

Chapter 42 - NOISE^[1]

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Footnotes:

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Editor's note—An ordinance adopted Aug. 10, 2009, § 1, Doc. #0908101101, amended ch. 42, in effect deleting ch. 42 and enacting a new ch. 42 to read as set out herein. Former ch. 42 pertained to similar subject matter and derived from Code 1948, § 62.03; and ordinance adopted July 12, 1982, Doc. #17094; and ordinance adopted Mar. 3, 1985, Doc. #19254; an ordinance adopted Jan. 24, 1994, Doc. #27191; an ordinance adopted Aug. 28, 1995, Doc. #28747; an ordinance adopted Nov. 2, 1998, Doc. #31647; an ordinance adopted Jan 12, 2004, § 4, Doc. # 040112905; and an ordinance adopted Mar. 22, 2004, § 1, Doc. #040322902.

Cross reference— Requirement that motorboats be equipped with mufflers, § 35.16.

Sec. 42.01. - Purpose.

The overall purpose of this Chapter is to protect the public health, safety, and welfare by establishing regulations for noise. This Chapter shall apply to the volume level and control of all sound originating within the jurisdictional limits of the City. Nothing within this section shall be construed to limit the regulation of noise to those sources specified herein. It is not the intent of this Chapter to interfere unduly with the freedom of speech or religion.

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

Sec. 42.02. - General Requirements.

All uses in all zoning districts shall conform to the requirements contained in this Chapter, including Chart 1.

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

Sec. 42.03. - Noises to Which the Standards Apply.

- (1) The requirements of Chart 1 shall apply to all noises (except those specifically exempted in Section 42.06), including but not limited to, continuous and intermittent noise, tones, impact noise, and noise emitted by speaker boxes, sound amplification devices, pick-up and delivery trucks and any other commercial or industrial activities.
- (2) The noise levels listed in Chart 1 for the Downtown Entertainment Area as defined herein, shall be those levels which may not be exceeded for a cumulative period of no less than one (1) minute in any fifteen (15) minute period. The noise levels listed in Chart 1 for all other types of property may not be exceeded for longer than eight and three-tenths percent (8.3%) of any measurement period, which measurement period shall not be less than thirty (30) minutes.
- (3) Where the ambient noise level exceeds the allowable noise levels given in Chart 1, then the ambient level becomes the allowable exterior noise level.
- (4) *Definitions.* The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:
 - (a) *Commercial* means property use that is for the trafficking of goods or furnishing of services for sale or profit, including, but not limited to, banking and other financial institutions, dining establishments, retail or wholesale establishments, recreation or entertainment establishments, office buildings, transportation facilities, and warehouses. This category excludes property which is defined as Multi-Use or is located in the Downtown Entertainment Area as described in section 42.07(6) herein.
 - (b) *Convenient hearing* means the listening comfort of those persons assembled.
 - (c) *Downtown Entertainment Area* means all property and uses contained within the area described in section 42.07(6) herein.

- (d) *Industrial* means property use that is for the fabrication, manufacturing, shipping, or production of durable or nondurable goods. This category excludes property which is located in the Downtown Entertainment Area as described in section 42.07(6) herein.
- (e) *Multi-Use* means property that includes a building(s) or structure(s) which contains both commercial (usually on the ground floor) and residential use, where such residential use is located above, behind, below or adjacent to the commercial use. This category shall also include any area where commercial use is located immediately or directly across a public right-of-way from residential use. Multi-Use excludes property which is located in the Downtown Entertainment Area as described in section 42.07(6) herein. Property used for the public benefit such as outdoor concert events, fairs, festivals, athletic fields, and public assemblies is also included in the definition of "Multi-Use."
- (f) *Neighborhood inhabitants* means person or persons who dwell or reside in a place which is immediately adjacent to or within one hundred (100) feet of the property generating the noise.
- (g) *Plainly audible* means any sound that can be detected by a person using his or her unaided hearing faculties who has a direct line of sight and hearing to the source of the noise. The person need not determine particular words or phrases, or the name of any song or artist: the detecting of a rhythmic bass reverberating sound is sufficient.
- (h) *Public right-of-way* means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.
- (i) *Real property line* means either (i) the imaginary line including its vertical extension that separates one parcel of real property from another; (ii) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit such as a condominium, townhouse, or apartment building; or (iii) on a multi-use property, the point of interface between the two (2) portions of the property on which different categories of activity are being performed.
- (j) *Residential* means property use that is for residences, including, but not limited to, single-family residences, multi-family residences, condominiums, apartments, hotels, motels, and assisted living facilities. This category excludes property which is defined as Multi-Use and property located in the Downtown Entertainment Area as described in section 42.07(6) herein.
- (k) *Sound amplification device* includes, but is not limited to, radios, stereos, CD players, DVD players, microphones, drums, turn tables, audio or visual equipment, electronic devices, musical instrument, sound equipment, television sets, interior or exterior speakers, loudspeakers, bullhorn, or any similar device.
- (l) *Weekday* means Sunday beginning at 2:00 a.m. through Thursdays ending at 11:59 p.m.
- (m) *Weekend* means Friday beginning at 12:00 a.m. through Sunday ending at 1:59 a.m.

CHART 1. MAXIMUM NOISE LEVELS IN A AND C-WEIGHTED DECIBELS

This chart establishes the maximum permissible noise level, measured in A-weighted and C-weighted decibels, which may be generated in the defined locations at the described time periods. As used below, dBA and dBC shall be the symbol designations of a noise level, using the A-weighting and C-weighting network of sound level meters. For purposes of this Chapter, noise shall be measured using the slow exponential time weighting characteristic of the sound level meter.

Type of Property Generating Noise	Class A Standard 7 AM—10 PM	Class A Standard 10 PM—7 AM	Class B Standard
Residential	60dBA/65dBC	55dBA/60dBC	65dBA/70dBC
Multi-Use	65dBA/70dBC	55dBA/60dBC	65dBA/70dBC

Commercial	70dBA/75dBC	65dBA/70dBC	75dBA/80dBC
Industrial	75dBA/80dBC	75dBA/70dBC	85dBA/90dBC

Class B Standards apply to noises originating from heavy manufacturing uses, as defined in the City's Land Development Code. Class A Standards apply to all other uses.

Downtown Entertainment Area	7 AM—11:59 PM 75dBA/80dBC	12 AM—7 AM 70dBA/75dBC	Weekdays
	7 AM-1:59 AM 75dBA/80dBC	2 AM-7 AM 70dBA/75dBC	Weekends

The categories listed in the above Tables are not to be construed as defined by the City's Land Development Code, but shall have the meanings ascribed to them in this Chapter.

(Ord. of 8-10-2009, § 1, Doc. #0908101101; Ord. No. 2013-14, § 1, 9-16-2013, Doc. #1309161202)

Sec. 42.04. - Prohibited Acts.

- (1) No person shall produce, cause to be produced, or allow to be produced, by any means, any noise within any private property which, when measured fifty (50) feet from the source of the noise or at the real property line of the property generating said noise, exceeds the applicable sound level limits set forth in Chart 1 and as measured as set forth in Section 42.03(2).
- (2) No person shall produce, cause to be produced, or allow to be produced, by any means, any noise within any public property which, when measured fifty (50) feet from the source of the noise, exceeds the applicable sound level limits set forth in Chart 1 and as measured as set forth in Section 42.03(2).

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

Sec. 42.05. - Additional Prohibited Acts.

(1) *On Residential Property:*

- a. It shall be unlawful for any person to make, maintain, create, or allow to be created any unreasonably annoying and disturbing noise that is of such character, intensity or duration as to be detrimental to the life, health, comfort or repose [of] any individual of ordinary sensibilities residing in or occupying the area.
- b. It shall be unlawful to play any radio, phonograph, television, electronic device, or any musical instrument or operate a sound-amplification device in such a manner as to unreasonably disturb the peace, quiet, comfort, and repose of neighboring inhabitants of ordinary sensibilities, or at any time louder than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such machine, instrument, or device is operated.
- c. The operation of any such machine, instrument, speaker, or device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifteen (15) feet from the property line of the building or structure, or the boundary of the vehicle in which the noise is located shall be prima facie evidence of a violation of this section.

(2) *On Multi-Use Property:*

- a.

It shall be unlawful for any person to make, maintain, create, or allow to be created any unreasonably annoying and disturbing noise that is of such character, intensity or duration as to be detrimental to the life, health, comfort or repose any individual of ordinary sensibilities residing in or occupying the area.

- b. It shall be unlawful to play any radio, phonograph, television, electronic device, or any musical instrument or operate a sound-amplification device in such a manner as to unreasonably disturb the peace, quiet, comfort, and repose of neighboring inhabitants of ordinary sensibilities, or at any time louder than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such machine, instrument, or device is operated.
- c. Any such machine, instrument, speaker, or device being used inside of a building, structure, room, chamber, or other similarly defined area shall not in any way face or direct the sound toward any open entrance or exit, or any window or other similar opening in the building, structure, room, chamber, or other similarly defined area.
- d. The operation of any such machine, instrument, speaker, or device between the hours of 10:00 p.m. and 7:00 a.m. in a such manner as to be plainly audible at a distance of fifty (50) feet from the property line of the building or structure, or the boundary of the vehicle in which it is located shall be prima facie evidence of a violation of this section.

(3) *In the Downtown Entertainment Area:*

- a. It shall be unlawful to play any radio, phonograph, television, electronic device, or any musical instrument or operate a sound-amplification device in such a manner as to unreasonably disturb the peace, quiet, comfort, and repose of neighboring inhabitants of ordinary sensibilities, or at any time louder than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such machine, instrument, or device is operated.
- b. Any such machine, instrument, speaker, or device being used inside of a building, structure, room, chamber, or other similarly defined area shall not in any way face or direct the sound toward any open entrance or exit, or any window or other similar opening in the building, structure, room, chamber, or other similarly defined area.
- c. The operation of any such machine, instrument, speaker, or device between the hours of 12:00 a.m. and 7:00 a.m. on weekdays and 2:00 a.m. and 7:00 a.m. on weekends in such a manner as to exceed the applicable sound level limit set forth in Chart 1 and as measured in Section 42.03(2) and 42.04 shall be prima facie evidence of a violation of this section.

(Ord. of 8-10-2009, § 1, Doc. #0908101101; Ord. No. 2013-14, § 1, 9-16-2013)

Sec. 42.06. - Exempt Noises.

The following types of noises shall be exempt from the provisions of this Chapter:

- (1) Noises from temporary construction and maintenance activities between 7 AM and 9 PM except Sundays and federal holidays.
- (2) Noises from safety signals, emergency equipment and vehicles, warning devices and emergency pressure release valves and law enforcement activities, including training.
- (3) Noises from motor vehicles such as automobiles, trucks, airplanes, motorcycles, and railroads which are regulated by state and federal law.
- (4) Ordinary domestic noises provided such noises comply with the requirements of Chart 1.
- (5) Noises such as those from show and ride attractions, fireworks, show pyrotechnics, aerial displays, sound effects, theatrical sound systems, music and human voices that are created within that part of the MA Overlay Zoning District that is not within the Downtown Entertainment Area.

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

Sec. 42.07. - Use of Mechanical Loud Speakers or Amplifiers Out of Doors.

- (1) It shall be unlawful to use any mechanical loud speaker or other sound amplification device on a truck or other moving vehicle or out of doors on a public or private property except under a permit issued by the Chief of Police or the City's Permitting Services Division. For purposes of this section, "out of doors" shall mean the loud speaker or other sound amplification device is located on or about, or is affixed to, the exterior of a building, structure, or other enclosed or dedicated space that is either covered or uncovered.
- (2) Except as provided in subsections (6), (7), and (8) below, no person shall use a loud speaker or other sound amplification device on a truck or other moving vehicle or out of doors on a public or private property between the hours of 10:00 p.m. and 7:00 a.m.
- (3) No person shall use a loud speaker or other sound amplification device out of doors within one thousand (1,000) feet of any school, church, hospital, court of law, or public transportation facility without the permission from that property owner.
- (4) Each permit application shall include the name, address, and telephone number of the permit applicant. The applicant shall submit a plan showing the proposed location and orientation of the loud speaker(s) or sound amplification device(s) to be used, the street address and specific location at that address for the proposed use, the hours of operation of the loud speaker(s) or sound amplification device(s), and a description of the loud speaker(s) or sound amplification device(s) including its decibel level. The applicant shall certify that such speaker(s) and device(s) will be monitored to ensure that it is operated within the decibel levels prescribed in Chart 1 set forth in Section 42.03 herein.

If the loud speaker(s) or sound amplification device(s) is being used temporarily for a particular event, the application must be submitted to the Chief of Police at least three (3) business days in advance of the installation of the equipment excluding holidays and must be accompanied by a twenty dollar (\$20.00) processing fee. If the use of such speaker or device will be continuous, the application must be submitted to the Permitting Services Division prior to the installation of the equipment and must be accompanied by a fee which shall be set forth by resolution of City Council.

- (5) The Chief of Police or the Permitting Services Division shall issue a permit provided the proposed use and speaker or device:
 - (a) Complies with subsections (2) through and including (10) of this section as applicable; and
 - (b) Will not interfere with any governmental function or with any event previously permitted pursuant to the City Code Chapter 18A, or with any event scheduled through the Families, Parks and Recreation Department if the proposed use of the speaker or device is temporary for a particular event; and
 - (c) Is not for a location within one thousand (1,000) feet of an activity or another location previously permitted under this section for the same date and time if the proposed use of the speaker or device is temporary for a particular event; and
 - (d) Is not for a fully enclosed restaurant, bar, or other similar establishment that does not have a permitted sidewalk café or other approved designated outdoor space for patrons.

If the loud speaker or sound amplification device is not being used temporarily for a particular event, but instead is being used continuously on a daily basis, the permit shall be valid for a period of twelve (12) months, at which time the City may renew the permit for the next 12-month period under the same conditions provided the renewal fee is paid and the number, type, and location of the speaker(s) or device(s) has not changed. The City may also consider the number of citations that had been issued, if any, to the applicant for violations under this Chapter during the prior 12-month period when determining renewal of the permit. If, at the time of renewal, the number of speakers or devices has increased or the type or location of the speakers or devices has changed, the permit application process shall begin anew. The time for renewal of the permit shall begin July 1st of each year and the fee shall be due and payable no later than October 1st of each year. The permit shall expire on September 30th of the succeeding year. Annual renewal of the permit is the responsibility of each permit holder.

If the loud speaker or sound amplification device is being used continuously at a fixed location on a daily basis, the permit must be posted in a conspicuous place upon the premises at which the speaker or device is being used.

- (6) For the purpose of providing an exemption from the prohibitions contained in subsections (2), and (3) above, there is hereby created a Downtown Entertainment Area which is described in Figure 1. Within said Area, loud speakers or other sound amplification devices that are permitted under subsection (1) may be used out of doors between 7:00 p.m. and 12:00 a.m. on weekdays and 7:00 p.m. and 2:00 a.m. on weekends and without regard to the other prohibitions set forth in subsections (2) and (3) above. However, sections 42.02 through 42.05 set forth herein shall still apply.
- (7) Notwithstanding the prohibition contained in subsection (2) above, the City Council may approve and authorize extended hours for use of a loud speaker or other sound amplification device provided that a permit application is filed which contains the information specified in subsection (4) above and that the proposed activity otherwise complies with the provisions of subsections (3) and (5) and the sound levels and standards prescribed in sections 42.02 through 42.05 herein. This subsection does not apply to loud speakers or sound amplification devices that are permitted for continuous use within the Downtown Entertainment Area as described in subsection (6).
- (8) Except for loud speakers and sound amplification devices installed by the City, such speakers or devices that are permitted for continuous use out of doors under subsection (1) shall not be located within public rights-of-way, including the air space above such public rights-of-way, unless such use is for a permitted sidewalk café or for space that is part of an encroachment agreement with the City. In that instance, such speakers and devices shall not face or direct the sound upward toward airspace or toward any adjacent business, streets, alleys, rights-of-way, or property. Instead, such speakers and devices shall be permanently mounted or affixed to the exterior of the building or structure and set in such a way that the sound is directed downward toward patrons and complies with the sound levels and standards set forth in sections 42.02 through 42.05 herein.
- (9) Any person, business, or property owner that is operating a restaurant, bar, or other similar establishment at a fixed location that is providing designated outdoor space to its patrons on private property (i.e. patio, rooftop, etc...) may utilize loud speakers or sound amplification devices for continuous use out of doors as long as such speakers and devices are permitted under subsection (1). Such speakers and devices may be affixed to the building or free-standing and shall not face or direct the sound upward toward airspace or outward toward any adjacent businesses, streets, alleys, rights-of-way, or property. Instead, such speakers and devices shall be set in such a way that the sound is directed inward toward patrons and complies with the sound levels and standards set forth in sections 42.02 through 42.05 herein. If the speakers or devices are free-standing, they shall not be elevated on a pole or stand more than five feet off of the ground.
- (10) The City shall revoke a permit issued for continuous use under subsection (1) upon the issuance of a third civil citation within a 12-month period for utilizing a loud speaker or sound amplification device in violation of this Chapter. However, if a citation is ultimately dismissed it will not count toward the requisite number of citations for revocation. The City shall send written notice of the revocation to the violator named in the citation and to the property owner. The permit shall be revoked for the remainder of the 12-month period for which the permit was issued. During this time the speaker(s) or device(s) shall be removed or disconnected and not used out of doors. After the revocation period has expired, an application for a new permit may be submitted in accordance with subsections (4) and (5) herein.
- (11) Any applicant shall have the right to appeal the denial of a permit or the revocation of a permit by immediately requesting review with a court of competent jurisdiction or by appealing the decision to the City's Chief Administrative Officer (CAO). The appeal to the CAO shall be taken by the applicant within five (5) days after receipt of the notice of denial or revocation, by filing a written notice with the Office of the Chief Administrative Officer with a copy to the City Clerk. The CAO, or his/her designee, shall render a decision no

later than ten (10) days following receipt of the notice of appeal. If the permit was denied, the CAO, or his/her designee shall direct the responsible department to issue a permit if the applicant has met the criteria set forth in this Chapter for issuance of a permit. If the permit was revoked, the CAO, or his/her designee, shall uphold the revocation if the criteria set forth in this Chapter for revoking a permit has been met. If the applicant is not satisfied with the decision of the CAO, the applicant may file a request for immediate review by the City Council with the City Clerk within five (5) days from the date the CAO's written decision was rendered.

(Ord. of 8-10-2009, § 1, Doc. #0908101101; Ord. No. 2013-14, § 1, 9-16-2013, Doc. #1309161202)

Sec. 42.08. - Method of Noise Measurement.

All measurements shall be made with a sound level meter. The sound level meter shall be calibrated in accordance with the meter manufacturer's recommendations. As necessary, a windscreen shall be utilized with the sound level meter. The measurements shall in general be made in accordance with the standards as promulgated by the American Society for Testing and Materials guidance.

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

Sec. 42.09. - Enforcement.

This Chapter shall be enforced pursuant to the provisions set forth in Chapter 1, section 1.08 or Chapter 5, Article II of this Code.

(Ord. of 8-10-2009, § 1, Doc. #0908101101)

(Ord. No. 2013-14, § 1, 9-16-2013, Doc. #1309161202)

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