

ARTICLE II. - NOISE

FOOTNOTE(S):

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**Editor's note**—Ord. No. 98-28, § 2, adopted Aug. 11, 1998, amended Art. II in its entirety, in effect repealing and reenacting said article to read as herein set out. The former Art. II, §§ 42-31—42-33, pertained to similar subject matter and derived from Code 1968, §§ 13-1—13-3.

Sec. 42-31. - General prohibition.

- (a) It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued or permit the continuance of any sound which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.
- (b) The acts enumerated in the following sections of this article, among others, are declared to be sound nuisances which are unreasonably loud, irritating, disturbing, or excessive sounds in violation of this article, but such enumeration shall not be deemed to be exclusive.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Daytime hours shall mean the hours between 6:30 a.m. on one day and 7:00 p.m. the same day.

dB(A) shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

Emergency shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

Emergency work shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

Nighttime hours shall mean the hours between 7:00 p.m. on one day and 6:30 a.m. the following day.

Nonresidential property shall mean any real property within the limits of the city which is not included in the definition of residential property as defined in this section.

Person shall mean any individual, association, partnership, or corporation.

Plainly audible means any sound produced by a sound amplification system which clearly can be heard at a distance of 50 feet or more. Measurement standards shall be by the auditory senses, based on direct line of sight. Words or phrases need not be discernable and bass reverberations are included.

Property line shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased or occupied by one person from that owned, leased or occupied by another person and the imaginary line which represents the legal limits of property of any

person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

Residential property shall mean any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound amplification system means any radio, tape player, compact disc player, loud speaker, or other electronic device used for the production or amplification of sound.

Sound nuisance shall mean any sound which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

Working days shall mean Monday through Friday excluding city holidays.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-33. - Unreasonable noise prohibited.

The playing of any radio or other electronic device, recording or any musical instrument in such a manner, or with such volume, as to create a noise such as is reasonably calculated to disturb a person of ordinary sensibilities under the same or similar circumstances within the vicinity, shall be prohibited and considered unnecessary and unreasonable noise in violation of this article.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 99-66, § 2, 10-26-1999; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-34. - Amplified sound from motor vehicle.

No person operating or occupying a motor vehicle on a street, highway, alley, parking lot or driveway, whether public or private property, shall operate or permit the operation of any sound amplification system from within or upon the vehicle so that the sound is plainly audible at a distance of 50 or more feet from the vehicle.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-35. - Noisy animals and birds.

The keeping of any animal or bird which causes or makes frequent or long and continued sound which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits and modes of living who reside in the vicinity thereof is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this article.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-36. - Defenses.

The following defenses shall apply to any offense established in this article:

- (1) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime.
- (2) The sound was produced by an authorized emergency vehicle.

- (3) The sound was produced by emergency work necessary to restore public utilities, or to restore property, to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.
- (4) The sound was generated:
  - a. At a lawfully scheduled stadium event;
  - b. By a parade and spectators and participants on the parade route during a permitted parade;
  - c. By spectators and participants at lawfully scheduled amphitheater event;
  - d. By patrons and participants using cannons and gunfire during historical battle reenactment for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;
  - e. By a pyrotechnic display that was inspected and approved by the fire marshal;
  - f. By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert which was sponsored, cosponsored, or permitted by the city; or
  - g. Any other lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution.
- (5) The sound was produced by the erection, excavation, construction, demolition, alteration, or repair work, or the permitting or causing thereof, of any street, building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in any such activity conducted between the hours of 7:00 a.m. and 7:00 p.m. and which activity did not produce a sound exceeding 75 dB(A) when measured from the nearest residential property where the sound is being received.
- (6) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.
- (7) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 7:00 p.m. and which device did not produce a sound nuisance.
- (8) The sound was generated as authorized under the terms of a permit issued under section 42-38 of this article.
- (9) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours and which did not exceed five continuous minutes in duration in any one-hour period.
- (10) The sound was produced by a sound amplification system on the property of a commercial business and the sound does not extend beyond the property under control of the commercial business from which the sound is being produced.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-37. - Method of sound measurement.

Whenever portions of this article prohibit sound over a certain decibel limit, measurement of said sound shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute (A.N.S.I. S1.4-1984/85A). Noise levels shall be measured in decibels and A-weighted. The unit of measurement shall be designated as dB(A).

Meters shall be maintained in calibration and good working order. Calibrations shall be employed which meet A.N.S.I. S1.40-1984 prior to every sampling of sound. Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for said microphone shall be used. Measurements shall be taken at or near the nearest property line of the property where the sound is being received.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-38. - Permit required for use of outdoor sound amplification equipment.

- (a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier or any other machine or device which produces, reproduces, or amplifies sound outside of buildings or other enclosed structures without first obtaining a permit to do so except as provided for in subsection 42-36(10).
- (b) Such permit:
  - (1) May be obtained by making application to the chief of police.
  - (2) Requires payment of a \$25.00 fee for the administrative costs of issuing the permit.
  - (3) Is valid for one 14-hour period between the hours of 8:00 a.m. and 10:00 p.m.
  - (4) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound which would be considered a sound nuisance.
  - (5) Shall only permit the amplification of either music and/or human speech.
  - (6) Shall be applied for no later than five working days prior to the date for which the permit is being sought.
- (c) The application for the permit required to be filed pursuant to this section shall contain the following information:
  - (1) The date of the application.
  - (2) The date for which the permit is requested.
  - (3) The name and address of the applicant.
  - (4) The name and address of the person who will have charge of the sound amplifying equipment.
  - (5) The purpose for which the sound equipment will be used.
  - (6) The address and/or a description of the location where the sound equipment will be used.
- (d) If an applicant for a permit under this section is unable to pay the full amount of the permit fee pursuant to subsection (a), the fee shall be reduced to that amount the applicant is able to pay, provided the applicant submits a sworn affidavit containing the following information:
  - (1) A statement that the applicant and the group or organization, on whose behalf he is making the application, are unable to pay the full amount of the permit fee.
  - (2) A statement that the applicant and the group or organization, on whose behalf he is making the application, have made diligent efforts to raise money to pay the permit fee.
  - (3) A statement of the exact amount the applicant and the group or organization, on whose behalf he is making the application, is able to pay for the permit fee.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Sec. 42-39. - Penalty.

Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than \$100.00 nor more than \$1,000.00. Upon a second or subsequent conviction for a violation of this article within a 12-month period, said person shall be fined not less than \$200.00 nor more than \$2,000.00. Each day that any violation continues shall constitute a separate offense. To the extent that any conduct prohibited under this article also constitutes an offense under state law, then it shall be punishable as provided by state law.

(Ord. No. 98-28, § 2, 8-11-1998; Ord. No. 2010-07, § 2(Exh. A), 2-23-2010)

Secs. 42-40—42-60. - Reserved.