

ARTICLE III. - NOISE POLLUTION<sup>[3]</sup>

Footnotes:

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**State Law reference**— Motor vehicle noise, F.S. §§ 316.293, 403.415 et seq.

## DIVISION 1. - GENERALLY

## Sec. 11-47. - Definitions.

(a) For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Construction* means any site preparation (including excavation and demolition), assembly, erection, substantial repair, alteration or similar action for or of public or private rights-of-way, structures, utilities or similar property.

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

*Emergency work* means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

*Impulsive sound* means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Impulsive sound includes, but is not limited to, fireworks displays, explosions, and drop forge impacts.

*Loud and raucous noise* means any sound which because of its volume level, duration or character annoys, disturbs, jars, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of ordinary sensibilities.

*Motor vehicle* means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi trailers, trailers, campers, go-carts, amphibious craft on land, dune buggies or racing vehicles, including motorcycles.

*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, personal watercraft and hover craft.

*Motorcycle* means an unenclosed motor vehicle having a seat and two or three wheels in contact with the ground, including, but not limited to, motor scooters, mopeds and minibikes.

*Muffler* means a device for abating the sound of escaping gasses of an internal combustion engine.

*Noise* means any sound that disturbs a reasonable person of ordinary sensibilities or which causes or tends to cause adverse psychological or physiological effect on humans.

*Noise disturbance* means any sound that:

- (1) Endangers or injures the welfare, safety or health of humans or animals;
- (2) Endangers or injures personal or real property;
- (3) Annoys or disturbs a reasonable person of normal sensitivities; or
- (4) Is loud and raucous.

*Noise sensitive zone* means any area designated pursuant to section 11-52.

*Parks* means all Charter and non-Charter parks as defined in chapter 21.

*Person* has the meaning set forth in section 1-2 and, for a business, includes any officer or employee of the owner or the operator of the business, including the manager or person in charge of the premises at the time of the violation.

*Plainly audible* means any sound produced by a source, which can be heard by any reasonable person of ordinary sensibilities using his or her unaided hearing faculties. Measurement standards shall be the auditory senses. Words or phrases need not be discernible and low frequency sound reverberations are included.

*Privately owned outdoor place* means any real property and the outside of structures thereon, that is owned or controlled by a private person or other private entity, including any publicly owned outdoor place that is leased to a private person or private entity (or for which they have received a long term permit to use, e.g. sidewalk cafes, sidewalk retail areas, pushcart vending locations) but does not include any publicly owned outdoor place that a private person or private entity has received a temporary permit to use (e.g., park or street closure permit).

*Property boundary* means:

- (1) 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.
- (2) The interior and exterior walls that define the outer perimeter of a unit in a multifamily building.
- (3) The exterior walls of a freestanding unit in a multifamily cluster, unless specific lots are established, then the specific lot lines as established.
- (4) The exterior walls of a mobile home in a mobile home park, unless specific lots are established, then the specific lots lines as established.
- (5) The exterior hull or deck of a boat legally moored in a marina or at a private dock in a residential area.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk or alley or similar place that is owned or controlled by a governmental entity.

*Publicly-owned outdoor place* means any real property and the outside of structures thereon that are owned or controlled by a governmental entity.

*Receiving land use* means the property being impacted or affected by the sound.

*Residential zoning district* shall have the meaning set forth in chapter 16, as amended, which as of the date of this amendment includes all NT, NS, NMH, NPUD, CRT or CRS zoning districts.

*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of that sound, including duration, intensity and frequency.

(Code 1992, § 11-56; Ord. No. 2002-F, § 1(14-31), 9-27-1990; Ord. No. 454-G, § 1, 12-21-2000; Ord. No. 455-G, § 1, 12-21-2000; Ord. No. 880-G, § 1, 6-19-2008; Ord. No. 1030-G, § 4, 9-22-2011; Ord. No. 73-H, § 1, 6-6-2013; Ord. No. 94-H, § 2, 11-25-2013)

Sec. 11-48. - Scope.

The City Council, having received an increasing number of complaints from the citizens of the City concerning excessive noise as the City continues to develop and grow, and having information and evidence concerning the impacts of excessive noise, hereby finds that the health, safety and welfare of its citizens requires protection from excessive, unnecessary and unreasonable noise.

- (1) Excessive noise, when unnecessary to the carrying on of religious, political, civic or commercial activities, or when not generated in the course of other activity necessary to the carrying on of daily life, can create a significant threat to the public health, safety and welfare.
- (2) Those noises which are most obnoxious to public health, safety and welfare in the City are those which are loud and raucous or generated without regard to the health, welfare and safety of others who are unable to avoid being subjected to such noises.
- (3) Excessive noise threatens both the tourist industry and residents of the City by making it difficult or impossible for visitors and residents to enjoy places and activities, including museums, outdoor cafes and other outdoor amenities, parks, and daily activities without being unreasonably disturbed by such noise.
- (4) There has been an increase in the frequency and volume of noise generated, therefore, the intent of this legislation is to strike an appropriate balance between the rights of individuals to derive pleasure from various sources of sound and the rights of individuals to a peaceful and healthful environment.
- (5) It is not the intent of this legislation to interfere unduly with freedom of speech or religion by regulating the initial production of sound.
- (6) The reasonable regulation of noise as provided by this article serves a significant government interest and this article allows for ample alternative means of communication.
- (7) This article shall apply to the control of all sound originating within the limits of the City.

(Code 1992, § 11-57; Ord. No. 2002-F, § 1(14-30), 9-27-1990; Ord. No. 880-G, § 1, 6-19-2008)

#### Sec. 11-49. - Exemptions.

The provisions of this article shall not apply to the following:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency.
- (2) The emission of sound in the performance of emergency work.
- (3) The emission of sound in the performance of an activity for which, pursuant to this article, the POD has expressly given a temporary, emergency waiver from this chapter when time would not permit the obtaining of a waiver pursuant to section 11-84.
- (4) Aircraft and airport operations.
- (5) Motorboats and marina operations and port operations.
- (6) The unamplified human voice. The use of a megaphone or similar device shall be considered to amplify the human voice.
- (7) Railroad operations.
- (8) Warning devices required on vehicles by any State or federal laws or regulations.
- (9) The emission of sound from the lawful operation of motor vehicles on a right-of-way, except as prohibited in section 11-53 and any State or federal laws.
- (10) The emission of sound from lawful and proper activities on school grounds, playgrounds, parks (except as specifically prohibited in section 11-53) or places primarily used for athletic contests.
- (11) The emission of sound from the operation of essential service vehicles (e.g., police and fire vehicles, sanitation and stormwater management vehicles).
- (12) The emission of sound from the operation of power tools and lawn and garden tools between the hours of 8:00 a.m. and 8:00 p.m. Monday through Saturday and between 11:00 a.m. and 7:00 p.m. on Sundays and national holidays.
- (13) Impulsive sound.
- (14) Noncommercial unamplified public speaking and public assembly activities conducted on any publicly owned place.

- (15) The emission of an unamplified sound from sporting activities on private property.
- (16) The emission of sound from construction activities pursuant to a valid construction permit which is in compliance with the days and hours of operation section of chapter 8 (currently section 8-7).

(Code 1992, § 11-58; Ord. No. 2002-F, § 1(14-35), 9-27-1990; Ord. No. 682-G, § 1, 9-16-2004; Ord. No. 756-G, § 1, 10-6-2005; Ord. No. 880-G, § 1, 6-19-2008)

Sec. 11-50. - Penalty.

- (a) Any person violating any of the provisions of this article, or any person at a business allowing a violation of this article shall be prosecuted and upon conviction thereof be punished as provided in section 1-7. Fines shall be as provided in subsection (b) hereof.
- (b) The first violation of any provision of this division is punishable by a Class I fine as established by administrative order of the Court. Any violation of this division which is issued within a year of another violation, which has been disposed of in any way other than a dismissal or finding of not guilty by a court, shall be punishable by a fine of \$350.00. Any third violation of this division, and any additional violations, issued within a calendar year of two previous violations, which have been disposed of in any way other than a dismissal or finding of not guilty by a court, shall be punishable by a fine of \$500.00.

(Code 1992, § 11-59; Ord. No. 2002-F, § 1(14-42), 9-27-1990; Ord. No. 880-G, § 1, 6-19-2008; Ord. No. 173-H, § 1, 6-4-2015; Ord. No. 216-H, § 4, 3-3-2016)

**Note**— See the editor's note to § 11-56.

Sec. 11-51. - Noise disturbances prohibited.

It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbance or any loud and raucous noise within the limits of the City.

(Code 1992, § 11-61; Ord. No. 2002-F, § 1(14-32), 9-27-1990; Ord. No. 455-G, § 1, 12-21-2000; Ord. No. 880-G, § 1, 6-19-2008)

Sec. 11-52. - Noise sensitive zones.

- (a) Noise sensitive zones are hereby created and established around every hospital in the City. Noise sensitive zones shall extend a distance of 300 feet in every direction from every hospital building.
- (b) No person shall create or cause the creation of any sound within any noise sensitive zone which disrupts the activities normally conducted within the zone provided that conspicuous signs are displayed indicating the presence of the zone. No horn or other motor vehicle warning device shall be sounded in a noise sensitive area except in an emergency.

(Code 1992, § 11-62; Ord. No. 2002-F, § 1(14-38), 9-27-1990; Ord. No. 880-G, § 1, 6-19-2008)

Sec. 11-53. - Loud, raucous and unnecessary noises enumerated.

The following acts, among others, and the causing thereof, are declared to be loud, raucous, disturbing, and/or excessive noise, and therefore unlawful and in violation of this article:

- (1) *Motor vehicles in the vehicular travel portion of a right-of-way.*
  - a. Operating or amplifying the sound produced by a radio, tape or compact disc player, or other mechanical or electronic sound-making device or instrument from within a motor vehicle which is located in the paved or vehicular travel portion of a right-of-way, including parking areas in the right-of-way, so that the sound is plainly audible at a distance of 50 or more feet from the motor vehicle to any person other than the operator and any passengers in the motor vehicle between the hours of 8:00 a.m. and 11:00 p.m.
  - b.

Operating or amplifying the sound produced by a radio, tape or compact disc player, or other mechanical or electronic sound-making device or instrument from within a motor vehicle which is located in the paved or vehicular travel portion of a right-of-way, including parking areas in the right-of-way, so that the sound is plainly audible at a distance of 25 feet or more from the motor vehicle to any person other than the operator and any passengers in the motor vehicle between the hours of 11:00 p.m. and 8:00 a.m. the following morning.

- c. Operating a motor vehicle not equipped with a muffler, or other sound dissipative device required by any applicable law, in good working condition so as to effectively prevent loud or explosive noise, so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle to any person other than the operator and any passengers in the motor vehicle between the hours of 11:00 p.m. and 8:00 a.m. the following morning.
- d. The provisions of this section shall not apply to any law enforcement vehicle equipped with any communications device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.
- e. The provisions of this section do not apply to the sounds made by a horn or other warning device required or permitted by any applicable law.
- f. The restrictions described herein are greater than those set forth in the following subsection (2), Publicly-owned outdoor places including the right-of-way, and in the event of a conflict concerning a motor vehicle in the paved or vehicular travel portion of a right-of-way including parking areas in the right-of-way, the restrictions set forth herein shall govern.

(2) *Publicly-owned outdoor places including right-of-way.*

- a. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any parks, playgrounds, beaches, recreation areas or any other outdoor publicly owned outdoor place or right-of-way so that the sound is plainly audible to any person at a distance of 50 feet or more from the source of the sound between 11:00 p.m. and 8:00 a.m. the following morning.
- b. For activities which have not received a park or street closure permit from the City, playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any parks, playgrounds, beaches, recreation areas or any other outdoor publicly owned outdoor place or right-of-way so that the sound is plainly audible to any person at a distance of 200 feet or more from the source of the sound between 8:00 a.m. and 11:00 p.m.
- c. For activities which have received a park or street closure permit from the City, playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any parks, playgrounds, beaches, recreation areas or any other outdoor publicly owned outdoor place or right-of-way so that the sound is plainly audible to any person at a distance of 5,000 feet or more from the source of the sound between the hours of 8:00 a.m. and 11:00 p.m. This distance is primarily intended to be utilized for permitted outdoor concerts and other large gatherings, it being understood that because of the unique location of the parks along the waterfront that sound may travel greater distances over the water so that at times some of the sound may be briefly audible at a distance greater than those set forth herein.

In any park or street closure permit, the POD may reduce the maximum distance from the distance set forth herein, based on the number of the expected participants of the permitted event and the area reserved for the event. The reduced distance shall be specifically identified in the permit.

- d. For activities which are sponsored or cosponsored by the City, playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any park or right-of-way shall comply with any conditions of the sponsorship or cosponsorship which place a specific, lesser distance limitation on any amplified sound than is otherwise set forth in subsection c.
- e. Sidewalk cafés. Any speakers placed outside a building in or over the right-of-way in a sidewalk cafe, shall be permanently mounted overhead and shall be oriented downward toward the sidewalk café. No speaker is allowed in a sidewalk café unless such speaker is specifically identified on the approved plan for the sidewalk café permit. No sound shall be audible from the speakers when the sidewalk café is not open and operating.

(3) *Buildings.*

- a. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any building in a nonresidential zoning district so that the sound is plainly audible to any person at a distance of 100 feet or more from the building between 11:00 p.m. and 8:00 a.m. the following morning.
- b. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any building in a residential zoning district so that the sound is plainly audible to any person at a distance of 25 feet or more from the building between 11:00 p.m. and 8:00 a.m. the following morning.
- c. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any building in a residential zoning district so that the sound is plainly audible to any person at a distance of 500 feet or more from the building between 8:00 a.m. and 11:00 p.m.
- d. Sound which may escape a building during the normal use of doors for ingress and egress shall not be a violation of this section.
- e. All indoor speakers located within 20 feet of a doorway which opens onto a right-of-way shall be oriented away from the doorway. Such distance shall be measured from the closest part of the door to the closest part of the speaker.
- f. No speakers may be placed in or over the right-of-way unless the abutting business has an approved plan in a sidewalk café permit which identifies the speaker locations.

(4) *Privately-owned outdoor places.*

- a. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier, or other machine or device that produces, reproduces or amplifies sound in any privately-owned outdoor place in a nonresidential zoning district so that the sound is plainly audible to any person at a distance of 100 feet or more from the source of the sound between the hours of 11:00 p.m. and 8:00 a.m. the following morning.
- b. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier, or other machine or device that produces, reproduces or amplifies sound in any privately-owned outdoor place at a

nonresidential use, when making sound is not the principal use of the property (e.g., the outdoor deck of a restaurant), so that the sound is plainly audible to any person at a distance of 1,000 feet or more from the source of the sound between the hours of 8:00 a.m. and 11:00 p.m. (12:00 midnight on Fridays, Saturdays and the days before a national holiday, this is an exception to subsection (4)a of this section). Wherever possible, outdoor speakers shall be oriented away from residential properties or in the direction that reduces the amount of sound directed at the closest residential properties.

- c. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier, or other machine or device that produces, reproduces or amplifies sound in any privately-owned outdoor place, when making sound is the primary, lawful permitted use of that portion of the property (e.g., a performance venue), so that the sound is plainly audible to any person at a distance of 3,000 feet or more from the source of the sound between the hours of 8:00 a.m. and 11:00 p.m. (12:00 midnight on Fridays, Saturdays and the days before a national holiday, this is an exception to subsection (4)a of this section).
  - d. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier, or other machine or device that produces, reproduces or amplifies sound in any privately-owned outdoor place at a residential use, so that the sound is plainly audible to any person at a distance of 500 feet or more from the source of the sound between the hours of 8:00 a.m. and 11:00 p.m.
  - e. Playing, using, operating or permitting to be played, used, or operated any radio, compact disc or tape player, musical instrument, drum, phonograph, sound amplifier or other machine or device that produces, reproduces or amplifies sound in any privately owned outdoor place in a residential zoning district so that the sound is plainly audible to any person at a distance of 25 feet or more from the source of the sound between 11:00 p.m. and 8:00 a.m. the following morning.
  - f. For the purposes of this section, the operation or playing of the above enumerated machines or devices shall be deemed to be outdoors if the musical instrument or speakers are not located within a building or other structure which is fully enclosed by walls and a roof and all doors and windows are closed.
- (5) *Bullhorns and airhorns.* Directing a bullhorn, or other handheld device used for the amplification of the human voice, or airhorn at any person within 25 feet of the person using the device at the time it is used. This section shall not prohibit the use of these devices when directed in another direction (e.g., upward or downward) when a person is within 25 feet.
  - (6) *Street sales.* Offering for sale or selling anything by shouting or outcry within any residential zoning district between the hours of 6:00 p.m. and 8:00 a.m. the following morning and at any time within a noise sensitive zone.
  - (7) *Animals and birds.* Owning, possessing, or harboring any animal, including birds, which frequently or for continued duration makes sounds, which are of a character, intensity or duration as to be detrimental to the life, health or welfare of any individual of ordinary habits and sensitivities.
  - (8) *Refuse and recyclable materials collection vehicles.* Collecting refuse or recyclable materials with a refuse or recyclable materials collection vehicle in a residential zoning district or noise sensitive zone between the hours of 7:00 p.m. and 7:00 a.m. the following morning.
  - (9) *Stationary nonemergency signaling devices.* Sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device intended primarily for nonemergency purposes, from any place, for more than ten consecutive seconds or for more than six such instances within any

hourly period or before 7:30 a.m. or after 6:00 p.m., except that soundings on the hour shall be allowed for up to 30 consecutive seconds. When chimes sound the hour, that portion of the sounding that identifies the hour shall be exempt from this time limitation.

(10) *Emergency signaling device.*

- a. The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling devices, except for emergency purposes or for testing, as provided in this section.
- b. Testing of a stationary emergency signaling device shall occur at the same time of day each time a test is performed, but not before 10:00 a.m. or after 4:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall the test time exceed 60 seconds.
- c. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. This testing shall not occur before 10:00 a.m. or after 4:00 p.m. There shall be no time limit for a complete system testing.

(11) *Emergency generators and other emergency equipment.*

- a. Generators and other equipment designed to be used during emergency situations shall be exempt from this article during periods of emergency.
- b. Testing of generators and other equipment designed to be used during an emergency situation is exempt from this article between the hours of 10:00 a.m. to 4:00 p.m. Any testing shall use the minimum time necessary for the test and shall not occur more than once a week. The time of the testing shall be scheduled to impact the least number of properties possible.
- c. Generators and other equipment designed to be used in emergency situations, which are not being tested or being used in a period of emergency, shall comply with section 11-54.

(12) *Air conditioning or air-handling equipment.* Operating or permitting the operation of any pool equipment, air conditioning or air-handling equipment which is not in good working condition and creates sound that is plainly audible to a person at a distance of 100 feet or more from the equipment.

(Code 1992, § 11-64; Ord. No. 2002-F, § 1(14-33), 9-27-1990; Ord. No. 455-G, § 1, 12-21-2000; Ord. No. 880-G, § 1, 6-19-2008; Ord. No. 73-H, §§ 2, 3, 6-6-2013; Ord. No. 94-H, § 1, 11-25-2013; Ord. No. 216-H, §§ 1—3, 3-3-2016)

Sec. 11-54. - Sound levels by receiving land use.

No person shall operate or cause to be operated a source of sound in a manner as to create a sound that is plainly audible to a person at the property boundary of a receiving land use and that violates the time or distance requirements set forth in the following table. The sounds regulated in the preceding section (currently section 11-53) are not subject to the restrictions of this section.

<b>Location of the Receiving Land Use</b>	<b>Time</b>	<b>Distance</b>
Residential zoning district	8:00 a.m. — 6:00 p.m.	500 feet or more
Residential zoning district	6:00 p.m. — 11:00 p.m.*	200 feet or more
Residential zoning district	11:00 p.m.* — 8:00 a.m.	50 feet or more



Nonresidential zoning district	7:00 a.m. — 11:00 p.m.*	500 feet or more
Nonresidential zoning district	11:00 p.m.* — 7:00 a.m.	200 feet or more
*12:00 (midnight) on Fridays, Saturdays, and the days prior to a national holiday.		

In the event that a court of competent jurisdiction determines that any distance requirement in this section is unconstitutional or unenforceable, then that distance shall become 50 feet farther than the distance set forth in this section.

(Code 1992, § 11-65; Ord. No. 2002-F, § 1(14-34), 9-27-1990; Ord. No. 455-G, § 1, 12-21-2000)

Sec. 11-55. - Tampering.

No person shall remove or render inoperative any noise control device or element of design of any product having those devices, other than for purposes of maintenance, repair or replacement. No person shall operate a product which was constructed with a noise control device which has been removed or rendered inoperative.

Sec. 11-56. - Reserved.

**Editor's note**— Ord. No. 216-H, § 4, adopted March 3, 2016, renumbered § 11-56 as § 11-50(b). The historical notation has been retained with the amended provisions for reference purposes.

Secs. 11-57—11-83. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 11-84. - Waivers.

- (a) Waivers to the application of this article for a specific continuing activity, such as, but not limited to, a construction project or the use of construction equipment, may be obtained pursuant to the requirements of this section.
- (b) Applications for a waiver from the restrictions of this article shall be made in writing to the POD. The application shall contain information which demonstrates that bringing the source of sound or activity for which the waiver is sought into compliance with this article would constitute an unreasonable hardship on the applicant, on the community, or on other persons.
- (c) The applicant, at its own expense, shall notify all occupants of property that would be directly affected by the issuance of a waiver by mail or hand delivery. The applicant shall submit a copy of the notice to the POD prior to delivery. For the purposes of this section property directly affected by the issuance of a waiver shall mean:
  - (1) In the case of a nonresidential zoning district all property located within 500 feet from the property boundary of the property from which the noise will emanate.
  - (2) In the case of a residential zoning district all property within 1,000 feet of the property boundary of the property from which the noise will emanate.
  - (3) Where a waiver is sought for noise emanating from a nonresidential zoning district and a residential zoning district lies within 1,000 feet of any property boundary of the property from which the noise will emanate, all residences within the residential zoning district which are within 1,000 feet shall be notified.
  - (4) Where a waiver is sought for noise emanating from a residential zoning district and a nonresidential zoning district is within 1,000 feet of any property boundary of the property from which the noise will emanate, then notice shall only be required to the border of the residential zoning district or 500 feet

whichever is greater.

- (d) The notices required in this section shall include the following information:
- (1) The name of the applicant.
  - (2) The local address and telephone number of the applicant or the applicant's representative.
  - (3) The activity planned for which the waiver is sought.
  - (4) The duration of time for which the waiver is sought.
  - (5) The types of noise expected to be generated.
  - (6) A date, which shall be no sooner than seven days from date of delivery of the notice, which is the deadline for affected citizens to file written objections to the application with the POD along with the address to which written objections may be mailed or delivered.
  - (7) The date on which the POD will make a decision on the application.
  - (8) A statement informing the recipient that affected persons may appeal the decision by requesting a public hearing in writing within seven days of the rendition of the decision.
- (e) If an emergency exists or imminent need is shown, the POD may determine that it is in the best public interest to grant a temporary waiver until such time as the procedures set forth herein may be accomplished.
- (f) In making a decision on an application for waiver or request for temporary waiver, the POD shall balance the interests of the directly affected properties and the person requesting the waiver and the interests of the City as a whole. The POD may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the directly affected properties, including but not limited to the use of mufflers, screens or other sound attenuating devices.
- (1) Standards for issuance of a waiver shall include the following findings:
- a. A benefit will accrue to the City.
  - b. The benefit to the City and its residents outweighs the temporary hardship, if any, to occupants of property that would be directly affected.
  - c. A waiver would advance an established policy of the City.
  - d. The proposed noise violations will not be unreasonable under the circumstances and restrictions of the waiver.
  - e. The proposed noise violations will not unreasonably interfere with or detract from the promotion of public health, welfare and safety.
  - f. The proposed activity will not entail extraordinary or burdensome expenses or police operations by the City.
  - g. The applicant has all necessary federal, State, and local permits to engage in the activity.
- (2) Conditions and requirements along with the expected mitigating results of the conditions and requirements shall be listed.
- (g) Any occupant of a directly affected property or the applicant may appeal the decision of the POD on an application for waiver by filing a written request with the City Clerk, within seven days of the decision, setting forth the reason for the appeal. The appeal will be scheduled to be heard at a regular meeting of the City Council within 30 days of the appeal.
- (1) If the person appealing is not the applicant, then that person and the applicant or a representative of the applicant and City staff will be the only persons heard.
  - (2) If the person appealing is the applicant then the applicant or a representative of the applicant, those persons who filed written objections to the application, and City staff will be the only persons heard.
  - (3) The City Council may vary this procedure pursuant to its existing procedure for waiving other rules of procedure.

(h)

At the public hearing, the City Council shall balance the interests of the directly affected properties and the applicant and the interests of the City as a whole.

- (1) If the City Council upholds the granting of a waiver it may delete or modify any of the conditions of the waiver or add such other conditions deemed necessary to minimize adverse effects upon the directly affected properties.
- (2) If the City Council reverses a denial of an application for a waiver it may prescribe any reasonable conditions deemed necessary to minimize adverse effects upon the directly affected properties.
- (i) Waivers may be issued for no longer than 180 days. Any request for extension of this time limit or for modification of other substantial conditions in the waiver shall be processed in the same manner as an application for a waiver as set out in this section.

(Code 1992, § 11-76; Ord. No. 2002-F, § 1(14-36), 9-27-1990; Ord. No. 455-G, § 1, 12-21-2000; Ord. No. 880-G, § 1, 6-19-2008)

#### Sec. 11-85. - Special variances.

- (a) Special variances to the application of this article for a specific event may be obtained pursuant to this section for the following:
  - (1) Activities requiring a permit from the City.
  - (2) Activities which do not require a formal permit but do require permission to use City-owned facilities.
  - (3) Activities or events held on privately owned property which may violate the provisions or restrictions of this article.
- (b) Applications for a special variance to the restrictions of this article shall be made in writing as a part of the application for a permit, or by letter, when a formal permit is not required, to the POD no later than five working days prior to the date of the event; however, this time limit shall not be used as a reason for refusal of the variance if it can be processed in a shorter time. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this article would constitute an unreasonable hardship on the applicant, on the community, or on other persons.
- (c) In reviewing an application for a special variance the POD responsible for issuing the permit shall balance the interests of the community or surrounding neighborhood, the person or persons requesting the special variance, and the City as a whole and make a recommendation to the City Administrator. The City Administrator shall grant or deny the application. The variance may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including but not limited to the use of mufflers, screens, or other sound attenuating devices.
  - (1) Standards for issuance of a special variance shall include the following findings:
    - a. A benefit will accrue to the City.
    - b. The benefit to the City and its residents outweighs the temporary hardship, if any, to occupants of property in the surrounding neighborhood.
    - c. A variance would advance an established policy of the City.
    - d. The proposed noise violations will not be unreasonable under the circumstances and restrictions of the variance.
    - e. The proposed noise violations will not unreasonably interfere with or detract from the promotion of public health, welfare and safety.
  - (2) Conditions and requirements along with the expected mitigating results of the conditions and requirements shall be listed.
- (d) Special variances may be issued for no longer than 72 hours and may not be extended beyond this time limit or substantially modified after issuance.

(Code 1992, § 11-77; Ord. No. 2002-F, § 1(14-37), 9-27-1990; Ord. No. 455-G, § 1, 12-21-2000; Ord. No. 880-G, § 1, 6-19-2008)

Sec. 11-86. - Decisions final.

The decisions of City Council made under this division are final.

(Code 1992, § 11-78; Ord. No. 2002-F, § 1(14-40), 9-27-1990; Ord. No. 880-G, § 1, 6-19-2008)

Sec. 11-87. - Violation of conditions of waiver or special variance.

It is unlawful to violate any conditions or requirements set forth in any waiver or special variance issued pursuant to this article.