

Date July 27, 2009

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, and amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No. 14,752 passed April 7, 2008, and Ordinance No. 14,774 passed June 9, 2008, by amending paragraphs (A) and(E)(10) of Section 42-258 and paragraph (A) of Section 42-264 thereof, relating to noise control regarding sound equipment, sound amplifying equipment and construction equipment",

which was considered and voted upon under Roll Call No. 09-_____ of July 13, 2009; again presented.

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

(Second 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

★ Roll Call Number

09-1258

Agenda Item Number

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Date July 13, 2009

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, and amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No. 14,752 passed April 7, 2008, and Ordinance No. 14,774 passed June 9, 2008, by amending paragraphs (A) and(E)(10) of Section 42-258 and paragraph (A) of Section 42-264 thereof, relating to noise control regarding sound equipment, sound amplifying equipment and construction equipment",

presented.

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

FORM APPROVED:

(First of three required readings)

Michael F. Kelley
Assistant City Attorney

(Council Communication No. 09-496)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, HENSLEY, KIERNAN, MAHAFFEY, MEYER, VLASSIS, and TOTAL (5 YEAS, 2 NAYS).


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.

T. M. Franklin Council Mayor

Diane Rauh City Clerk

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	July 13, 2009
	Agenda Item No. 54 Roll Call No. 09- 1258 Communication No. <u>09-496</u> Submitted by: Larry Hulse, Community Development Director	

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AGENDA HEADING:

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

SYNOPSIS:

Recommend approval of an amendment to the noise ordinance to allow nonprofit organizations to construct homes in residential districts at times that would not otherwise be allowed. Under the current ordinance, construction noise is not allowed between the hours of 10:00 P.M. and 7:00 A.M. Nonprofits have found themselves with a need to complete construction for special projects between those hours. This ordinance would allow the construction to take place with a permit, after notice to neighbors and an appeal process through the administrative hearing officer.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

The proposed amendment would allow non-profits who wish to complete construction during evening and night hours to apply for a special permit. Notification will be sent by the Community Development Department to property owners within 250 feet of the construction site. If 25% or more of the property owners within the 250 feet send in responses claiming to be adversely affected by the noise, an administrative hearing will be held.

The sole issue before the hearing officer will be whether the granting of the variance will 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.

If the permit is not granted, the applicant can appeal the decision of the hearing officer to the City Council.

PREVIOUS COUNCIL ACTION(S):

Date: February 25, 2008

Roll Call Number: 08-329

Action: Final consideration of ordinance above. Moved by Vlassis that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,746. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

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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, and amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No. 14,752 passed April 7, 2008, and Ordinance No. 14,774 passed June 9, 2008, by amending paragraphs (A) and (E)(10) of Section 42-258 and paragraph (A) of Section 42-264 thereof, relating to noise control regarding sound equipment, sound amplifying equipment and construction equipment.

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, and amended by Ordinance No. 14,746 passed February 25, 2008, and Ordinance No. 14,752 passed April 7, 2008, and Ordinance No. 14,774 passed June 9, 2008 is hereby amended by amending paragraphs (A) and (E)(10) of Section 42-258 and paragraph (A) of Section 42-264 thereof, relating to noise control regarding sound equipment, sound amplifying equipment and construction equipment, as follows:

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

(A) *Permit required.* No person shall, use, operate or cause to be used or operated any sound equipment or tools or equipment used in construction activities beyond the hours permitted under section 42-260 of this article upon the public right-of-way or in any building or upon any premises, public or private, creating a noise disturbance unless such person:

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

(10) Type "J" permit - night construction.
A type "J" permit may be issued for residential construction activities beyond the hours permitted under section 42-260. A type "J" permit may be issued for construction performed on behalf of a nonprofit or

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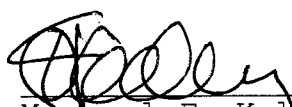
philanthropic organization where such construction activity is to be completed in an expedited manner pursuant to a construction schedule which has been approved by the community development director and has been determined to advance the overall welfare of city residents, provided that the residential structure is being built for occupation by low or moderate income persons. Application for a type "J" permit shall be processed pursuant to sections 42-264 through 42-267 of this article.

Sec. 42-264. Application for sound variances or type "J" permits.

(A) Any person desiring to exceed the standard conditions of any type of permit as set out in this article may apply to the community development department for a variance from such conditions. An application for a type "J" permit under section 42-458 shall be processed as a variance as set forth in this section.

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

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney