

★ **Roll Call Number**

Agenda Item Number
6A

Date June 9, 2008

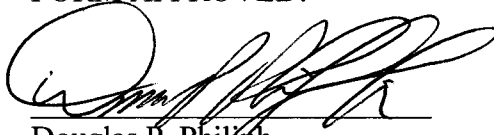
An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No 14,752 passed April 7, 2008, by amending paragraph (A)(2) of Section 42-254, adding a new paragraph (E)(9) to Section 42-258, and amending Sections 42-264 and 42-265 thereof, relating to adding a permit for Water Works events and miscellaneous amendments to Article IV – Noise Control",

presented.

(Council Communication No. 08-357)

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:


Douglas P. Philip
Assistant City Attorney

(First of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No 14,752 passed April 7, 2008, by amending paragraph (A)(2) of Section 42-254, adding a new paragraph (E)(9) to Section 42-258, and amending Sections 42-264 and 42-265 thereof, relating to adding a permit for Water Works events and miscellaneous amendments to Article IV - Noise Control.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No 14,752 passed April 7, 2008 is hereby amended by amending paragraph (A)(2) of Section 42-254, adding a new paragraph (E)(9) to Section 42-258, and amending Sections 42-264 and 42-265 thereof, relating to adding a permit for Water Works events and miscellaneous amendments to Article IV - Noise Control, as follows:

Sec. 42-254. Maximum permissible sound levels by receiving land use; immediate threat.

(A) *Maximum permissible sound levels.* With the exception of sound levels elsewhere specifically authorized or allowed in this article, no person shall make, continue, or cause to be made or continued, any sound which exceeds the following sound level limits at or within the real property boundary of a receiving land use:

- (2) This subsection shall not apply to:
 - a. Activities covered by the following sections of this article: 42-255 (emergency signaling devices); ~~42-254 (amplified sound)~~; 42-259 (motorized vehicles); 42-260 (construction); 42-261 (stationary non-emergency signaling devices); 42-266 (noise covered by sound variance).

Sec. 42-258. Sound equipment and sound amplifying equipment.

(E) *Application standards.* The following are general standards for the type of permit:

(9) Type "I" permit- Waterworks Park.

A type "I" permit may be issued for amplification equipment for live performances held in Waterworks Park, emitting music or human speech, at a level not greater than 85 decibels when measured at the nearest residence.

A type "I" permit is effective for one or two days and for the hours of 9:00 a.m. and 10:00 p.m. Sunday through Thursday, and between the hours of 9:00 a.m. and 12:00 midnight on Friday and Saturday, the Sunday of Memorial Day weekend, Labor Day weekend and the Fourth of July should it fall on a Sunday. Additionally the stage and sound equipment shall be set up facing the northeast causing the sound to be directed through the park and away from residential areas.

Sec. 42-264. Application for sound variances.

- (A) Any person desiring to exceed the standard conditions of any type of permit ~~permitted sound levels or the number of days a permit is valid for~~ as set out in this article may apply to the community development department for a variance from such conditions ~~regulations~~.
- (B) All applicants for such variances shall apply in writing to the community development department. ~~The~~ ~~Such~~ application shall be submitted at least 30 days prior to the proposed date for the needed sound permit variance.
- (C) All variance applications shall contain the following information:
- (1) The name and address of the applicant;
 - (2) If the application is made on behalf of an organization, the name and address of that organization;
 - (3) The name and phone number of a contact person;
 - (4) The proposed dates for which a variance is required;
 - (5) A description of the event and the terms and conditions of the requested variance ~~its potential cause for excessive noise;~~
 - ~~(6) The times the event will generate excessive noise; and~~
 - (7) Information which would demonstrate that complying with the standard conditions for the permit to be issued ~~bringing the source of sound or activity for which the sound permit variance is sought into compliance would constitute an unreasonable hardship on the applicant, on~~

- the community, or on other persons.
- (D) An application for a sound permit variance shall be submitted to the community development department accompanied by a nonrefundable fee of \$100.00 to cover the cost of processing the application.
 - (E) Upon receipt of an application for a sound permit variance, the director of the community development department or his or her designee shall determine what property interests may be affected by the granting of a sound permit variance, including but not limited to:
 - (1) The occupants of surrounding residences and businessessingle-family or duplex residences located in an area that includes the next two homes in any direction or those within 250200 feet of the noise source, whichever is less; or
 - (2) The owner or manager of multiple-residence structures, including hotels, within such areas.
 - (F) The director of the community development department shall notify such property owners or occupants as identified in subsection (E) of this section in writing and delivered by the U.S. Postal Service, ordinary mail, of the application for a sound permit variance and shall give them ten days to give written cause why the variance should not be granted.
 - (G) If the director of the community development department receives written statements from 25 percent or more occupants who claim to be adversely affected by allowance of the sound permit variance, the director shall forward the information to the city clerk to schedule an administrative hearing to consider the application for a variance.
 - (H) If the application for variance is not set for hearing before the administrative hearing officer an administrative decision shall be made in writing and shall be sent to the applicant by regular U.S. mail. The decision will either grant the variance with conditions as deemed appropriate under the circumstances or deny the requested variance stating the reason for denial. The applicant or any person claiming to be adversely affected by such decision may appeal the determination to the city council by notifying the city clerk's office within seven (7) days of the date of the decision.

Sec. 42-265. Scheduling of hearing on sound variances denials and revocations.

UponThe City Clerk, upon receipt from the director of the community development department of a request for a hearing on a sound variance, or from any person who may appeal an administrative decision, or when a sound permit is denied or revocation is sought denial or a revocation of a sound permit, the city clerk shall schedule a hearing as soon as is practical and shall send by the

regular U.S. Postal Service a notice of the time, date and location of the hearing to the applicant, the permit holder and/or all persons who filed an adverse impact statement and all property owners previously notified with copy to the community development department at least ten (10) days prior to the hearing.

Sec. 42-266. Conduct of administrative hearing on sound variances denials and permit revocations.

- (A) The administrative hearing shall be conducted before the hearing officer designated by the city manager.
- (1) *Variance.* The sole issue before the hearing officer shall be whether the granting of the variance shall create an adverse impact on the health, safety, and welfare of persons or property affected. The applicant for a variance shall carry the burden of establishing that an adverse impact shall not be created by the granting of a variance.
 - (2) *Denial or Revocation.* The sole issue before the hearing officer shall be whether the conditions set out in a sound permit have been violated and whether the issuance or continuance of a permit will create an adverse impact on the health, safety and welfare of persons or property affected by the violation. If the hearing officer determines that the violations of a permit created and adverse impact or were a violation of the permit a permit may be denied or revoked and/or the conditions of a permit may be reduced so as to eliminate the adverse impact.
 - (3) The department, the person requesting the hearing and any person who feels adversely impacted by a sound permit may be represented by counsel, examine witnesses and present evidence.
 - (4) The hearing officer shall issue a written determination to be sent to the applicant for the variance, the permit holder and/or the community development department director. A copy of the decision will be kept on file with the city clerk.
 - (5) The proceedings at the administrative hearing shall be tape recorded by the hearing officer. Such tape recording and all exhibits entered shall serve as the official record of the administrative hearing for appeal purposes. The hearing officer shall retain the official record until the time for filing a notice of appeal has expired. If a notice of appeal is timely filed, the hearing officer shall retain the official record of the administrative hearing until the appeal has been acted upon.
- (B) Should the hearing officer revoke the sound permit the property location will not be granted another sound permit for

another six (6) months from the date of the decision or final decision if ~~appeals~~appealed.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney