

ARTICLE III. - OFFENSES AGAINST PUBLIC PEACE AND ORDER^[3]

Footnotes:

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Editor's note—Ordinance No. 91-32, § I, adopted May 28, 1991, amended Art. III, §§ 16-76-16-82 to read as set forth herein. Prior to such amendment, §§ 16-76-16-82 contained similar provisions and derived from Ch. 7, art. 6, §§ 4, 7, 13 and Ch. 7, art. 9, §§ 1-4 of the 1963 Code.

Sec. 16-76. - Purpose; definitions.

- (a) The purpose of this article is to control excessive noise and vibration that interferes with the comfortable enjoyment of life, property, recreation, and conduct of business as defined and described in this article.
- (b) As used in this article, the following words and terms shall have the meanings respectively ascribed:
- Ambient noise* shall mean background or surrounding noise.

A-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighted network, fast response.

C-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the C-weighted network, fast response.

City manager shall also mean the city manager's designee.

Elapsed time average shall mean the A-weighted or C-weighted sound level, fast response, emanating from a source during one (1) hour, by sampling the sound level for a continuous period of three (3) minutes and recording the average sound level for that period; then repeating the sampling process on one (1) other occasion during the hour; and then, averaging the two (2) readings together (adding the two (2) readings and dividing the sum by two (2)).

Impulsive sound means sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

Nighttime shall mean the hours between 11:00 p.m. and 7:00 a.m.

Noise nuisance means any loud, irritating, vexing, disturbing, or unreasonable sound which causes distress, annoyance, discomfort or injury to or which interferes with the comfort or repose of any reasonable person of ordinary nervous sensibilities in the vicinity or hearing thereof, or any sound which endangers or injures the safety or health of humans or animals, or any sound which interferes with the physical well-being of humans or animals, or any sound which endangers or injures person or real property.

Public place means any public road, street or alley, inn, tavern, store, grocery or workshop, or a place in which people are assembled or to which people commonly resort for purposes of business, amusement, recreation, or other lawful purposes.

Sound level shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network such as A or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971).

Sound level meter shall mean an instrument which includes a microphone, amplifier, RMS detector, integrator, or time averages, output meter, and weighing network used to measure sound pressure levels.

Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § I, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-77. - General restrictions.

A person may not:

- (a) create a noise in excess of the decibel limits prescribed by this article;
- (b) make noise or play a musical instrument or other equipment plainly audible to a nearby business or residence during the nighttime;
- (c) operate, permit, or cause the operation of any device that creates vibration which is above the vibration perception threshold of an individual at or beyond the property of the source if on private property, or at fifty (50) feet from the source if in a public space or public right-of-way;
- (d) create, generate, produce, or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration, is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so as to endanger or injure personal or real property.

(Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)

Sec. 16-78. - Noise nuisance enumeration.

- (a) It shall be unlawful to create, generate, produce or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so as to endanger or injure personal or real property. Unreasonable noise nuisance includes, but is not limited to, the following acts:
 - (1) The playing or permitting, or causing the playing, of any radio, television, phonograph, drum, jukebox, nickelodeon, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound, whether such device is operated at a fixed location or in a vehicle.
 - (2) The gathering, on public or private property, of any number of persons at any time, when the cumulative noise of the gathering, whether from human voices or other sources, or from a combination of human voices and other sources, causes unreasonable disturbance to any person or animal located within the range of hearing of such gathering.
 - (3) The keeping of any animal, fowl, or bird, which makes frequent or long, continued noise.
 - (4) The continued or frequent sounding of any horn or other signal device on any automobile, truck, motorcycle, bus or other vehicle, except as a danger signal.
 - (5) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, automobile, truck, motorcycle, or other motor vehicle or boat, except through a muffler or other device which prevents loud or explosive noises therefrom.
 - (6) The crying, calling, or shouting, in person or by a mechanical device, or the use of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, loudspeaker or phonograph with or without an amplifier, hand organ, or other devices or instruments, musical or otherwise, for the purpose of advertising any candidates for elective office, any goods, wares, or merchandise, or for the purpose of attracting attention to or inviting persons to any political rally, meeting or gathering, to any place of amusement, to any performance or show, or to any business or activity whatsoever.

- (7) The raucous shouting, whistling, yelling, singing, hooting, or crying of peddlers, hawkers, vendors or any other persons.
 - (8) The use of any automobile, bus, motorcycle, truck, van or other vehicle, so out of repair or so loaded, that it emits or creates loud grating, grinding, or rattling noise.
- (b) A peace officer, consistent with the law of this state, may arrest any person who violates any provision of this article in the officer's presence; such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.
- (Ord. No. 91-32, § I, 5-28-91; Ord. No. 94-27, § II, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-79. - Restriction on decibel level.

- (a) It shall be unlawful to create, generate, produce or emanate an unreasonable noise or noise nuisance when, using the A-weighted scale, fast response, it exceeds 3 decibels over the ambient noise, or a maximum of 50 decibels, whichever is higher, or using the C-weighted scale, fast response, it exceeds 5 decibels over the ambient noise, or a maximum of 60 decibels, whichever is higher. Measurement shall be taken at the property line of the noise-producing property, or beyond, in accordance with sec. 16-81(e).
- (b) Regardless of the measurable decibels level established above and measured as provided in section 16-81(e), it shall be unlawful to generate, produce or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so as to endanger or injure personal or real property.
- (c) A peace officer, consistent with the law of this state, may arrest any person who violates any provision of this article in the officer's presence; such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.
- (Ord. No. 91-32, § I, 5-28-91; Ord. No. 94-27, § III, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-80. - Exceptions.

- (a) The provisions of this article shall not apply to:
- (1) Sound generated by emergency vehicles or for the purpose of alerting persons to an emergency;
 - (2) Sound produced by a vehicle motor while the vehicle is moving on a public right-of-way, public waterway, airport runway, or railway, except as regulated under subsection 16-78(a)(8) above;
 - (3) Sound produced by any governmental body in the performance of a governmental function;
 - (4) Sound generated at or by a parade route during a lawful and permitted parade, a scheduled stadium event, or at outdoor celebrations sponsored or co-sponsored by the city or any governmental body in the performance of its duty, or as otherwise allowed by law; or
 - (5) The activity, operation, noise, or vibration source emanates from an operation or activity (including, by way of example only, but not limited to, construction, reconstruction, remodeling, and rebuilding of any structure or place in conformity with applicable provisions of this code and state law) that cannot reasonably be done in an alternative manner, time, or place so as to otherwise comply with this article.
- (b) Applications for a permit for relief from the noise and vibration restrictions designated in this article on the basis of undue hardship may be made to the city manager. Each application must be accompanied by a fifty-dollar fee. The relief requested may be granted upon a good and sufficient showing:
- (1) That additional time is necessary for the applicant to alter or modify his activity or operation to comply with the provisions of this article;
 - (2) That the activity, operation, noise or vibration source will be of temporary duration and cannot reasonably be done in a manner that would comply with this article; or

- (3) That no reasonable alternative is available to the applicant.
- (c) If granted, the permit shall be in writing and contain all conditions upon which such permit is granted, including, but not limited to, the effective dates, any time-of-day, location, sound-pressure-level, or equipment limitations. The city manager may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding area.
- (d) In the event the city manager denies an application for a permit for relief from the noise and vibration restrictions designated in this article, or grants relief under conditions the applicant finds unacceptable, the affected party may appeal the decision to the city council by filing a written letter with the city manager within ten (10) calendar days after receiving notice of the city manager's decision. The appeal letter must specifically state each and every point of contention with the city manager's determination. The city manager shall immediately cause the appeal to be placed on the next regular meeting agenda of the city council for discussion and action. At that meeting, the city council shall consider the standards contained in this article, the city manager's reasons for denying a permit or applying conditions, the points raised in the letter of appeal, and relevant surrounding facts.
- (Ord. No. 91-32, § I, 5-28-91; Ord. No. 94-27, § IV, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-81. - Enforcement.

- (a) *Administrative stop order.* The building official, his designee, or his duly authorized noise abatement officers may issue an order to any person having possession or control over noise-generating property to immediately halt any sound which exposes any person to continuous or impulsive noise levels that are unreasonably loud, disturbing, or raucous. Within five (5) days following issuance of such an order, the building official or his duly authorized representative may apply to the appropriate court for an injunction to replace the administrative stop order.
- (b) *Identification of violator.* The persons responsible for violations of this article are identified as follows:
- (1) *At private residences.* Any adult resident present at the time of the offense, and any adult guest or adult trespasser with the ability to control the level of noise at the time of the offense when no adult resident is present at the time of the offense.
- (2) *At business locations.* Any business owner, operator, manager, employee in charge, and all persons in control or in possession of the noise nuisance-generating instrument or property at the time of the offense.
- (3) *At any location with an unattended noise nuisance-producing machine, device, instrument, child, animal, or combination of same.* Any person who leaves unattended any machine, instrument, device, child, animal, or any combination of same, which thereafter commences producing noise in violation of this article.
- (c) *Authority of peace officer.* Subject to subsection (d) below, a peace officer, consistent with the law of the state, may arrest any person who violates any provision of this article in such officer's presence. Such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.
- (d) *Method of noise measurement.* Whenever portions of this article prohibit noise over a certain decibel limit, measurement of the noise shall be made with a decibel meter meeting the standards prescribed by the American Standards Association and using the A-weighted or C-weighted scale, fast response. Measurements shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be placed three to five feet above ground level, when possible, and positioned so as not to create any unnatural enhancement or diminution of the measured noise. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements, except where such background noise interferes with the primary noise being measured.
- (e) *Determination of violation.* An arrest, citation, summons, or complaint for the violation of any part of this article must be based on probable cause arising from:

- (1) The complainant's physical sense perceptions and observations of the unreasonable noise or vibration, as defined herein, at the time such is occurring; or
 - (2) Sound level measurements, taken in accordance with this article, which exceed the stated limits; or
 - (3) A combination of the foregoing two (2) types of evidence.
- (Ord. No. 91-32, § I, 5-28-91; Ord. No. 94-27, § V, 4-12-94; Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)

Sec. 16-82. - Penalties.

Any person who violates any portion of this article is guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00), nor more than two thousand dollars (\$2,000.00). For the second or subsequent conviction within a twelve-month period, such person shall be fined not less than two hundred fifty dollars (250.00), nor more than two thousand dollars (\$2,000.00).

(Ord. No. 91-32, § I, 5-28-91; Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)