner has taken to correct the violation which led to the permit revocation.
- With respect to all other applications for permits, the chief of police shall issue a permit to any applicant who has submitted a properly completed application along with the applicable fee unless such permit is prohibited because the application pertains to property in a residential zoning district.
- E. Revocation— A permit may be revoked by the chief of police upon:
1. Violation of one or more regulations of the permit;
  2. Material misrepresentation of fact in the permit application; or
  3. Material change in any of the circumstances relied upon by the chief of police in granting the permit.
  4. A permit may be revoked at any time, even after the permitted event, if the chief of police learns of any violation listed above.
- F. Exemptions - The following shall be exempt from the requirement of obtaining a permit under this section:
1. Community events and festivals permitted by Section 18-0314 of the Fargo Municipal;
  2. Other community-wide events or festivals;
  3. An event that is open to the general public for which no admission is charged and when the purpose for the event is generally not for commercial gain; and,
  4. All land and property owned by the Park District is exempt from the requirements of this section.

The chief of police is authorized to determine whether a proposed event is exempt pursuant to this subsection, and shall consider the factors provided under Section 18-0314.C. of the Fargo Municipal Code in making such determination. The Fargo Moorhead Marathon, currently operated by Fargo Marathon, Inc., is hereby deemed to be a community-wide event that is exempt.

- G. Appeal—The applicant or any person actually or potentially aggrieved by the issuance or denial of a permit or the granting or denial of an exemption may appeal said decision to the board of city commissioners.

Source: 4839 (2012), 4966 (2015).

11-0210. - Radio interference between six o'clock p.m. and eleven o'clock p.m. prohibited.

It shall be unlawful for any person, firm or corporation to operate in the city any device or apparatus, either electrical or mechanical, which generates or causes high frequency oscillations or electrostatic or electromagnetic waves which interfere with radio broadcast reception between the hours of six o'clock p.m. and eleven o'clock p.m., except that a person duly licensed to practice medicine, osteopathy, chiropractic, or dentistry by the laws of the state of North Dakota, in a case of absolute emergency arising in the course of the practice of his profession, which case demands immediate treatment between the aforementioned hours, may operate or cause to be operated under his immediate direction and supervision any machinery necessary to give emergency in such case.

This prohibition shall be construed to apply to radio equipment either of the regenerative or any other type, violet ray machines, X-ray machines, diathermy machines, vibrating battery charges, sign changers or electric signs or devices using a blinking device where a make and break contact is maintained, electric refrigeration machines, electrically driven oil pumps or furnace equipment, high tension ignition systems, electric transmission lines, defective insulators and transformers, defectively sparking motors and generators, and all other electrical or mechanical devices which, because of the manner of construction, state of repair, or condition or manner of operation, interfere with radio reception.

Source: 2017 (1981), 4839 (2012).

11-0211. - Unlawful interference defined.

Unlawful interference with radio reception within the meaning of this article shall exist where radio reception interference arises from the use or operation of any device or apparatus such as violet ray machines, machines using Tesla coil or principle, X-ray machines and diathermy machines described in § 11-0210, under all of the following conditions:

- A. Such device or apparatus must be situated not less than 100 feet from the radio receiving set with which it interferes.
- B. The radio receiving equipment interfered with shall be operated at a volume comparable to a person's normal tone of voice.
- C. The broadcasting station whose program is being received when the interference occurs must have a power output of not less than one kilowatt and must be located not more than 300 miles from the receiving set.

It is expressly provided, however, that this article shall not apply to radio stations, either broadcast, commercial, or amateur, duly licensed by the government of the United States; and unlawful radio reception interference shall not be deemed to arise or exist from the operation of duly licensed broadcasting stations.

Source: 2017 (1981), 4839 (2012).

11-0212. - Interference—When permitted.

Unlawful radio reception interference, within the meaning of this article, shall not be deemed to arise or exist under the following conditions:

- A. It shall not be unlawful to cause radio reception interference except between the hours of six o'clock p.m. and eleven o'clock p.m.
- B. It shall not be unlawful to cause radio reception interference where the devices mentioned in § 11-0210 are operated by any agency or department of the city, the county of Cass, the state of North Dakota, or the United States of America; provided, that such devices be equipped so far as is reasonably possible with filters, chokes, condensers, shields, and grounds and are operated and maintained exclusively in the exercise of public or governmental functions.

Source: 2017 (1981), 4839 (2012).

11-0213. - Building inspector—Powers and duties.

The building inspector of the city, or his duly authorized deputies, shall have the right to enter upon any premises, other than private residences, at all reasonable hours for the purpose of inspecting the same. He may enter upon the premises and inspect private dwellings with the consent of the owner or occupant thereof. If it is found that equipment, apparatus, or devices described in § 11-0210 are being operated or maintained in violation of this article, the building inspector shall notify, in writing, the person, firm or corporation responsible for the unlawful operation or maintenance of such devices, equipment, or apparatus to discontinue the use thereof, or to make additions, repairs, or modifications thereof, in order that the same may be operated or used in a manner which complies with this article. The mailing of a registered or certified letter to the owner or operator of such machine, device, or apparatus, addressed to such owner or operator at the premises where such machine, device, or apparatus is operated or maintained, or the personal service of such notice upon the said owner or operator shall constitute sufficient notice for the purposes of this article. In the event that the owner or operator of such machine, device or apparatus shall not, within three days after the giving of such notice, either entirely discontinue the use or operation of such machine, device, or apparatus during the hours when the same is prohibited to be used or operated by the terms of this article or repair the same so that it complies with the provisions of this article, such owner or operator thereof shall be deemed to be operating the same in violation of the provisions of this article.

Source: 2017 (1981), 4839 (2012).

11-0214. - Wires over streets, alleys, and private property—Consent of owner.

No person, firm, or corporation shall install, operate, or maintain any aerial ground wire or other wire used in connection with any radio receiving set over, upon or across any public street or alley; nor over, upon, or across the private property of any other person, firm, or corporation without the consent of the owner thereof; nor within five feet of any telephone, electric light or telegraph pole, or any exterior telephone, telegraph, or electric light service wire. Such aerial, ground wire, or any other device used in connection with the maintenance of any radio receiving set shall be properly grounded or protected against lightning or other improper foreign electrical conductivity.

Source: 2017 (1981), 4939 (2012).

11-0215. - Advertising or making announcements from buildings or on streets with sound trucks or noise-making devices prohibited—Exceptions.

The word "person" as use in this section shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

No person owning, leasing, or operating any building, structure, or vehicle shall play, use, operate, or permit to be played, used, or operated any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, sound truck, or other machine or device for the producing or reproducing of sound for the purpose of advertising, making announcements, or attracting the attention of the public to such building, structure, or

vehicle, except that the board of city commissioners may issue a permit for the use of sound trucks upon specified city streets during stated hours if the announcements or programs to be broadcast are in the public interest and not for commercial purposes.

Each person shall be deemed guilty of a separate offense for each day during any portion of which any violation of the provisions of this article be committed, continued, or permitted.

Source: 2017 (1981), 4839 (2012).

11-0216. - Public nuisance—Remedy—Penalty.

Any noises found to be in violation of this ordinance and the maintenance, use, or operation of any of the apparatus, machinery, or devices defined in § 11-0210 in violation of the terms of the article, are hereby declared to be a public nuisance and may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction. A violation of any of provision of this article shall constitute an infraction, punishable in accordance with § 1-0301 of the Fargo Municipal Code. Each day a violation exists shall be deemed to be a separate offense. The remedy provided by this section shall not be deemed to be exclusive, and violations may be prosecuted in municipal court in the same manner as violations of other ordinances.

Source: 2017 (1981), 4553 (2006), 4839 (2012).