



Roll Call Number

Agenda Item Number

34

Date January 27, 2020

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 42-258 and 42-263, relating to noise control",

which was considered and voted upon for the first time under Roll Call No. 19-2048 of December 16, 2019, and considered and voted upon for the second time under Roll Call No. 20-0104 of January 13, 2020, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, P. Kay Cmelik, 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 42-258 and 42-263, relating to 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, as heretofore amended, is hereby amended by amending Sections 42-258 and 42-263, relating to noise control, as follows:

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) Sound level meter. Recipient of a permit must have a sound level meter on site during the use of a permit when determined by staff to be a requirement of the permit, examples are concerts and street closure events. The equipment must monitor the amplified sound for compliance with the permit, be capable of producing read outs during the event and upon request 30 days after the event.

(ef) *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 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 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 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 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 dBCs, 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 in~~ 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~~ 112 dBCs, ~~when measured at the middle cement crosswalk area of the amphitheater or at the front of house which is established to be 50-75~~ 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~~ 10:00 p.m. Sunday through Thursday and 9:00 a.m. to ~~12:30 a.m.~~ 11:00 p.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~~ 112 dBCs 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 up to three consecutive days 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 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 dBCs~~ 114 dBCs measured at front of house which will be set at 125 feet from the stage. and limited to 85 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~~ 11:00 p.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. ~~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.
- (12) *Type “L” permit* may be issued to a privately held recreational area more than 40 acres in area for outside events, emitting music or human speech at a level not greater than ~~100~~ 112 dBCs when measured 50 feet from the amplification equipment. 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, the Sunday of Labor Day weekend, and the Fourth of July whenever it occurs on a Sunday. The stage and sound equipment for any live performances held shall be set up facing away from residential areas. A type “L” 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.
- (13) *Type “M” permit Zoo.* A type “M” permit may be issued for amplification equipment for live performances held on the Blank Park Zoo Foundation Parcel, emitting music or human speech, at a level not greater than 85 dBCs when measured at the nearest residence. A type “M” 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 11:00 p.m.-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. 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.
- (14) *Type “N” permit – Simon Estes Riverfront Amphitheater.* A type “N” 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 dBCs, when measured at the middle cement crosswalk. This permit is effective between the hours of 9:00 a.m. to 10:00 p.m. Sunday through Thursday and 9:00

a.m. to 11:00 p.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.

(fg) *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.

(gh) *Denial or revocation.*

(1) *Denial of sound permit.* The director of the community development department or director's designee may deny an application for a sound permit in writing. 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 in any 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 revoke a sound permit issued pursuant to this article upon the second finding of a violation of the terms and conditions of the permit by persons charged with enforcement of this article, within a 12-month period.

(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.

Sec. 42-263. Enforcement.

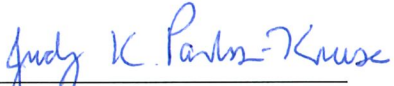
(a) The noise control program established by this article shall be implemented, administered, and enforced by the community development and police departments.

(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) 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.
- (e) The measurements used to measure and determine violations for A-Weighted sound measurements shall use an A-weighted frequency weighting with Fast (125 millisecond) time integration, or LAF. The measurements for A-weighted sound shall be A-weighted Fast, and the LC peak fast reading will be used to determine a violation.
- (f) The measurements used to measure and determine violations for permits referring to C-Weighted sound measurements shall use a C-weighted frequency weighting with Fast (125 millisecond) time integration, or LCF. Amplified music will be measured Using C-weighted Fast, and the LC peak fast reading will be used to determine a violation.

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

FORM APPROVED:



 Judy K. Parks-Kruse
 Assistant City Attorney