



Council Communication

Office of the City Manager

Date

April 7, 2008

Agenda Item No. 48

Roll Call No. 08-

Communication No. 08-204

Submitted by: **Richard A. Clark, City Manager**

AGENDA HEADING:

Amending Chapter 42, Article IV of the Municipal Code regarding Noise.

SYNOPSIS:

Recommend approval of the following amendments to Chapter 42, Article IV of the Municipal Code regarding noise.

The proposed amendments would add the following permits:

- Type “F” permit – Simon Estes Riverfront Amphitheater. A type “F” permit may be issued for sound equipment to be used in the Simon Estes Riverfront Amphitheater in conjunction with a lease agreement entered into with the Parks and Recreation Department, emitting music or human speech registering not more than 100 dBAs when measured at the soundboard area at the cement crosswalk.
- Type “G” permit-Special Event Live Performances. A Type “G” permit may be issued for sound amplification equipment when meeting the following criteria:
 - In C-3, C-3A, C-3B, C-3R and DR (riverfront) districts in the downtown area only. This would include the Court Avenue area, the Historic East Village area, Gateway West area and the Principal Riverwalk.
 - For live performances at events that require either a street use permit, a contract for use of public property, or on an establishment’s patio area emitting music or human speech, registering not more than 100 dBAs when measured 50 feet from the amplification equipment.
 - For one or two days in succession.
 - For two times per year per address. If an applicant wishes to close a street and obtain a Type G sound permit and has no permanent address in the C-3, C-3A or C-3B districts, a sponsorship will be required. These sponsorships could be obtained from the Downtown Community Alliance, Historic East Village, Court Avenue Business Association or any other organization affiliated with the C-3 zoned areas in downtown.
 - A Type G Permit cannot be obtained without street use team approval if it is to be used in conjunction with a street closure.

- If a Type G permit is issued for a particular address or sponsor for a designated day, another Type G permit cannot be issued to that same address or sponsor for another 30 days.
- If no other Type G sound permit has already been issued within 1000 feet for the same time or day.
- Type G permits must be obtained seven days prior to an event.

Type G permits will have a fee of \$200. Also, if an establishment or sponsor would like to obtain a Type G permit after their allotted two times, within the 30 day time period, or if they are not within the C-3 zoned districts in the downtown area, they may do so by obtaining a variance.

Staff is also recommending that the allowable decibel limits for Type A, F, and G sound permits in the C-3, C-3A, C-3B and DR districts in the downtown be from the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and between the hours of 9:00 a.m. and 12:30 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday.

- Type “H” permit- Farmer’s Market. A Type “H” permit may be issued to Farmer’s Markets, which have a street closure, for sound amplification equipment allowing music up to 85 dBAs for the duration of the street closure.

Besides the addition of the above permits, staff is recommending the following amendments to the noise ordinance:

- Type E sound permits for background music can only be issued in commercial zoned areas or in commercially zoned PUD’s and PBP’s.
- Under section 42-259 C (2) amend the ordinance to read:
 - (2) No person shall operate or permit the operation of any recreational vehicle(s), on public or private land between the hours of 10:30 p.m. and ~~7:00 a.m.~~ 9:00 a.m.

Staff is also recommending the following criteria be established for staff to deny a sound permit application upon hearing, using the following criteria and standards:

- Whether the sponsor, applicant, or their employees have been issued two or more notices of violation in a previous 12 month period.
- Whether police have stopped activities sponsored by the same applicant or at the same location for public safety purposes such as riots, disorderly conduct or other crimes.
- Whether the sponsor, applicant, or their employees have violated the Des Moines Municipal Code at past events.
- Whether the applicant(s) has not paid the city all fees due and owing under any chapter of the Des Moines Municipal Code

Denials of a sound permit may be appealed to the Des Moines City Council.

FISCAL IMPACT: NONE**ADDITIONAL INFORMATION:**

At the direction of the City Council at their March 24, 2008 Council meeting, the City Manager requested staff to look at creating an “entertainment district” classification that operates by a different set of rules and standards than the residential neighborhoods. The above recommended amendments are a result of staff’s work at Council’s request.

At the February 11, 2008 Council meeting, Council amended the ordinance by:

- Adding a Type “E” permit for background sound equipment registering not more than 65 dBAs;
- Adding a month-long sound permit to be used on eight days designated by the permit holder in a one month period;
- New permit fees:

- One day or less	\$40.00
- Over one day through one week	\$100.00
- Permits for one month to be used on eight designated days	\$200.00
- Background sound permit (this permit is allowed for one year)	\$300.00
- Decreasing allowable decibel levels and hours for Type A permits to 85 dBAs from the hours of 9:00 a.m. to 10:00 p.m. Sunday through Thursday and between the hours of 9:00 a.m. and 12:00 a.m. on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday.
- Changing the process by which a sound permit may be revoked from two violations in a 24-month period to two violations in a 12-month period. Revocation of a sound permit will now be through an administrative hearing process.
- Changing the process in which decibel readings are taken. Decibel readings will be taken at the property boundary, edge of designed seating area, or 50 feet from the sound equipment, whichever is closer rather than from 50 feet from the property line.
- Decreasing the distance when measuring detectable sound vibrations from a vehicle between the hours of 7:00 p.m. and 7:00 a.m. from fifty (50) feet to twenty-five (25) feet from the vehicle.

The City Council also directed staff to meet to review changes to the Downtown area and other entertainment venues to allow higher decibel levels for live music events. Staff recommended the addition of three sound permits as in the Synopsis. The Type “G” permit for Special Event Live Performances will be issued for events that are tied to a street closure and will allow amplified sound to register not more than 100 dBAs when measured 50 feet from the amplification equipment. Staff felt that the Simon Estes Amphitheatre is a unique venue in the City of Des Moines and should have its own

type of sound permit and can also have amplified sound to register not more than 100 dBAs. They also felt that a sound permit for Farmers Markets should be established since the current ordinance states that sound permits allowing amplified sound cannot start until 9:00 a.m. and the Farmers Market opens at 7:00 a.m. The allowable decibel limit for this type of permit is 85 dBAs.

At the Council Workshop of October 29, 2007, staff presented amendment recommendations to Council regarding the City's Noise Ordinance. At the November 5, 2007 Council meeting, by Roll Call No. 07-2153, Council approved a moratorium on the issuance of year-long sound permits. Staff had received numerous complaints from residents regarding noise from sound equipment used in conjunction with sound permits causing noise disturbances at their residences throughout the City of Des Moines.

As directed by Council, staff held a public hearing on November 15th and invited business establishments, neighborhood associations, and holders of year-long sound permits to provide their input on the recommended ordinance changes. Staff took into consideration all the suggestions and comments that were given at this public hearing as they were amending the ordinance.

PREVIOUS COUNCIL ACTION(S):

Date: March 24, 2008

Roll Call No.: 08-506

Action: Amending Chapter 42 of the Municipal Code regarding noise. (Council Communication No. 08-166) Moved by Kiernan that this ordinance be considered and given first vote for passage; refer to the City Manager to look at creating an "Entertainment District" classification that operates by a different set of rules and standards than the residential neighborhoods. Motion Carried 6-1. Nays: Coleman.

Date: February 11, 2008

Roll Call No.: 08-240

Action: Amending Chapter 42 of the Municipal Code regarding noise control. (Council Communication No. 08-048) Moved by Kiernan that this ordinance be considered and given first vote for passage, amended as follows: 1) The city-wide Type A Permit to be allowed from 9:00 A.M. to 10:00 P.M. 2) The downtown permit for Sunday through Thursday to be allowed from 9:00 A.M. to 10:00 P.M. 3) Appeals of the Hearing Officer decisions will be heard by the City Council; refer to the City Manager to review changes to the Downtown area and other entertainment venues to allow higher decibel levels for live music events. This recommendation will be forwarded to Council at a later date. Motion Carried 5-2. Nays: Coleman and Meyer.

Date: November 5, 2007

Roll Call No.: 07-2153

Action: Resolution establishing a temporary moratorium on issuance of year-long sound permits. (Council Communication No. 07-669) Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Third reading of the ordinance.

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