

Variance to the Noise Ordinance

Sec. 17-8. Noise nuisances.

- (a) *Definitions.* As used in this section, the following terms shall have the respective meanings ascribed in them:

Plainly audible in this section means any sound produced by artificial means, which clearly can be heard at a distance of fifty (50) feet or more when measured by the auditory senses, based on the direct line of sight. Determination of whether a sound is plainly audible shall be made without regard to the discernibility of words or phrases. Bass reverberations may be considered plainly audible.

Sound amplifying device in this section means any radio, tape player, compact disk player, loudspeaker, or other electronic device used for the amplification of sound.

(b) *Declaration of nuisance, prohibitions.* Any noise of a non-natural or artificial source, of such intensity that is plainly audible from a distance of fifty (50) feet or more from the source is declared a nuisance and is hereafter prohibited.

(c) *Enumerated acts.* The following acts, among others, are declared to be nuisances in violation of this section, but said enumerations shall not be deemed to be exclusive, to wit:

- (1) The playing of any radio, phonograph or other musical instrument in such a manner or with such volume as to be plainly audible at a distance of fifty (50) feet or more from the source.
- (2) The operation of a sound amplifying device in a public park or public playground so that the sound is plainly audible at a distance of fifty (50) feet or more from the sound amplifying device.
- (3) The keeping of any animal or bird which is causing frequent or long-continued noise that disturbs the comfort and repose of any person of ordinary sensibilities within fifty (50) feet of the property line on which the animal or bird resides.
- (4) This section shall not apply to any person acting on behalf of a government authority or acting pursuant to a valid permit issued by the city.

(d) *Test for standards and noises.* Factors to consider: The standards which shall be considered in determining whether a violation of this section exists shall include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) Whether the origin of the noise is natural or unnatural.
- (5) The volume and intensity of the background noise, if any.
- (6) The proximity of the noise to residential sleeping facilities.
- (7) The nature of the area within which the noise emanates.
- (8) The density of inhabitation of the area within which the noise emanates.
- (9) The time of the day or night the noise occurs.
- (10) The duration of the noise.
- (11) Whether the noise is recurrent, intermittent or constant.
- (12) Whether the noise is produced by a commercial or noncommercial activity.

(e) *Violations; penalties.* Any person, firm, or corporation violating subsection (a) or (b) hereof, shall be a

violation of a class C misdemeanor and upon conviction shall be fined in an amount not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), plus costs.
(Ord. of 8-21-03, §§ I-III)

Editors Note: Ord. No. 0-03-010, §§ I-III, adopted Aug. 21, 2003, repealed the former § 17-8, and enacted a new § 17-8 as set out herein. The former § 17-8 pertained to similar subject matter and derived from Ord. of Apr. 19, 1983, §§ 1--3.

Cross References: Animals and fowl, Ch. 5; buildings and structures, Ch. 6; health and sanitation, Ch. 12; oil and gas production, Ch. 18; streets and sidewalks, Ch. 22; traffic, Ch. 25.

Any person or persons who intend to hold an event or function that will violate the above noise ordinance, generally by using musical instruments or sound amplifying equipment, need to apply for a variance to the noise ordinance. This application is a one page document that gives the details of the event as well as what equipment, instruments, etc. will be used. Once the application and application fee (\$10.00) is received, the application must be approved by the Fire Department and the Police Department prior to being acted upon by City Council. This procedure requires that the application be submitted at least three weeks prior to the event.