

ARTICLE V. - NOISE<sup>[5]</sup>

Footnotes:

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**Cross reference**— Property maintenance code, § 18-691 et seq.; juke box operations, § 22-601 et seq.

**State Law reference**— Special inspection warrants, Wis. Stats. § 66.122.

## DIVISION 1. - GENERALLY

## Sec. 42-111. - 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. All acoustical terminology shall be as defined in American National Standards Institute section 1.1, entitled "acoustical terminology."

*A-weighted level* or *A* used in conjunction with dB is the total sound level of all sounds as measured with a sound level meter using the "A" weighting network as defined in American National Standards Specification for sound level meters, S1.4-1971. The unit is the dBA.

*Ambient sound level* means the sound pressure level of all-encompassing sounds associated with a given environment, being a composite of many sounds. For the purpose of this article, such term is the sound pressure level exceeded 90 percent of the time, based upon a measurement of not less than ten minutes and excluding the alleged offensive sounds.

*Average sound level* means a sound level typical of the sound levels observed at a certain place during a given period of time averaged by the general rule of combination for sound levels, such general rule being set forth in ANSI specifications for sound level meters. "Average sound level" is also called "equivalent continuous sound level (Leq)."

*Band pressure level* of a sound for a specified frequency band means the sound pressure level for the sound contained within the restricted band.

*Commercial purpose* means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, any goods or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition or event, or for the purpose of demonstrating any such sound equipment.

*Cycle* means the complete sequence of values of a periodic quantity which occurs during a period.

*Daytime* means the hours from 7:00 a.m. to 10:00 p.m.

*Decibel* or *dB* is a unit of level which denotes the ratio between two quantities which are proportional to power; the number of decibels corresponding to the ratio of two amounts of power is ten times the logarithm to the base ten of this ratio.

*Frequency* of a function periodic in time means the reciprocal of the primitive period. The unit is the cycle per unit time and shall be specified.

*Motor vehicle* includes but is not limited to minibikes and go-carts.

*Nighttime* means the hours from 10:00 p.m. until 7:00 a.m. of the following day.

*Noise* means any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

*Noncommercial purpose* means the use, operation or maintenance of any sound-amplifying equipment for other than a commercial purpose. Such term includes, but is not limited to, philanthropic, political, patriotic and charitable purposes.

*Sound-amplifying equipment* means any machine or device for the amplification of the human voice, music or any other sound, but shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

*Sound-level meter* means 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.

*Sound pressure level* of a sound, in decibels, means 20 times the logarithm to the base ten of the ratio of the pressure of the sound to the reference pressure, which for the purposes of this article shall be 0.0002 microbar.

*Sound truck* means any vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto any sound-amplifying equipment.

(Code 1973, § 11.14.020; Ord. No. 39-90, pts. 1—3, 5-7-91)

**Cross reference**— Definitions generally, § 1-2.

Sec. 42-112. - Findings and declaration of policy.

(a) It is found that:

- (1) The making and creation of excessive or unusually loud sounds within the limits of the city is a condition which has existed for some time and the extent and volume of such sounds is increasing;
- (2) The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud sounds which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(b) It is declared that the policy of the city is to prohibit unnecessary, excessive and annoying sounds which at certain levels and frequencies are detrimental to the health and welfare of the city's inhabitants and in the public interest must be systematically proscribed.

(Code 1973, § 11.14.010)

Sec. 42-113. - Penalty for violation of article.

Any person violating any of the provisions of this article shall, upon conviction, forfeit an amount as prescribed in section 1-15. This section shall not preclude the city from maintaining any appropriate action to prevent or to remove a violation of this article.

(Code 1973, § 11.14.200)

Sec. 42-114. - Injunction; additional remedy.

The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this article, which causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed, and is declared to be, a public nuisance and may be subject to summary abatement by a restraining order or injunction issued by a court of competent jurisdiction. This is not intended to preclude resort to any other legal remedy.

(Code 1973, § 11.14.190)

## Sec. 42-115. - Enforcement of article.

It shall be the duty of the health officer to enforce the provisions of this article, except that the provisions of section 42-137, relating to traffic sounds, are to be enforced by the chief of police, and the provisions of section 42-127, relating to excessive sounds, are to be enforced by the chief of police, or his designee, during the hours from 5:00 p.m. to 8:00 a.m. on weekdays, and on weekends and holidays.

(Code 1973, § 11.14.030)

## Sec. 42-116. - Payment of forfeiture in lieu of court appearance.

(a) Any person charged with a violation of the offenses listed under subsection (b) of this section may pay the amount enumerated therein at the police department in lieu of a court appearance. Persons wishing to contest charges contained in subsection (b) of this section may contact the police department to arrange a court appearance date.

(b) The following forfeitures for the offenses listed herein may be paid at the police department:

Section number	Violation	Forfeiture
<u>42-127</u>	Excessive sound prohibited	\$100.00
<u>42-128</u>	Unreasonable disturbance prohibited	200.00
<u>42-134</u>	Excessive sound by residential air conditioners	50.00
<u>42-135</u>	Radios, television sets, and similar devices	30.00
<u>42-136</u>	Sound truck permit	50.00
<u>42-137(d)</u>	Radios and sound amplification	100.00

(Code 1973, § 11.26.020; Ord. No. 41-90, pt. 1, 11-20-90; Ord. No. 13-95, pt. 4, 8-15-95)

**State Law reference**— Actions for violation of municipal regulations, forfeitures, stipulations, Wis. Stats. § 66.12(1)(b); citations for ordinance violations, Wis. Stats. § 66.119.

Secs. 42-117—42-125. - Reserved.

## DIVISION 2. - STANDARDS

## Sec. 42-126. - Excessive sound and vibration declared a nuisance.

Excessive sound and vibration as defined in this article is hereby declared to be a public nuisance and may be subject to summary abatement procedures as described in section 42-142. Such abatement may be in addition to administrative proceedings, fines and penalties as provided in this article. It shall be the duty of the health officer, upon complaint of a nuisance, to determine if excessive sound and vibration exist and to take the appropriate action as specified in this article. Conditions of excessive sound and/or vibrations which are specifically exempted or for which a variance permit has been issued in conformity with the provisions of this article shall be exempt from the application of the provisions of this section.

(Code 1973, § 11.14.040)

Sec. 42-127. - Excessive sound prohibited.

No person shall produce or cause to be produced sound which exceeds the limitations set forth in section 42-129 or which violates the provisions of section 42-131.

(Code 1973, § 11.14.050)

Sec. 42-128. - Unreasonable disturbance prohibited.

No person shall make or assist in making any sound tending to unreasonably disturb the peace and quiet of persons in the vicinity thereof unless the making and continuing of such sound cannot be prevented and is necessary for the protection or preservation of property or of the health, safety, life or limb of some person.

(Ord. No. 18-92, pt. 1, § 11.14.055, 6-16-92)

Sec. 42-129. - Sound limitations.

(a) The maximum allowable hourly average sound level emitted from any stationary sound source shall not exceed the following limits for the respective categories of receiving land use. The hourly average sound level shall be determined during any measurement period by an  $L_{eq}$  measurement taken at the property boundary affected by the noise.

TABLE 1

Receiving land use category	Time	One-hour average sound level (dBA)
Institutional	10:00 p.m.— 7:00 a.m. 7:00 a.m.—10:00 p.m.	60 65
Residential (all categories)	10:00 p.m.— 7:00 a.m. 7:00 a.m.—10:00 p.m.	60 65
Uses bordering Festival Park	Any time	<u>70</u>
Commercial	10:00 p.m.— 7:00 a.m. 7:00 a.m.—10:00 p.m.	<u>70</u> 75
Manufacturing	Any time	80

(b) Correction for ambient conditions. Where the ambient sound level influences a measurement at a property boundary, such sound will be accounted for by applying the following correction factors:

TABLE 2

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If the ambient sound level is less than the sound source by:	Add the following to the sound limit:
0—1 dBA	3 dBA
2—3 dBA	2 dBA
4—9 dBA	1 dBA

If the ambient sound level is greater than the sound limit, the sound source shall not be allowed to exceed the ambient level.

(Code 1973, § 11.14.060; Ord. No. 39-90, pt. 4, 5-7-91)

Sec. 42-130. - Method of measuring sound.

- (a) *Equipment.* Sound measurement shall be made with a sound level meter manufactured according to the specifications of the American National Standards Institute, USA Standard Specifications for General Purpose Sound Level Meters (S1.4-1971) and Preferred Center Frequencies for Acoustical Measurements (S1.6-1960), or any subsequent nationally adopted standards superseding the above standards.
- (b) *Location and interpretation.* Sound measurement shall be made at the nearest lot line of premises from which sound complaints are received and shall be made at a height of at least three feet above the ground and at least three feet away from walls, barriers, obstructions or sound reflective surfaces. Where the nature of the sound level permits, the slow response setting shall be used to obtain the sound level on the sound level meter.

(Code 1973, § 11.14.070)

Sec. 42-131. - Sound nuisances where sound level measurements are not practical.

- (a) Certain sounds are generated by electrical or mechanical equipment which due to the nature of their method of generation, such as random or unpredictable times of occurrence, are impractical to measure to determine compliance to the community sound standards as described in sections 42-127, 42-129, and 42-130. Where such sounds occur and cause a serious disturbance to neighborhoods, an alternate method of processing and relief should be applied.

Upon receipt of a written petition concerning such nuisances, signed by two or more affected adult persons from separate households or occupancies, the health officer or his designee may commence prosecution on information and belief. The health officer in such cases shall issue an order on the alleged violator setting forth that a complaint has been received, the nature of the complaint and a notification that production of excessive and nuisance sounds are a violation of the Code and may be prosecuted for relief.

- (b) Following issuance of a notification of a sound nuisance under this section, a reasonable time for compliance, and the receipt of another complaint that the noise continues to cause a disturbance, the health officer or designee shall arrange for such case to be reviewed by the office of the city attorney. No person shall be convicted under the provisions of this section except upon testimony of at least one of the affected adult persons.

(Code 1973, § 11.14.075)

Sec. 42-132. - Variance permits.

Variance permits may be issued by the health officer to exceed the sound standards set forth in this article, as follows:

(1) *Temporary variance permits.*

- a. *Generally.* A temporary variance permit may be issued upon request provided that the work producing such sound is necessary to promote the public health and/or welfare and reasonable steps are taken to keep such sound at the lowest possible practical level.
- b. *Special community events.* A temporary variance permit may be issued for special events, such as circuses, Fourth of July celebrations and similar community events which are limited in duration, provided that precautions are taken to maintain the sounds produced at the lowest practical level. Such variance permits shall not be issued for block parties.
- c. *Application procedure.* Applications for temporary variance permits must be made in writing to the health officer and shall contain all of the following pertinent information:
  1. Date requested.
  2. Type of event.
  3. Time and place of operation.
  4. Equipment and operation involved.
  5. Necessity for such permit.
  6. Steps to be taken to minimize noise.
  7. Name of responsible person who will be present at the operation site while the noise is produced.

(2) *Variance permits of indefinite duration.*

- a. It is recognized that it is not technically or economically feasible for certain business operations and equipment to comply with the standards set forth in this article as of the date of this article. The health officer shall therefore issue a variance permit on existing business operations and equipment which produce excessive sound if it is found that it is not technically or economically feasible to alter such operations to reduce sound to within the prescribed standards set forth in this article. Applications for such variances must be made to the health officer by an affected party in a letter setting forth the reasons that such variance should be granted. The health officer, after review of all circumstances and the degree of nuisance, shall reply in writing giving the variance, denying the variance or setting forth conditions or limitations under which the variance will be granted.
- b. If the health officer issues an order citing a violation of this article on an existing business operation and equipment and the party cited applies for a variance within ten days of such citation, then all penalties provided shall be tolled from the date the application is filed until a final order or decision has been issued on the merits of the application.

(3) *Fees.* The fee for a temporary variance permit under subsection (1) above shall be \$10.00 per day.

(Code 1973, § 11.14.080; Ord. No. 18-00, pt. 1, 9-20-00)

## Sec. 42-133. - Exemptions from article.

- (a) *Construction sites, public utilities, public works.* The daytime criteria as set forth in section 42-129 shall not apply to construction sites, public utilities and public works projects and operations during the daytime hours from Monday through Saturday, inclusive; provided, however, that sound production shall be minimized through proper equipment operation and maintenance. Stationary equipment on construction projects lasting more than ten days within residential districts shall be shielded or located so as not to cause unnecessary sound.
- (b) *Emergency operations.* Emergency short-term operations which are necessary to protect the health and welfare of the citizens, such as emergency utility and street repair, fallen tree removal or emergency fuel oil delivery, shall be exempt from the criteria set forth in section 42-129, provided that reasonable steps shall be taken by those in charge of such operations to minimize sound emanating from such operations.

- (c) *Sound required by law.* The provisions of section 42-129 shall not apply to any sound required specifically by law for the protection or safety of people or property.
- (d) *Lawn mowers, garden tools, etc.* Powered equipment such as lawn mowers, small lawn and garden tools, riding tractors and snow removal equipment which is necessary for the maintenance of property, is kept in good repair and maintenance, and which, when new, would not comply with the standards set forth in this article, shall be exempted from the provisions of section 42-129. However, no person shall operate such equipment, with the exception of snow removal equipment, during the hours from 10:00 p.m. through 7:00 a.m., inclusive.
- (e) *Residential air conditioners.* Sound emitted by residential air conditioners shall be judged by the criteria set forth in section 42-134.
- (f) *Highway vehicles.* Vehicles operating on city streets, alleys and highways shall be subject to sound control as set forth in section 42-137.
- (g) *Aircraft.* Aircraft operations which are controlled specifically by federal law and enforcement shall be exempted from the provisions of this article.
- (h) *Bells, chimes.* Bells, chimes and similar devices which signal the time of day and operate during the daytime hours for a duration of no longer than five minutes in any given one-hour period shall be exempt from the daytime sound limitations of section 42-129.

(Code 1973, § 11.14.090)

Sec. 42-134. - Nighttime sound emitted by residential air conditioners.

- (a) *Excessive sound prohibited.* No person shall install, operate or use any residential air conditioner which creates a sound level in a sleeping room in any dwelling unit located on any adjacent premises in excess of five decibels above the ambient sound level at the location being measured.
- (b) *Measurement.* Upon receiving a complaint of a violation of this section, the health officer shall conduct a sound level survey through the use of a sound level meter. The sound pressure levels shall be measured in a sleeping room in the complainant's premises, with the sound level measuring microphone placed three feet from an open window nearest to the source of the sound and not less than three feet above the floor of the room in which the measurement is made. If the sound level exceeds the level specified in subsection (a) of this section, the noise shall be deemed excessive and in violation of this section.

(Code 1973, § 11.14.100)

Sec. 42-135. - Radios, television sets, and similar devices.

- (a) *Restriction.* No person shall use or operate any radio receiving set, musical instrument, phonograph, television set or other machine or device for the producing or reproducing of sound in such a manner as to create a sound level in any room in any dwelling unit located in any adjacent premises in excess of five decibels above the ambient sound level at the location being measured.
- (b) *Measurement.* Upon receiving a complaint, the health officer shall conduct a sound level survey through the use of a sound level meter. The sound pressure levels may be measured in any room in the complainant's premises with the sound level measuring microphone placed three feet from an open window nearest the source of the sound and not less than three feet above the floor of the room in which the measurement is made. If the sound level exceeds the level specified in subsection (a) of this section, the sound shall be deemed excessive and in violation of this section. Sound level measurements shall be taken within any adjoining apartment if the radio receiving set, musical instrument, phonograph, television set or other machine or device is in an apartment house, condominium or other multiple dwelling.

(Code 1973, § 11.14.110)

Sec. 42-136. - Sound trucks and sound-amplifying equipment.

- (a) *Purpose of regulation.* The common council recognizes that the use of sound-amplifying equipment when operated for free speech purposes is protected by the constitutional rights of freedom of speech and assembly, but nevertheless feels obligated to reasonably regulate the use of such equipment in order to protect the correlative constitutional rights of those who wish privacy and freedom from the nuisance of loud and unnecessary sound.
- (b) *Registration of sound trucks.* No person shall use a sound truck on the street, or on city-owned property, with its sound-amplifying equipment in operation without having first filed an application with the city clerk in writing and receiving approval by the public safety and licensing committee. Such application shall be filed in triplicate at least 15 days prior to the date on which it is intended to use such equipment and shall state the following:
- (1) Name and home address of registrant;
  - (2) Address and place of business of registrant;
  - (3) License number and motor vehicle number of the sound truck to be used by registrant;
  - (4) Name, address and telephone number of person who owns the sound truck;
  - (5) Name, address and telephone number of person having direct charge of the sound truck;
  - (6) Names and addresses of all persons who will use or operate the sound truck;
  - (7) The purpose for which the sound truck will be used;
  - (8) A general statement as to the section or sections of the city in which the sound truck will be used;
  - (9) The proposed hours of operation of the sound truck;
  - (10) The number of days of proposed operation of the sound truck;
  - (11) A general description of the sound truck amplifying equipment which is to be used;
  - (12) The maximum sound-producing power of the sound-amplifying equipment, expressed in decibels at a reference distance of 30 feet; and
  - (13) Whether the sound-amplifying equipment will be used for commercial or noncommercial purposes.
- (c) *Processing of applications.*
- (1) The city clerk shall forthwith transmit applications under this section to the public safety and licensing committee of the common council for consideration.
  - (2) The public safety and licensing committee shall return to the applicant an approved certified copy of the application unless it finds that:
    - a. The conditions of the motor vehicle movement are such that the use of the equipment would constitute a detriment to traffic safety;
    - b. The conditions of pedestrian movement are such that use of the equipment would constitute an unreasonable interference with traffic; or
    - c. The application reveals that the applicant would violate the provisions set forth in this article or any other provisions of this Code.
- (d) *Disapproval.* If an application under this section is disapproved, the public safety and licensing committee shall endorse upon the statement its reasons for disapproval and return it forthwith to applicant.
- (e) *Regulations.* The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:
- (1) The only sounds permitted shall be either music or human speech, or both.
  - (2) The operation of sound-amplifying equipment shall only occur between the hours of 8:00 a.m. and 10:00 p.m. each day. No operation of sound-amplifying equipment for commercial purposes shall be permitted on Sundays or legal holidays.
  - (3) No sound emanating from sound-amplifying equipment shall exceed 15 dBA above the ambient sound level as measured at any property line.



- (4) Sound-amplifying equipment shall not be operated within 300 feet of churches, schools and hospitals.
- (5) In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to persons of normal sensitivity within the area of audibility.
- (f) *Appeal.* Any person aggrieved by disapproval of an application under this section may appeal to the common council by filing a written notification thereof with the city clerk within ten days from the date such statement is mailed or given to the applicant. The city council shall consider such appeal at its first meeting following the filing of the appeal.
- (g) *Fees.* Prior to the approval of an application under this section, a fee in the amount of \$10.00 per day or any portion thereof shall be paid to the city if the loudspeaker or sound-amplifying equipment is to be used for commercial purposes. Any person who operates a sound truck business and maintains his offices within the city may be granted an annual license upon application therefor and payment of a fee of \$100.00. No fee shall be required for the operation of a loudspeaker or sound-amplifying equipment for noncommercial purposes.

(Code 1973, § 11.14.120; Ord. No. 33-06, pt. 1, 9-5-06)

Sec. 42-137. - Control of traffic sounds.

- (a) *Adoption of regulations.* The health officer in consultation with the chief of police shall promulgate and adopt rules and regulations which set standards for the control of sound created by motor vehicles operating on public highways; provided, however, that such standards shall be in conformity with federal and state standards which may be adopted and are applicable and which govern the emission of sound from such vehicles. The rules and regulations adopted by the health officer shall have the same effect as law. The health officer shall submit a copy of the rules and regulations to the common council for approval prior to his adoption of such regulations. A copy of the adopted rules and regulations shall be filed by the health officer in the office of the city clerk.
- (b) *Operation of noisy vehicles.* No person shall operate any vehicle on the alleys, streets and highways of the city which, as a result of the nature of the vehicle or the manner in which it is driven, exceeds the sound levels established in the rules and regulations adopted by the health officer pursuant to this section. The operation of equipment installed on governmental or other authorized emergency vehicles to produce warning sounds during emergency operation and for the safety of the public is excluded from the provisions of this section.
- (c) *Modification of vehicular equipment.* No person shall modify or change the exhaust muffler, intake muffler or any other noise abatement device of a vehicle in such a manner that the sound emitted by the vehicle is increased above that emitted by the vehicle as originally manufactured.
- (d) *Radios and other electric sound-amplification devices.* Except as provided in Wis. Stats. § 347.38(1), no person may operate or park, stop or leave standing a motor vehicle while using a radio or other electric sound-amplification device emitting sound from the vehicle that is audible under normal conditions from a distance of 50 or more feet, unless the electric sound-amplification device is being used to request assistance or warn against an unsafe condition. This subsection does not apply to any of the following:
  - (1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm.
  - (2) The operator of a vehicle of a public utility, as defined in Wis. Stats. § 11.40(1)(a).
  - (3) The operator of a vehicle that is being used in a community event or celebration, procession or assemblage.
  - (4) The activation of a theft alarm signal device.
  - (5) The operator of a motorcycle being operated outside of a business or residence district.
- (e) *Enforcement.* It shall be a duty of the chief of police or his duly authorized representatives to enforce the provisions of this section and the rules and regulations adopted by the health officer pursuant thereto.

(Code 1973, § 11.14.130; Ord. No. 18-92, pts. 2, 3, 6-16-92; Ord. No. 20-96, pt. 1, 10-15-96)

Sec. 42-138. - Sale, distribution, lease or rental of noisy equipment.

- (a) *Prohibition.* No person shall sell, offer, distribute, lease or rent any new or used vehicle, device or equipment intended for use within the limits of the city which does not comply with the provisions of this article or with the rules and regulations adopted by the health officer pursuant to the provisions of this article or with any federal or state standards which apply to such equipment and are intended to reduce or minimize the sound emission from such equipment or device.
- (b) *Adoption of rules and regulations.* The health officer is empowered to adopt rules and regulations relative to the sale, distribution, rental or lease of new and used vehicles, devices and equipment which emit sound for the purpose of limiting such sound emission to the lowest practical level. Such rules shall be reasonably consistent with federal and state standards which regulate the sound emission of such equipment and devices. Such rules shall have the same force and effect as law and shall be enforced in accordance with the provisions of this article. The health officer shall submit a copy of such rules and regulations to the common council for approval prior to his adoption of such regulations. He shall file a copy of the adopted rules and regulations in the office of the city clerk.

(Code 1973, § 11.14.140)

Sec. 42-139. - City purchases, contractors to comply with article.

- (a) It is city policy to comply with the sound emission standards as set forth in this article in its own operations and the operations of city contractors and subcontractors.
- (b) It is city policy to purchase only equipment which complies to the standards established for such equipment by this article.

(Code 1973, § 11.14.150)

Sec. 42-140. - School, hospital and church areas.

It shall be unlawful for any person to create on any street, sidewalk or public place adjacent to any hospital or to any school, institution of learning or church while the same is in use, any sound which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such street, sidewalk or public place indicating the presence of a school, church or hospital.

(Code 1973, § 11.14.160)

Sec. 42-141. - Excessive vibration prohibited.

- (a) *Stationary sources.* No person in the operation of a business in a fixed location shall produce earthborn vibration which, when measured at the foundation or basement floor of any dwelling structure, exceeds the following criteria:

Frequency (hertz)	Displacement amplitude (in inches)
1	0.05
2	0.01
5	0.001
10	0.0005

20	0.00025
<u>30</u>	0.00015
40	0.00012
50	0.00010

(b) *Temporary and mobile sources.* No person shall produce vibrations of a temporary nature such as, but not limited to, blasting, demolition, pavement breaking and piledriving which, when measured at the foundation or basement floor of any dwelling structure, exceeds the following limitations:

Frequency	Displacement amplitude (in inches)
2	1.0
5	0.01
10	0.005
20	0.0018
<u>30</u>	0.001
40	0.0008
50	0.0006
60	0.0005

(c) *Variance permits.* Variance permits may be issued by the health officer to exceed the vibration standards set forth in this section, as follows:

(1) *Temporary variance permits.*

- a. *Generally.* A temporary variance permit may be issued upon request provided that the work producing such vibrations is necessary to promote the public health and/or welfare and reasonable steps are taken to keep such vibrations at the lowest possible practical level.
- b. *Special community events.* A temporary variance permit may be issued for traditional special events, such as Fourth of July celebrations, which are limited in duration, provided that precautions are taken to restrict the vibrations produced to the lowest practical level.
- c. *Application procedure.* Applications for temporary variance permits must be made in writing to the health officer and shall contain all of the following pertinent information:
  1. Dates requested;

2. Time and place of operation;
3. Equipment and operation involved;
4. Necessity for such permit;
5. Steps to be taken to minimize vibrations; and
6. Name of responsible person who will be present at the operation site while the vibrations are produced.

(2) *Variance permits of indefinite duration.*

- a. It is recognized that it is not technically or economically feasible for certain business operations and equipment to comply with the standards set forth in this section as of the date of this article. The health officer shall therefore issue a variance permit on existing business operations and equipment which produce excessive vibrations if it is found that it is not technically or economically feasible to alter such operations to reduce vibrations to within the prescribed standards set forth in this section. Applications for such variances must be made to the health officer by an affected party in a letter setting forth the reasons that such variance should be granted. The health officer, after review of all circumstances and the degree of nuisance, shall reply in writing granting the variance, denying the variance or setting forth conditions or limitations under which the variance will be granted.
- b. If the health officer cites an existing business operation and equipment and the party cited applies for a variance within ten days of such citation, then all penalties provided shall be tolled from the date the application is filed until a final order or decision has been issued on the merits of the application.

(Code 1973, § 11.14.170)

Sec. 42-142. - Appeals.

Any person aggrieved by the denial of an application by the health officer for an exemption or variance from the provisions of this article shall have the right to appeal therefrom to the board of health, provided that a written request therefor is filed with the secretary of the board of health within ten days after receipt of the notice of such denial. The board of health, after a hearing on such appeal, may affirm, modify or overrule the denial from which the appeal is made.

(Code 1973, § 11.14.180)

Sec. 42-143. - Sound-producing devices; impoundment; seizure and forfeiture.

- (a) In this section, "sound-producing device" does not include a piece of equipment or machinery that is designed for agricultural purposes and that is being used in the conduct of agricultural operations.
- (b) A law enforcement officer, at the time of issuing a citation for a violation of section 42-137(d) may impound any radio, electric sound amplification device or other sound-producing device used in the commission of the violation if the person charged with such violation is the owner of the radio, electric sound amplification device or other sound-producing device and has two or more prior convictions within a three-year period of section 42-137(d). The vehicle in which the radio, electric sound amplification or other sound-producing device is located may be impounded for not more than five working days to permit the city or its authorized agent to remove the radio, electric sound amplification device or other sound-producing device if the vehicle is owned by the person charged with the violation and the sound-producing device may not be easily removed from the vehicle. Upon removal of the sound-producing device, an impounded vehicle shall be returned to its rightful owner.
- (c) The city may recover the cost of impounding the sound-producing device and, if a vehicle is impounded, the cost of impounding the vehicle and removing the sound-producing device. Upon disposition of the forfeiture action for the violation of section 42-137(d) and payment of any forfeiture imposed, the sound-producing device shall be returned to its rightful owner.

- (d) The city may dispose of any impounded sound-producing device or, following the procedure for an abandoned vehicle under Wis. Stats. § 342.40, any impounded vehicle which has remained unclaimed for a period of 90 days after disposition of the forfeiture action.
- (e) This subsection does not apply to a radio, electric sound amplification device or other sound-producing device on a motorcycle.

(Ord. No. 21-96, pt. 1, 10-15-96)

Secs. 42-144—42-165. - Reserved.