

★ **Roll Call Number**

Agenda Item Number

47

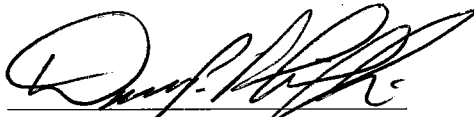
Date March 20, 2017

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, as heretofore amended, by amending Sections 42-246, 42-251, 42-254, 42-256, 42-258, 42-263, 42-264, 42-266, and by repealing Sections 42-265 and 42-267, relating to noise control by adding dBC scale and allowing measurement from public right of way",

presented.

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				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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, as heretofore amended, by amending Sections 42-246, 42-251, 42-254, 42-256, 42-258, 42-263, 42-264, 42-266, and by repealing Sections 42-265 and 42-267, relating to noise control by adding dBC scale and allowing measurement from public right of way.

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, as heretofore amended, is hereby amended by amending Sections s 42-246, 42-251, 42-254, 42-256, 42-258, 42-263, 42-264, 42-266, and by repealing Sections 42-265 and 42-267, relating to noise control by adding dBC scale and allowing measurement from public right of way as follows:

Sec. 42-246. Definitions.

Definitions of technical terms used in this article which are not defined in this section shall be obtained from publications of acoustical terminology issued by the American National Standards Institute (ANSI) or its successor body. 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:

“*Adverse Impact*” shall mean such a state of facts as would lead a person of ordinary care and prudence to conclude that the economic, entertainment and philanthropic benefits to the community or business do not reasonably outweigh the quiet use and enjoyment of the affected property.

“*Ambient sound level*” means the noise associated with a given environment, exclusive of a particular noise being tested, being usually a composite of sounds from many sources near and far, exclusive of intruding noises from isolated identifiable sources.

“*A-weighted sound level*” means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level is designated dB(a) or dBA.

“*C-weighted sound level*” means the sound pressure level in decibels as measured on a sound level meter using the C-weighting network. The level is designated dB(c) or dBC.

“*Construction*” means any site preparation, assembly, erection, substantial repair, alteration, or similar action for or of public or private rights-of-way, structures, utilities or similar property.

“*Decibel (dB)*” means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

“*Demolition*” means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

“*Emergency*” means any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action.

“*Emergency work*” means any work performed for the purpose of alleviating or resolving an emergency.

“*Equivalent A-weighted sound level (L_{eq})*” means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purpose of this article, a time period of one hour shall be used, unless the likely duration or intensity of the sound being measured makes a shorter time period reasonable.

“*Impulsive sound*” means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

“*Motorboat*” means any vessel which operates on water and which is propelled by a motor, including but not limited to boats, barges, amphibious craft, water ski towing devices and hovercraft.

“*Motorcycle*” means any motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term includes motorized bicycles and motor scooters.

“*Motor vehicle*” means any motor-operated vehicle licensed for use on the public highways, but not including a motorcycle.

“*Noise*” means any sound which disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

“*Noise disturbance*” means:

- (1) Any sound which unreasonably endangers or injures the health or safety or welfare of a human being; or
- (2) Any sound which unreasonably disturbs a person of normal sensitivities; or
- (3) Any sound which unreasonably devalues or injures personal or real property; or
- (4) Any Sound which is in excess of decibel levels set forth in this article.
- (5) The factors which may be considered in determining whether a noise disturbance exists may include, but are not limited to:
 - a. The level of the noise;
 - b. The level and intensity of any background noise;
 - c. Whether the nature of the noise is usual or unusual;
 - d. Whether the origin of the noise is natural or unnatural;
 - e. The proximity of the source of the noise to sleeping facilities;
 - f. The land use, nature and zoning of the area from which the noise emanates and of the area where the noise is received;
 - g. The time of day or night when the noise occurs;
 - h. The duration of the noise;

- i. Whether the noise is recurrent, intermittent or constant.
- j. The level and intensity of the bass or low tones.

Noise sensitive area” means any area designated ~~pursuant to section 42-263 of this article~~ by resolution of city council for the purpose of ensuring exceptional quiet and clearly posted with noise sensitive area signs, because of the noise sensitive activities conducted therein.

“Notice of violation” shall include a notice of violation, a civil infraction and/or a criminal citation.

“Person” shall have the meaning prescribed by section 1-2 of this Code and, in addition, means and includes any officer, employee, department, agency or instrumentality of the state or any political subdivision of the state.

“Person responsible” or *“Responsible party”* shall be the owners, employees or acting managers, agents, contract buyers, tenants, or lessees’ of all residential dwellings, commercial establishments, and/or real estate upon which a violation of this article is found and shall be jointly and severally responsible for compliance with this article at any location.

“Powered model vehicle” means any self-propelled airborne, waterborne, or land borne model plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to any model airplane, boat, car or rocket.

“Public right-of-way” means any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity.

“Public space” means any real property, including any structure thereon, which is owned or controlled by a governmental entity.

“Pure tone” means any sound which can be distinctly heard as a single pitch or a set of single pitches.

“Real property boundary” means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, or from the public right of way, but not including intra-building real property divisions.

“Receiving land use” means the public right of way or the use or occupancy of the property which receives the transmission of sound as defined in this section.

“Recreational vehicle” means any race car, motorcycle, snowmobile, all terrain vehicles or any other motorized vehicle equipped for use in racing or other recreational events or uses off of public rights-of-way on public or private property. For purposes of this article, a motor vehicle or motorized vehicle which is taking part in an organized racing, endurance, or other coordinated sporting event shall be deemed a recreational vehicle and shall be governed by the terms of subsection 42-259(C) of this article.

“Residential” means any property on which is located a building or structure used wholly or partially for living or sleeping purposes. This definition shall not include park custodial residences or school or college dormitories.

“Sound” means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

“*Sound equipment*” means any radio, record player, stereo, television, tape deck or player, loudspeaker, amplifier, sound truck or other device for producing, reproducing, or amplifying sounds.

“*Sound level*” means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network as specified in American National Standards Institute specifications for sound level meters. If the frequency weighting employed is not indicated, the A-weighting shall apply.

“*Sound level meter*” means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output or display meter, and weighting networks used to measure sound pressure levels, which complies with American National Standards Institute standards.

Sec. 42-251. Exceptions to article.

This article shall not apply to the following:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency.
- (2) The emission of sound in the performance of emergency work.
- (3) Noncommercial public speaking and public assembly activities conducted on any private property, public space, or public right-of-way, except those activities controlled by section 42-257 of this article.
- (4) The un-amplified human voice, except those activities controlled by subsection 42-256(a) of this article.
- (5) Agricultural activities, exclusive of those involving the ownership or possession of animals or birds.
- (6) Snowmobiles regulated by I.C. ch. 321G.
- (7) Rail and air transportation and public mass transportation vehicles.
- (8) The emission of sound in connection with activities conducted on the state fairgrounds during the annual state fair and exposition.
- (9) The emission of sound in the performance of military operations, exclusive of travel by individuals to or from military duty.
- (10) The emission of sound in the legal discharge of weapons or in fireworks displays licensed by the city.
- (11) The emission of sound in the operation of snow removal equipment.
- (12) Parades or processions for which a parade permit has been issued by the city.
- (13) Marching bands and athletic events.
- (14) Government owned, operated, or contracted vehicles in the performance of their official duties.
- (15) The testing and use of generators for commercial/business use when installed for use in an emergency during power outages, subject to site plan requirements as set out in Chapter 82, and when testing occurs at the same time of day each time performed, and not before 9:00 a.m. or after 4:00 p.m., and when the minimum cycle test time is used.

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:

TABLE 1. SOUND LEVELS BY RECEIVING LAND USE

Zoning Category of Receiving Land Use	Time	Sound Level Limit
		<u>Unamplified limit in dBA</u> <u>Amplified limit in dBC</u>
Residential zones: R1-80 to R-6,R-HD and a residential PUD	7:00 a.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	50
Mixed use and commercial zones: PUD to C-4	At all times	65
Industrial zones: M-1 to M-3	At all times	75
Noise sensitive area	At all times	55
U-1 floodplain or FW floodway	At all times	65

~~(1) For the purposes of this article, unamplified sound levels in excess of the dBA and amplified sound levels in excess of the dBC listed in table 1 shall be deemed a violation, except~~

~~exceptions(2) This subsection shall not apply to:~~

a.(1) Activities covered by the following sections of this article: 42-255 (emergency signaling devices); 42-259 (motorized vehicles); 42-260 (construction); 42-261 (stationary non-emergency signaling devices); 42-2664 (noise covered by sound variance).

b.(2) The operation of the following domestic power tools or equipment between the hours of 7:00 a.m. and 10:00 p.m.:

1a. Electrical power tools.

2b. Motor-powered, muffler-equipped lawn, garden and tree trimming equipment.

- (b) *Immediate threat.*

(1) The official of any department charged with enforcement of this article shall order an immediate halt to any sound which exposes any person, except those excluded under subsection (2) of this section, to continuous sound levels in excess of those shown in table 2 or to impulsive sound levels in excess of those shown in table 3.

If the sound has not abated within a reasonable length of time following issuance of such an order, the official of any department charged with enforcement of this article may apply to the appropriate court for an injunction to replace the order or may treat the violation in the manner of other Code violations.

- (2) No order under subsection (b)(1) of this section shall be issued if the only persons exposed to sound levels in excess of those listed in tables 2 and 3 are exposed as a result of:
 - a. Trespass;
 - b. Invitation upon private property by the person causing or permitting the sound; or
 - c. Employment by the person or contractor of the person causing or permitting the sound.
- (3) Any person subject to an order issued pursuant to subsection (b)(1) of this section shall comply with such order until:
 - a. The sound is brought into compliance with the order as determined by the noise control division; or
 - b. A judicial order has superseded such order.

TABLE 2. CONTINUOUS SOUND LEVELS WHICH POSE AN IMMEDIATE THREAT TO HEALTH AND WELFARE
(Measured at 50 Feet)

Sound Level Limit (dBA)	Duration
90	24 hours
93	12 hours
96	6 hours
99	3 hours
102	1.5 hours
105	45 minutes
108	22 minutes

- (5) Correction for character of sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth in table 2 shall be reduced by five dBA.

- (6) Varying sound level. Where the sound level (dBA) varies over the measuring period, the equivalent A-weighted (average) sound level (L_{eq}) shall be determined by figuring the time and intensity levels for time periods set out in tables 2 and 3.

TABLE 3. IMPULSIVE SOUND LEVELS WHICH POSE AN IMMEDIATE THREAT TO HEALTH AND WELFARE
(Measured at 50 Feet)

Sound Level Limit (dB)	Number of Repetitions Per 24-Hour Period
140	1
130	10
120	100

Sec. 42-256. Specific activities prohibited.

- (a) *Sales by hawking or barking.* No person shall offer for sale or sell anything by shouting or raised voice within any residential or commercial area in the city.
- (b) *Loading and unloading.* No person shall so load, unload, open, close or handle boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 6:00 a.m. the following morning as to create a noise disturbance across a residential real property boundary or within a noise sensitive area. This subsection shall not apply to the engine noise generated by the activities regulated by section 42-259 of this article.
- (c) *Vehicle or motorboat repairs and testing.* No person shall repair, rebuild, modify, or test any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or outdoors within a noise sensitive area.
- (d) *Powered model vehicles.* No person shall operate or permit the operation of powered model vehicles in a public or private space out-of-doors or within a noise sensitive area between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (e) No business shall allow sound to escape a structure through walls, rooftops, openings in the building, including but not limited to, vents, roof top mechanical units, doors or windows left open, except for the ingress and egress of customers, so as to create a noise disturbance.

Sec. 42-258. Sound equipment, 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:
- (1) First obtains a permit in accordance with this section;
 - (2) Complies with the conditions imposed by the permit, including the maximum permitted sound level shown therein;
 - (3) Complies with the provisions of chapter 102 of this Code, as it regulates street closings; and
 - (4) Complies with all other applicable subsections of this section.
- (b) "*Sound equipment*" requiring a permit shall not include:
- (1) Equipment used for public health and safety purposes.
 - (2) Church or clock carillons, bells or chimes.
 - (3) Automobile or boat radios, tape decks or players, or other standard equipment used and intended for the use and enjoyment of the vehicle occupants, provided the sound emitting there from does not create a noise disturbance or does not violate section 42-259.
 - (4) Un-amplified live music provided, sponsored, or funded, in whole or in part, by a governmental entity.
- (c) *Permit, fees.* A separate permit shall be required for each type of activity described in subsection (e) of this section, and permits shall be nontransferable. The permit shall be conspicuously displayed on or immediately adjacent to the sound equipment. A nonrefundable fee shall be paid in the amount set in the schedule of fees adopted by the City Council by resolution at the time of application for the sound permit.
- (d) *Information required on permit application.* Application for the permit required in this section shall be made in writing to the zoning enforcement officer, accompanied by the required permit fee and the following information:
- (1) The type of permit requested.
 - (2) The name and address of the applicant.
 - (3) The purpose for which the sound equipment will be used.
 - (4) The location where the sound equipment will be used.
 - (5) Designation of the days of use and proposed hours of operation of the sound equipment.
 - (6) A general description of the sound equipment, including the license number of any motor vehicle upon which it is to be operated.
 - (7) The name(s) and phone number(s) of the person(s) responsible for the use of the permit.
- If the application contains the required information and is accompanied by the required fee, and the proposed use of the sound equipment complies with the standards and other requirements of this section and all other applicable laws and ordinances, the zoning enforcement officer shall issue the appropriate permit.
- (e) *Application standards.* The following are general standards for the type of permit:

- (1) *Type "A" permit.* A type "A" permit may be issued for sound equipment emitting live music, reproduced music or human speech registering not more than 85 ~~dBAs~~dBCs when measured at the real property boundary of the permitted property or at a distance of 50 feet from the sound equipment if issued in conjunction with a street closing. A type "A" permit may be issued only in areas of the city zoned for industrial, commercial and/or mixed use and only between the hours of 9:00 a.m. and 10:00 p.m., except the C-3, C-3A, C-3B, C-3R and DR zoned areas which shall be between the hours of 9:00 a.m. and 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. A type "A" permit will be issued for a thirty day period, commencing on the first of each month, to be used on eight days during the permitted time, with the days of use to be designated on the permit application.
- (2) *Type "B" permit—parks located in residential zones.* A type "B" permit may be used for sound equipment emitting music or human speech registering not more than 65 ~~dBAs~~dBCs when measured at the real property boundary or at a distance of 50 feet from the sound equipment, whichever distance is closer to the sound equipment. Sound equipment permitted under a type "B" permit may be used only in public parks owned and operated by the city or public grounds owned and operated by another governmental body, located in a residentially zoned district from 9:00 a.m. to the time the park closes for events authorized and approved by the park and recreation board or other body having jurisdiction over the park or public grounds. A type "B" permit will be issued for one day up to one week with the days to be designated on the permit application.
- (3) *Type "C" permit—church or school grounds.* A type "C" permit may be issued for sound equipment emitting music or human speech registering not more than 65 ~~dBAs~~dBCs when measured at the real property boundary or when measured at a distance of 50 feet from the sound equipment, whichever distance is closer to the sound equipment. Sound equipment permitted under a type "C" permit may be used only on church grounds, school grounds, or in conjunction with a school sponsored activity, from 9:00 a.m. to 10:00 p.m. for events authorized and approved by the church or school authorities having jurisdiction of the grounds. A type "C" permit will be issued for one day up to one week with the days to be designated on the permit application.
- (4) *Type "D" permit--residential events.* A type "D" permit may be issued for sound equipment emitting music or human speech registering not more than 65 ~~dBAs~~dBCs when measured at the real property boundary of the permitted property or 50 feet from the sound equipment, whichever distance is closer. Sound equipment permitted under a type "D" permit may be used only pursuant to a permitted street closing under chapter 102 of this Code, from 9:00 a.m. to 10:00 p.m. A type "D" permit will be issued for one day up to one week with the days to be designate on the permit application.
- (5) *Type "E" permit – background sound equipment.* A type "E" permit may be issued for a commercially zoned area or a commercially zoned PUD or PBP area for sound

equipment to be used in an outdoor area in conjunction with an approved business use emitting music or human speech, excluding live music, registering not more than 65 dBA_sdBCs, or below the ambient level, when measured at the property boundary, edge of designated seating area or 50 feet from the sound equipment whichever is closer. Sound equipment permitted under a type “E” permit may be used only during regular hours of business operation. A type “E” permit will be issued up to one year.

- (6) *Type “F” permit – Simon Estes Riverfront Amphitheater, Brenton Skating Plaza and other property owned by the city.* A type “F” permit may be issued for sound equipment to be used in the Simon Estes Riverfront Amphitheater or the Brenton Skating Plaza or other property owned by the city, in conjunction with a lease agreement entered into with the Parks and Recreation Department or the city if the property is not city parkland, emitting music or human speech, registering not more than 100 dBA_sdBCs, when measured at the middle cement crosswalk area of the amphitheater or 50 feet from the sound equipment at the skating plaza or other property owned by the city. This permit is effective between the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and 9:00 a.m. to 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.
- (7) *Type “G” permit-Special Event Live Performances.* A type “G” permit may be issued for sound amplification equipment to be used for live performances where the sound from music or human speech does not exceed 100 dBA_sdBCs when measured 50 feet from the amplification equipment and meets all of the following criteria:
- a. The special event or live performance is located in a C-3, C-3A, C-3B, C-3R or RD zoned district,
 - b. This type permit will only be issued two times per year per address to include a street closing abutting the sponsoring business and only if 30 days has elapsed from the effective date of a previous type “G” permit for the same location, however, if the street closing is sponsored by the Court Avenue Business Association, Downtown Community Alliance, Historic East Village, or any other community organization affiliated with businesses located in the C-3, C-3A, C-3B, C-3R or RD zoned districts this type permit is not limited in number or time span,
 - c. If the applicant has no address in the C-3, C-3A, C-3B, C-3R or RD zoned district, then either a business in the properly zoned district, or a community organization affiliated with businesses located in the C-3, C-3A, C-3B, C-3R or RD zoned districts must sponsor the event,
 - d. This type permit may not be issued if another type “G” permit has already been issued within 1,000 feet of a given location and covering the same time on any day. If the event has multiple stages in the designated event only one permit will be required.
 - e. When used in conjunction with a street closure this type permit will not be issued until the street use team approves the street closure,

- f. This type permit must be obtained at least 7 days prior to the performance unless pending street use team approval.
 - g. This type permit is effective for ~~one or two~~ up to three consecutive days in succession and for the hours of 9:00 a.m. to 11:00 p.m. Sunday through Thursday and 9:00 a.m. to 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.
 - h. A variance may be sought in accordance with this article if any of the requirements for issuance of this type permit wish to be modified on a case by case basis.
- (8) *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 ~~dBA's~~ dBCs for the duration of the street closure.
 - (9) *Type "I" permit- Waterworks Park and Zoo.* A type "I" permit may be issued for amplification equipment for live performances held in Waterworks Park or in the Blank Park Zoo Foundation Parcel, emitting music or human speech, at a level not greater than 85 ~~decibels~~ dBCs 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 for any live performances held in Waterworks Park shall be set up facing the northeast causing the sound to be directed through the park and away from residential areas. The stage and sound equipment for any live performances held on the Blank Park Zoo Foundation Parcel shall be set up facing the south causing the sound to be directed towards the Blank Park Zoo and the Blank Golf Course. For the purpose of this subsection, Blank Park Zoo Foundation Parcel means the tract owned by Blank Park Zoo Foundation located south of Army Post Road and east of SW 9th Street, and designated for tax purposes as Polk County district/parcel number 120/00324-005-001.
 - (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 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.
 - (11) *Type "K" permit* may be issued for an event whose route is on city streets, trails and/or other public right-of-way with the permit to be valid one hour before the start of the event and at specifically approved locations along the route that would otherwise comply with all other provisions of this article.

(f) *Commercial advertising.* No sound equipment shall be permitted to be used on public streets or public places or in any building or upon any premises if the sound may be plainly audible from any public street or public place within the city when any such use is for commercial advertising purposes or for the purpose of attracting the attention of the public to any building or structure for monetary gain.

~~(g) Not used.~~

(hg) *Denial or revocation.*

- (1) *Denial of sound permit.* The director of the community development department or director's designee may, upon hearing, deny an application for a sound permit in writing, and shall forward the information relied upon to the city clerk to schedule a hearing for consideration of denial using ~~(~~The following criteria and standards shall be considered as basis for a denial:
 - a. Whether police have stopped activities sponsored by the same applicant or in the same location for public safety purposes such as riot, disorderly conduct, or other crimes;
 - b. Whether the sponsor, applicant, or their employees have violated the Des Moines Municipal Code at past events requiring a sound permit;
 - c. Whether the applicant(s) have paid the city all fees due and owing under any chapter of the Des Moines Municipal Code; and
 - d. If any person responsible for monitoring the terms and conditions of the sound permit at the premises has been found to be in violation of this article issued two or more notices of violation of this article in any previous 12 month period.
 - e. Where it is determined that the permit would be in conflict with another established event, or when in conjunction with another permit, when considering the combined impact the issuance would create a potential for a noise disturbance.
- (2) *Revocation.* The director of the community development department or the director's designee may, upon hearing, revoke a sound permit issued pursuant to this article upon the second ~~notice~~ finding of a violation of the terms and conditions of the permit by persons charged with enforcement of this article, issued within a twelve month period. ~~to persons responsible for monitoring the terms and conditions of the sound permit, the director shall forward the information to the city clerk to schedule a hearing for consideration of revocation of the sound permit.~~
- (3) *Revocation hearing-adverse impact.* If the director of the community development department receives written statements or a petition from 25 percent or more of the occupants of single family or duplex residences and the owner or manager of multiple residence structures including hotels, who claim to be adversely affected by the operation of sound amplification equipment under a valid sound permit and who live within 200 feet measured from property line to property line of the property where such sound permit is valid, the community development director, or the director's designee, shall proceed pursuant to Section 42-266. forward the

~~information to the city clerk to schedule a hearing for consideration of revocation of the sound permit.~~

Sec. 42-263. Enforcement.

- (a) The noise control program established by this article shall be implemented, administered, and enforced by the community development and police departments.
- (b) The sections of this article which prohibit the making, continuing, or causing the making or continuing of a noise disturbance across a real property boundary or within a noise sensitive area shall be enforced upon receipt of complaint made or filed with city officials by a person disturbed by such noise disturbance or by direction of the chief of police or his or her designee. Certification by an official charged with enforcement of this article that such complaint was made shall be sufficient to establish the fact of such complaint.
- (c) To implement and enforce this article, the community development department and the police department shall have the additional power to:
 - (1) Conduct research, monitoring, and other studies related to sound.
 - (2) Upon presentation of proper credentials, enter and inspect any private property or place and inspect any report or records at any reasonable time when granted permission by the owner or by some other person with apparent authority to act for the owner.
 - (3) Issue sound variances pursuant to section 42-264 of this article.
 - (4) Deny sound permits or seek a revocation of a sound permit.
 - (5) Prepare recommendations for consideration by the city council, after publication of notice and public hearing, for establishing the boundaries of noise sensitive areas.
 - (6) Prepare recommendations to council to designate locations where there is public acceptance of the activity producing the sound pursuant to section 42-250(2) of this chapter.
 - (7) ~~(6)~~ The sound source or any component thereof may be impounded pending the resolution of any violations charged under this article.
- (d) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute or its successor body. Measurements shall be taken so as to be in compliance with the specifications for a valid test as set out by the product manufacture. Training will be administered by the product manufacture representative or any departmental employee(s) who has attended such training.

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.
- (b) An application for a type "J" permit under section 42-4258 shall be processed as a variance as set forth in this section.

- (bc) All applicants for such variances shall apply in writing to the community development department. The application shall be submitted at least 30 days prior to the proposed date ~~for the needed for the sound permit variance.~~
- (cd) 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;
 - (6) Information which would demonstrate that complying with the standard conditions for the permit to be issued would constitute an unreasonable or unnecessary hardship on the applicant, on the community, or on other persons.
- (de) An application for a sound permit variance shall be submitted to the community development department accompanied by a nonrefundable fee as set out in the schedule of fees of \$100.00 to cover the cost of processing the application.
- (ef) Upon receipt of an application for a sound permit variance, should the community development department determine there is unreasonable or unnecessary hardship, not including economic loss, should the variance not be granted and also ~~in the case of a type "J" permit~~ 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 businesses within ~~250~~200 feet of the noise source; or
 - (2) The owner or manager of multiple-residence structures, including hotels, within such areas.
- (fg) The director of the community development department shall notify such property owners or occupants as identified in subsection (Ef) 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.
- (gh) 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, or the director's designee, may deny the variance. ~~If the denial is appealed the statements shall be forwarded to the hearing officer. shall forward the information to the city clerk to schedule an administrative hearing to consider the application for a variance.~~
- (hi) If the application for variance is denied by the community development department for any reason, not set for hearing before the administrative hearing officer an administrative decision a such denial 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 to grant or deny a variance may appeal the determination pursuant to Chapter 3 of this Code

~~within 10 business days of the date of the decision, to the city council by notifying the city clerk's office within seven (7) days of the date of the decision.~~

Sec. 42-265. Repealed by Ord. No. 15,---. Scheduling of hearing on sound variances denials and revocations.

~~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 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 revocationsDenial, or revocation of a sound permit.

- ~~(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 an 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 appealed.~~
- (a) Upon determination by the community development department director that a sound permit should be revoked, should not issue, or a renewal of a sound permit should not be issued, the community development director or designee shall give notice to the applicant or permit holder of the city's intent to revoke the permit, to deny its issuance, or deny its renewal.
- (b) Notice of the city's intent to revoke, or deny the issuance or renewal of a permit and a brief summary of the factual basis for such action shall be served upon the applicant or permit holder. Such notice shall inform the applicant or permit holder of the time, date and place of a meeting where the person(s) may meet with the community development director or designee for the purpose of presenting additional information regarding the intended action and the factual basis therefore, and that a final decision on the appropriate action will be made after the scheduled time for such meeting. Such notice shall be served upon the applicant or permit holder by personal service or by service upon an employee of the business at the business address, or by regular mail addressed to the applicant or permit holder at the address as shown on the application a minimum of five business days prior to the date set for the meeting.
- (c) After the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the applicant or permit holder, the community development department director or designee shall make a final decision based on the considerations set out under section 42-258(g) of this Chapter and any other circumstances including the severity of any code or permit violations. The community development director or designee may revoke the permit, deny its issuance or renewal, or grant the permit, or allow its continuance. The decision shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after so served. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision.
- (d) The decision of the community development department director or designee pursuant to this section may be appealed by any person affected by the decision pursuant to the administrative appeal process set forth in Chapter 3 of this Code.

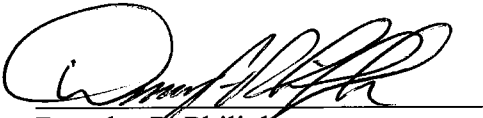
Sec. 42-267. Repealed by Ord. No. 15,---.Right of appeal.

~~Any party aggrieved by a final determination made by an administrative hearing officer pursuant to this article may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within 30 days from the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The city manager is hereby authorized to initiate a certiorari action on~~

~~behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.~~

Section 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