

ORDINANCE NO. 13,757

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,776, passed February 3, 1992, and amended by Ordinance No. 11,801, passed April 20, 1992, and amended by Ordinance No. 13,013, passed March 28, 1994 by repealing Sections 16-139, 16-140 and 16-144 thereof and enacting new Sections 16-139, 16-140 and 16-144, relating to noise, sound levels and sound equipment.

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

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, and amended by Ordinance No. 11,776, passed February 3, 1992, and amended by Ordinance No. 11,801, passed April 20, 1992, and amended by Ordinance No. 13,013, passed March 28, 1994 is hereby amended by repealing Sections 16-139, 16-140 and 16-144 thereof and enacting new Sections 16-139, 16-140 and 16-144, relating to noise, sound levels and sound equipment, as follows:

16-139. NOISE DISTURBANCE PROHIBITED.

With the exception of sound levels elsewhere specifically authorized or allowed in this subchapter, no person shall make, continue, or cause to be made or continued, any noise disturbance as defined in this subchapter.

16-140. 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 subchapter, 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:

(1) TABLE 1. SOUND LEVELS BY RECEIVING LAND USE

Zoning Category of Sound Level

receiving land-use Time Limit, dBA

R-1 to R-6 7 A.M. to 10 P.M. 60

Residential 10 P.M. to 7 A.M. 50

C-0, C-1 to C-4,

U-1 Commercial At all times 65

M-1 to M-3 Industrial At all times 75

Noise Sensitive Area At all times 55

U-1 Flood Plain or

FW Floodway At all times

Use specific limit from above in view of character of land-use.

For the purposes of this subchapter, sound levels in excess of the dBA listed in Table I above shall be deemed a violation.

Correction for character of sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth hereinabove shall be reduced by 5 dBA.

(2)The provisions of this section shall not apply to:

(i)Activities covered by the following sections:

16-141 (Emergency signaling devices); 16-144 (Amplified sound); 16-145 (Motorized vehicles); 16-146 (Construction); 16-147 (Stationary non-emergency signaling devices); 16-152 (Noise covered by sound variance).

(ii) The operation of the following domestic power tools or equipment between the hours of 7:00 A.M. and 10:00 P.M.

(A) Electrical power tools.

(B) Motor-powered, muffler-equipped lawn, garden and tree trimming equipment.

(b) **Immediate threat.**

(1) The zoning enforcement official shall order an immediate halt to any sound which exposes any person, except those excluded under paragraph (2) of subsection (a), 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 zoning enforcement official 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 paragraph (1) hereof 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 (1) trespass, (2) invitation upon private property by the person causing or permitting the sound, or (3) employment by the person or

contractor of the person causing or permitting the sound.

(3) Any person subject to an order issued pursuant to paragraph (1) hereof shall comply with such order until (1) the sound is brought into compliance with the order as determined by the noise control division; or (2) 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

Correction for Character of Sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth hereinabove shall be reduced by 5 dBA.

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)

Number of repetitions

Sound Level Limit (dB) per 24 hour period

140 1

130 10

120 100

16-144. REGULATION OF SOUND EQUIPMENT AND SOUND AMPLIFYING EQUIPMENT.

(a) Except for activities open to the public and for which a permit has been issued and not otherwise invalidated or revoked by the city under this section, no person shall so operate, play or permit the operation or playing of any sound equipment:

(1) As to create a noise disturbance across a residential real property boundary or outdoors within a noise sensitive area.

(2) As to create a noise disturbance 50 feet from the device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters.

(b) (1) **Sound equipment--permit required.** No person shall, use, operate or cause to be used or operated any sound equipment upon the public streets or in any building or upon any premises, public or private, if the sound therefrom be plainly audible from any public street or public place within the city, unless said person:

(i) First obtains a permit in accordance with this section;

(ii) Complies with the conditions imposed by the permit, including the maximum permitted sound level shown therein;

(iii) Complies with the provisions of chapter 23 of this code, as it regulates street closings; and

(iv) Complies with all other applicable provisions of this section.

(2) For purposes of municipal code section 16-144(b)(1) "sound equipment" shall not include:

(i) Equipment used for public health and safety purposes;

(ii) Church or clock carillons, bells or chimes;

(iii) 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 therefrom is not audible for more than 50 feet from the vehicle while being operated on a public right of way or public space or in a boat on public waters.

(iv) Unamplified live music provided, sponsored, or funded, in whole or in part, by a governmental entity.

(v) Mobile radio or telephone signaling devices.

(c) **Fees.** A separate permit shall be required for each type of activity described hereinbelow, and permits shall be nontransferable. The permit shall be conspicuously displayed on or immediately adjacent to the sound equipment. A nonrefundable fee for sound equipment permits shall be paid as follows:

(1) Permits for one day or less \$
20.00

(2) Permits for over one day
through

one week \$ 40.00

(3) Permits for over one week
through

one year \$200.00

No fee shall be required for any sound equipment permit issued to the city of Des Moines, state of Iowa, or the federal government or a governmental subdivision or agency.

(d) **Information required.** Applications for permits required herein shall be made in writing to the zoning enforcement officer, accompanied by the required permit fee and the following information:

(1) Type of permit requested;

(2) Name and address of applicant;

(3) The purpose for which the sound equipment will be used;

(4) The location where the sound equipment will be used;

(5) The number of 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 proposed sound pressure level output of the sound equipment, including:

(i)Type B permits. The approximate decibel output measured in dB(A)'s at a distance of 100 feet from the sound equipment.

(ii)Type A, C, D and E permits. The address of the residence nearest the sound equipment, the approximate decibel output measured in dB(A)'s at the real property boundary of the private residence nearest the sound equipment, and the decibel output measured in dB(A)'s at a distance of 50 feet from the sound equipment. 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.

(8)The name(s) and phone number(s) of the person(s) responsible for the use of the permit.

(e) Application standards.

(1) Type A permit--general standards. A type A permit may be issued for sound equipment emitting music or human speech registering not more than 60 dB(A)'s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(A)'s at a distance of 50 feet from the sound equipment. Sound equipment permitted under a Type A permit may be used only in areas of the city zoned for nonresidential use and only between the hours of 9:00 A.M. and 11:00 P.M., except the C-3 zoned area 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.

(2) Type B permit--sound trucks--general standards. Sound trucks may be operated only under a type B permit. A type B permit may be issued for sound equipment mounted upon a motor vehicle and intended for use upon city streets provided that the sound equipment emits only music or human speech registering not more than 80 dB(A)'s when measured at a distance of 100 feet from the sound equipment. Sound equipment permitted under a type B permit may be used only in nonresidential areas from 9:00 A.M. to 9:00 P.M.

(3) Type C permit--parks--general standards. A type C permit may be used for sound equipment emitting music or human speech registering not more than 60 dB(A)'s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(A)'s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type C permit may be used only in public parks owned and operated by the city, or public grounds owned and operated by another governmental body, from 10:00 A.M. to 11:00 P.M. for events authorized and approved by the park and recreation board or other body having jurisdiction over the park or public grounds.

(4) Type D permit--school grounds--general standards. A type D permit may be issued for sound equipment emitting music or human speech registering not more than 60 dB(A)'s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(A)'s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type D permit may be used only on school grounds, or in conjunction with a school sponsored activity, from 10:00 A.M. to 11:00 P.M. for events authorized and approved by

the school authorities having jurisdiction of the grounds.

(5) Type E permit -- residential events - general standards. A type E permit may be issued for sound equipment emitting music or human speech registering not more than 60 dB(A)'s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(A)'s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type E permit may be used only pursuant to a permitted street closing under Chapter 23 of this code, from 10:00 a.m. to 11:00 p.m.

(f) **Commercial advertising--sound equipment prohibited.** 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 therefrom 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) **Sound equipment impounded.** The sound equipment or any component thereof may be impounded pending the resolution of any violations charged under this subchapter.

(h) **Responsible person required to be present.** A permit is not valid unless at least one of the persons listed as a responsible person on the application is present on the premises at the time during which the permit is used.

(i) **Ineligibility or revocation.**

(1) Ineligibility-convictions. No permit shall be issued if applicant, any of the applicant's agents, or employees, has been

convicted of two (2) or more violations of this subchapter in the previous 24 month period.

(2)Revocation-convictions. The director of the community development department shall revoke a permit issued pursuant to this subchapter upon the second (2nd) conviction of the applicant, applicant's agents, or employees, within a 24 month period, whether the total convictions are a result of one individual or a combination of the convictions of the applicant, applicant's agents, or employees.

(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 property owners or residents 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 director shall forward the information to the city clerk to schedule a hearing for consideration of revocation of the sound permit.

(j) Revocation hearing for adverse impact.

(1)Notice. Upon receipt from the community development director that 25 percent or more of the property owners or residents in the designated 200 foot radius have stated an adverse impact due to the issuance of a sound permit, the community development director or his or her designee shall schedule a hearing and shall send by regular U.S. mail, a notice of the time, date and location of the hearing to the permit holder and all property owners and residents within the designated 200 foot radius. Additionally, the city clerk shall cause a notice of revocation hearing to be published in a local publication.

(2)Conduct of hearing. The revocation hearing shall be conducted before the hearing officer designated by the city manager not less than twenty business days, excluding Saturdays, Sundays, and city holidays, from the proposed date for the hearing. The sole issue before the hearing officer shall be whether the continuance of the sound permit creates and adverse impact on the health, safety, and welfare of persons or property affected. The petitioners shall have the burden of establishing the adverse impact. In the event the hearing officer determines there is an adverse impact, then the sound permit shall be either revoked, or the limitations of the permit reduced so as to eliminate the adverse impact. The findings and decisions of the hearing officer shall be reported in writing and delivered to the permit holder and filed with the city clerk. The proceedings at the revocation hearing shall be tape recorded by the hearing officer. Such tape recording shall serve as the official record of the hearing for appeal purposes. The hearing officer shall retain the tape-recorded record of the hearing until the appeal has been acted upon by the city council.

(3)Adverse impact and appeal. For the purpose of the revocation hearing the definition of "adverse impact" is the same as set forth in this chapter at section 16-152.03. The right to appeal and the appeal process shall be set forth in this chapter at sections 16-152.04 and 16-152.05.

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

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Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 99-3237), passed by the City Council of said City at a meeting held October 18, 1999, signed by the Mayor on October 18, 1999, and published as provided by law in the Business Record on November 1, 1999. Authorized by Publication Order No. 6309.

Donna Boetel-Baker, CMC/AAE, City Clerk