

ORDINANCE NO. 14,746

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, by repealing Article IV, Noise Pollution, Sections 42-246 through 42-270 thereof and adding and enacting a new Article IV, Noise Control, Sections 42-246 through 42-267.

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, by repealing Article IV, Noise Pollution, Sections 42-246 through 42-270 thereof and adding and enacting a new Article IV, Noise Control, Sections 42-246 through 42-267, as follows:

ARTICLE IV. Noise Control

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 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.

"*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.

"*Noise sensitive area*" means any area designated pursuant to section 42-263 of this article 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, but not including intra-building real property divisions.

"*Receiving land*" means 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. 42-247. Title.

This article may be cited as the "Noise Control Ordinance of the City of Des Moines."

Sec. 42-248. Statement of public policy.

The city council finds and declares that:

- (A) Excessive noise is a serious hazard to the public health and welfare and the quality of life in a close urban society.
- (B) A substantial body of science and technology exists by which excessive noise can be substantially abated without serious inconvenience to the public.
 - (C) Certain noise-producing equipment in this community is essential to the quality of life in the community and should be allowed to continue at reasonable levels with moderate regulation.
- (D) Each person has a right to an environment reasonably free from noise which jeopardizes health or welfare or unnecessarily degrades the quality of life.
- (E) It is the policy of this city to promote an environment free from excessive noise, which unnecessarily jeopardizes the health and welfare and degrades the quality of the lives of the residents of this community, without unduly prohibiting, limiting or otherwise regulating the function of certain noise-producing equipment which is not amenable to such controls and yet is essential to the economy and quality of life of the community.

Sec. 42-249. Purpose.

The purpose of this article is to establish standards for the control of excessive noise in the city by setting maximum permissible sound levels for various activities to protect the public health, safety and general welfare.

Sec. 42-250. Scope.

This article shall apply to the control of all noise originating within the city limits or originating from properties lying outside the city limits owned or controlled by the city, except where either:

- (A) A state or federal agency has adopted a different standard or rule than that prescribed within this article and has so preempted the regulation of noise from a particular source as to render this article inapplicable thereto; or
 - (B) The city council has determined that, because of public acceptance of the activity producing a particular noise, such noise is deemed acceptable to the city residents.

Sec. 42-251. Exceptions to article.

This article shall not apply to the following:

- (A) The emission of sound for the purpose of alerting persons

to the existence of an emergency.

- (B) The emission of sound in the performance of emergency work.
- (C) 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.
 - (D) The un-amplified human voice, except those activities controlled by subsection 42-256(A) of this article.
- (E) Agricultural activities, exclusive of those involving the ownership or possession of animals or birds.
- (F) Snowmobiles regulated by I.C. ch. 321G.
 - (G) Rail and air transportation and public mass transportation vehicles.
- (H) The emission of sound in connection with activities conducted on the state fairgrounds during the annual state fair and exposition.
- (I) The emission of sound in the performance of military operations, exclusive of travel by individuals to or from military duty.
- (J) The emission of sound in the legal discharge of weapons or in fireworks displays licensed by the city.
 - (K) The emission of sound in the operation of snow removal equipment.
- (L) Parades or processions for which a parade permit has been issued by the city.
- (M) Marching bands and athletic events
- (N) Government owned, operated, or contracted vehicles in the performance of their official duties.

Sec. 42-252. Noise disturbance prohibited.

No person shall make, continue or cause to be made or continued any noise disturbance as defined in this article.

Sec. 42-253. Ambient Noise Level

When noise level measurements are taken and the ambient noise level measurement exceeds the maximum permitted sound level, the maximum permitted sound level shall be increased to equal the ambient noise level.

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, dBA
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, sound levels in excess of the dBA listed in table 1 shall be deemed a violation.

(2) This subsection shall not apply to:

a. Activities covered by the following sections of this article: 42-255 (emergency signaling devices); 42-258 (amplified sound); 42-259 (motorized vehicles); 42-260 (construction); 42-261 (stationary non-emergency signaling devices); 42-266 (noise covered by sound variance).

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

1. Electrical power tools.
2. 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. 42-255. Emergency signaling devices.

- (A) No person shall operate or permit the intentional sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection (b) of this section.
- (B) Testing of a stationary emergency signaling device shall occur at the same time of day each time the test is performed, but not before 9:00 a.m. or after 4:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall test times exceed 60 seconds.

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 7:00 a.m. the following morning as to create a noise disturbance across a residential real property boundary or within a noise sensitive area. This section shall not apply to activities covered 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.

Sec. 42-257. Musical instruments and similar devices.

No person shall operate, play or permit the operation or playing of any drum, musical instrument or similar device which produces sound in such a manner as to create a noise disturbance across a residential real property boundary as defined in section 42-254 of this article or outdoors within a noise sensitive area.

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

- (A) *Permit required.* No person shall, use, operate or cause to be used or operated any sound equipment 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 music or human speech registering not more than 85 dBAs 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 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-3R and DR zoned areas which shall be between 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 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 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 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 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 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 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 dBAs, or below the ambient level, when measured at the property boundary, edge of designated seating area or 50 feet from the sound equipment which ever 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.

(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.

(H) *Denial or revocation.*

(1) *Denial of sound permit.* The director of the community development department may, upon hearing, deny an application for a sound permit if any person responsible for monitoring the terms and conditions of the sound permit at the premises has been issued two or more notices of violation of this article in a previous 12-month period, the director shall forward the information to the city clerk to schedule a hearing for consideration of denial of the sound permit.

(2) *Revocation.* The director of the community development department may, upon hearing, revoke a sound permit issued pursuant to this article upon the second notice of violation issued in 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 director shall forward the information to the city clerk to schedule a hearing for consideration of revocation of the sound permit.

Sec. 42-259. Motorized vehicles.

- (A) No person shall operate the engine, or auxiliary engine, of a motor vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or more for a period longer than 20 minutes while such vehicle is standing and located within 150 feet of property zoned and used for residential purposes. This subsection shall not apply to delivery or pickup vehicles that require the operation of the engine to unload or load their vending loads.
- (B) No person shall operate a motor vehicle or a combination of vehicles of a type subject to registration at any time or under any condition in such manner as to exceed the noise limit listed in this subsection for the category of motor vehicle, such noise to be measured at a distance of fifty (50) feet from the vehicle.

NOISE LIMIT IN RELATION TO
LEGAL SPEED LIMIT

Type of Vehicle	35 mph or Less dBA	Over 35 mph dBA
Any motor vehicle with a manufacturer's gross vehicle weight rating of 10,000 lbs. or more and any combination of vehicles towed by such motor vehicle	88	92
Any motorcycle	82	86

Any other motor vehicle and any combination of motor vehicles towed by such motor vehicle	76	82
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This subsection applies to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other section of this Code relating to motor vehicle mufflers or noise control.

- (C) (1) No person shall operate a recreational vehicle or permit the operation of one or more recreational vehicles, individually or in a group, or in an organized racing event on public or private property in such a manner that the sound level exceeds that set forth in Sec. 42-254(A) Table 1.
- (2) No person shall operate or permit the operation of any recreational vehicle(s), on public or private land between the hours of 10:00 p.m. and 7:00 a.m.
- (3) This section shall not apply to recreational vehicles when legally operated upon the public streets.
- (D) No person operating or in control of a motor vehicle, recreational vehicle, watercraft, or vessel shall operate or permit the operation of a sound system in the vehicle so as to produce a vibration or sound that is clearly detectable at a distance of fifty (50) feet from the vehicle between the hours of 7:00 a.m. and 7:00 p.m. or clearly detectable at a distance of twenty-five (25) feet from the vehicle between the hours of 7:00 p.m. to 7:00 a.m.

Sec. 42-260. Construction.

No person shall operate or permit the operation of any tools or equipment in construction, drilling or demolition work or in preventive maintenance work for public service utilities between the hours of 10:00 p.m. and 7:00 a.m.

Sec. 42-261. Stationary non-emergency signaling devices.

- (A) No person shall operate or permit the sounding of any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place for more than one minute in any hourly period.
- (B) Devices used in conjunction with places of religious worship shall be exempt from the operation of this section.

Sec. 42-262. Animals and birds.

No person shall own, possess or harbor any animal or bird which frequently or for continued duration emits sounds native to the species which are a noise disturbance across a residential real property boundary or within a noise sensitive area.

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) 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.

- (A) Any person desiring to exceed the permitted sound levels or the number of days a permit is valid for as set out in this article may apply to the community development department for a variance from such regulations.
- (B) All applicants for such variances shall apply in writing to the community development department. Such application shall be submitted at least 30 days prior to the proposed date for the needed sound permit variance.
- (C) All variance applications shall contain the following information:
 - (1) The name and address of the applicant;
 - (2) If the application is made on behalf of an organization, the name and address of that organization;
 - (3) The name and phone number of a contact person;
 - (4) The proposed dates for which a variance is required;
 - (5) A description of the event and its potential cause for excessive noise;
 - (6) The times the event will generate excessive noise; and
 - (7) Information which would demonstrate that bringing the source of sound or activity for which the sound permit variance is sought into compliance would constitute an unreasonable hardship on the applicant, on the community, or on other persons.
- (D) An application for a sound permit variance shall be submitted to the community development department accompanied by a nonrefundable fee of \$100.00 to cover the cost of processing the application.
- (E) Upon receipt of an application for a sound permit variance, the director of the community development department or his or her designee shall determine what property interests may be affected by the granting of a sound permit variance, including but not limited to:
 - (1) The occupants of surrounding single-family or duplex residences located in an area that includes the next two homes in any direction or those within 200 feet of the noise source, whichever is less; or
 - (2) The owner or manager of multiple-residence structures, including hotels, within such areas.
- (F) The director of the community development department shall notify such property owners or occupants as identified in

subsection (E) of this section in writing and delivered by the U.S. Postal Service, ordinary mail, of the application for a sound permit variance and shall give them ten days to give written cause why the variance should not be granted.

- (G) If the director of the community development department receives written statements from 25 percent or more occupants who claim to be adversely affected by allowance of the sound permit variance, the director shall forward the information to the city clerk to schedule an administrative hearing to consider the application for a variance.

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

The City Clerk, upon receipt from the director of the community development department of a request for a hearing on a sound variance, or a denial or a revocation of a sound permit, 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 at least ten (10) days prior to the hearing.

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

- (A) The administrative hearing shall be conducted before the hearing officer designated by the city manager.

(1) *Variance.* The sole issue before the hearing officer shall be whether the granting of the variance shall create an adverse impact on the health, safety, and welfare of persons or property affected. The applicant for a variance shall carry the burden of establishing that an adverse impact shall not be created by the granting of a variance.

(2) *Denial or Revocation.* The sole issue before the hearing officer shall be whether the conditions set out in a sound permit have been violated and whether the issuance or continuance of a permit will create an adverse impact on the health, safety and welfare of persons or property affected by the violation. If the hearing officer determines that the violations of a permit created 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.

Sec. 42-267. Right of appeal of hearing officer's decision and process.

(A) The decision of the hearing officer under this article may be appealed to the city council by either the director of the community development department, the applicant for the revoked or denied permit, the applicant for a sound variance, or any impacted resident, provided that such entity or person files a written notice of appeal with the city clerk's office within seven days of the hearing officer's decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the hearing officer's decision to the city council.

(B) The appeal of the decision of the hearing officer shall be considered and a decision rendered by the city council within 14 days of the filing of the written notice of appeal. The time for considering the appeal may be extended for good cause. The appeal process shall consist of a review by the city council of the transcript of the tape recorded record of the administrative hearing. No additional evidence may be presented as part of the appeal. The sole issue before the council shall be whether the decision of the hearing officer was supported by sufficient evidence. The decision of the city council is final.

Sec. 42-268. Penalty.

Any person who fails to perform an act required by the provisions of this article, or who commits an act prohibited by the provisions of this article, shall be guilty of a simple misdemeanor or a municipal infraction punishable by a criminal or a civil penalty as provided by section 1-15.

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

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 08-329), passed by the City Council of said City at a meeting held February 25, 2008 signed by the Mayor on February 25, 2008 and published as provided by law in the Business Record on March 10, 2008. Authorized by Publication Order No. 6056.

Diane Rauh, City Clerk