

the abatement plan, or undertakes the remedies provided by Chapter 704 of the Wisconsin Statutes as may be amended from time to time, or takes one or more legal steps as identified in the abatement plan to remove the tenants creating the public nuisance allowable under Wisconsin Statutes and Consumer Protection Rules when notified by the Police Department in writing that an illegal public nuisance exists.

- (iv) **PENALTIES:** In addition to any other penalty provided in this Municipal Code, every person convicted of a violation of any of the provisions of this Section shall for each offense be punished by the forfeitures as set below, together with the costs of prosecution and in default of payment of such fines and costs. Each day of violation shall be considered a separate and distinct offense.
- aa. First Offense: not less than \$400, nor more than \$800.
 - bb. Second offense within 24 months of previous conviction: not less than \$600, nor more than \$1,000.
 - cc. Third offense within 24 months of previous two convictions: not less than \$800, nor more than \$1,200.
 - dd. Fourth or subsequent offense within 24 months of previous three subsequent convictions: not less than \$1,000, nor more than \$2,000.

SECTION 17-39 BARBED WIRE FENCING

The use of barbed wire within the City for the purpose of fencing or enclosing lots or for any other purpose is prohibited, provided that the provisions of this Section shall not apply to farming lands used and cultivated as such within the City limits where the fencing along either a street or sidewalk line is placed a distance of at least six (6) feet inside the sidewalk line, and provided further that this Section shall not apply to any fences more than six (6) feet high from the ground, where such barbed wire is strung at the top of such fencing.

SECTION 17-40 ABANDONED ICE BOXES

No person shall leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded ice box, refrigerator or any other container of any kind which has an air-tight door or lock which may not be released for opening from the inside of said ice box, refrigerator or container; or which has an air-tight snap-lock or other device thereon without first removing the same snap-lock doors from said ice box, refrigerator or container.

SECTION 17-41 UNNECESSARY NOISES

Any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life or health of any individual or which is in the disturbance of public peace and welfare is hereby prohibited.

SECTION 17-42 EXCESSIVE NOISE (Revised 5/7/12)

(1) Scope and Enforcement

This section shall apply to the control of all noise originating within the limits of the City. It is the policy of the City of Oshkosh to comply with the noise limitations, as set forth in this section, in all of its own operations and the operations of its contractors and subcontractors.

(2) Definitions. As used in this section:

- (a) "Ambient noise" means the all encompassing background noise associated with a given environment, being usually a composite of sounds from many sources near and far.
- (b) "A-weighted sound level" or "A-Scale level" mean the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB (A) or dBA.
- (c) "Commercial district" means any area of the city designated on the official Oshkosh Zoning Map, pursuant to Chapter 30 of this Code, as a Business District or Commercial District or as classified as C-1, C-2, C-3, or C-4.
- (d) "Day" means the hours between 7:00 a.m. and 10:00 p.m.
- (e) "Decibel (dB)" means a standard unit of sound pressure level.
- (f) "Industrial district" means any area of the City designated on the official Oshkosh Zoning Map, pursuant to Chapter 30 of this Code, as a Light Industrial, or Heavy Industrial District, or classified as M-1, M-2, or M-3.
- (g) "Impulsive sound" means a single sound pressure peak or a series of single bursts of short duration, usually less than one second.
- (h) "Night" means the hours between 10:00 p.m. and 7:00 a.m.
- (i) "Person" means any individual, firm, partnership, or corporation.
- (j) "Pure tone" means a steady sound without overtones.
- (k) "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 division.
- (l) "Residential district" means any area of the City designated on the official Oshkosh Zoning map, pursuant to Chapter 30 of this Code, as Single-Family, Two-Family, or Multiple Dwelling Districts, or R-1, R-2, R-3, R-4, R-5 or Agricultural (Ag).
- (m) "Sound level meter" means an instrument which includes microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

(3) Noise Limitations

The A-scale level from any noise source or combined noise sources on any parcel located in the City of Oshkosh shall not exceed the following levels at the Real Property Boundary:

Maximum Sound Pressure Levels (dB) along District Boundaries:

Residential

Commercial/Industrial

A-scale levels

55 dBA

62 dBA

Maximum sound pressure levels shall be decreased by five dB if the subject noise consists primarily of a pure tone or if it is impulsive in character.

Readings shall be taken in such a manner to minimize or eliminate the effects of ambient noise upon the readings taken. If a correction is made for ambient noise in the readings, such correction shall be noted.

(4) Public Nuisance

Excessive noise as defined in this section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures, as provided in this Code. Such abatement shall be in addition to administrative proceedings, forfeitures, and penalties provided in this section.

(5) Prohibited Acts

No person shall make, produce, allow or cause to be produced any noise which exceeds the noise limitations as set forth in this section.

(6) Noise Exemptions

The noise limitations as set forth in sub-section (3)(a) shall not apply to the following:

- (a) Non-commercial public speaking and public assembly activities conducted on any public property.
- (b) Construction sites, public utilities, and public works operations during any day, from Monday through Saturday, inclusive; provided, however, that the sound level at or across a real property boundary shall not exceed 86 dBA.
- (c) Emergency short term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.
- (d) Any noise emitted from emergency warning devices and unregulated safety relief valves.
- (e) Loading or unloading operations or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects during any day.
- (f) Stationary bells, chimes, sirens, whistles, or similar devices, intended primarily for emergency purposes, except industrial whistles; provided, however, that no such device shall be sounded more than five minutes in any hourly period, nor a total of 30 minutes in any twenty-four hour period. Church bells, chimes and carillons may be rung at any time.
- (g) Domestic power tools, including any mechanically powered sander, lawn or garden tool, snow thrower, or similar device used during any day.
- (h) Industrial whistles, provided that the sounding of any such whistle is to give notice of the time to begin or stop work or as a warning of fire, danger, or upon request of proper city authorities.
- (i) The sounding of any horn on a railroad train or locomotive on a main line railroad track, provided that any such sounding is required by state law or reasonably required to avoid an impending accident.
- (j) Parades duly permitted pursuant to Chapter 5 of this code.
- (k) Aircraft operations.

- (l) Noise created by human behavior and generally considered to be disorderly conduct which is regulated under Section 17-1 of this code.
 - (m) Barking dogs, including kennels, shall be regulated under Chapter 6 of the Oshkosh Municipal Code.
- (7) Places of Public Entertainment
No person shall operate, play, or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device or any combination thereof, which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than 100 dBa as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least 225 square inches in area is placed outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."
- (8) Variances
Temporary variances from the terms of this section may be requested by written request from the City Council. Variances exceeding two years may be granted only in exceptional cases, including those for which, control technology is unavailable or available only at a prohibitive cost.
- (a) Application. Application for a variance under this sub-section shall be made in writing and filed with the City Clerk who shall place the variance request upon the Common Council agenda for their next regular meeting if the request is received at least five (5) business days prior to such meeting. If the request is received less than five (5) business days prior to the next regular Council meeting, the request shall be placed on the second meeting following the submission of the request. The request shall specify the grounds upon which the variance is sought and the date by which the source of any excess noise or vibration for which the variance is sought shall be brought into compliance with this section. An application for a variance shall be considered timely made if filed within thirty (30) days following due notification that it is in violation of this section. The proper filing of an application within such time shall stay the enforcement of any such violation until a final decision has been issued by the Council.
 - (b) Review. The Common Council may grant a temporary variance to the requirements set forth in this section, if the Council determines circumstances exist which would make immediate compliance with the noise or vibration limitations as set forth in this section result in unnecessary hardship to the applicant. In making the determination, the Council shall consider:
 - (1) the hardship to the applicant, the community, and other persons of not granting the variance;
 - (2) the adverse impact on health, safety, and welfare of persons owning, residing, or occupying property in the surrounding area and the public in general;
 - (3) the adverse effect on surrounding property;
 - (4) whether the circumstance, hardship, or situation to be addressed by the proposed variance is unique, and not applicable generally to other circumstances;
 - (5) whether the person or entity seeking the variance is otherwise in compliance with all applicable ordinances, regulations and statutes;
 - (6) and any other adverse impacts of granting the variance.

The Common Council may require the applicant to submit additional information not contained

in the application which may be necessary for making a determination under this subsection.

- (c) Decision upon Variance. The Council may approve, approve subject to conditions, or deny, in whole or in part, a variance under such conditions as are necessary to protect the public health, safety, and welfare, including a schedule for achieving compliance with noise limitations.
- (d) Non-compliance. Non-compliance with any conditions imposed on the variance shall terminate the variance and subject the person holding it to those provisions of this section for which the variance was granted.
- (e) Extension and Modification. Application for extension of time limits or modification of other conditions specified in the variance shall be treated like applications for an initial variance.
- (f) Legal Recourse. Any applicant aggrieved by the decision of Common Council or any person so aggrieved may seek such other legal relief as may be available

SECTION 17-43 RAILROAD HORNS AND WHISTLES

No railroad shall cause or permit a locomotive horn or whistle to be sounded within the limits of the City except when, in the judgment of the operator of the locomotive, it is necessary to do so to prevent damage to property or injury to persons.

SECTION 17-44 WEED CUTTING AND LAWN CARE

- (A) Owner's Responsibility
The owner of every parcel of land within the City shall cut or cause to be cut all grass in excess of eight (8) inches in length, dandelions, and weeds and other like vegetative growth in excess of eight (8) inches in length upon said land and in the public right-of-way adjoining said land. Any owner failing to comply with this provision is subject to penalties provided in Section 17-46.
- (B) Uncut Growth; Public Nuisance; Abatement by City
All uncut growth as outlined above is hereby declared to be a public nuisance and fire hazard and shall be cut by the City at its option if the owner fails to comply with this ordinance. In addition to any other penalty provided in this Code, the costs thereof, together with an administrative charge applied to the bill, imposed each time the growth is cut, shall be charged against the property as a special tax.
- (C) Exemption
This ordinance shall not apply to appropriate lands cultivated for agricultural purposes or to appropriate privately-owned nature areas as outlined in paragraph (D) below provided that appropriate measures shall be taken to eliminate noxious weeds as defined in Section 66.96 of the Wisconsin Statutes. Failure to eliminate the noxious weeds or otherwise conform to the land management plan for a nature area shall forfeit the exemption to this Section.
- (D) Private Nature Areas
 - (1) An owner of land in the City may apply to the Director of Parks or designee for approval of a nature area on privately owned land. The application shall define the proposed nature area indicating the types of vegetation to be used and any other information the Director deems