

City Council Agenda Items
and
Contracts, Leases or Agreements

9/3/2013

City Council Meeting Date
Agenda Items Only

Jeremy Pate
Submitted By

Planning
Division

Development Services
Department

Action Required:

Approval of an ordinance to limit late night construction noise near residences

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

Jeremy C. Pate
Department Director

08.02.2013
Date

Previous Ordinance or Resolution # _____

[Signature]
City Attorney

Aug 11, 2013
Date

Original Contract Date: _____

Original Contract Number: _____

Marsla Henderson
Finance and Internal Services Director

8/13/13
Date

Received in City -03-13P01:25 RCVD
Clerk's Office

[Signature]
Chief of Staff

8/13/13
Date

Received in
Mayor's Office

[Signature]
Mayor

8/13/13
Date

ENTERED
8/12/13
PIT

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff 

From: Jeremy Pate, Development Services Director 

Date: August 08, 2013

Subject: Late Night Construction Noise

RECOMMENDATION

The staff recommends adoption of an ordinance to limit late night private development construction noise near residences to reasonable levels.

BACKGROUND

The City commonly receives citizen complaints related to the noise of private development construction activity near residential areas outside of "normal" working hours of 8:00 a.m. to 5:00 p.m. Most often, these complaints are centered on early morning or weekend activities, which is when homeowners are often present at their residence. While construction is often necessary during evening or early morning hours, and at times on weekends, city staff believes that reasonable limits can be placed upon these activities, without entirely prohibiting them, to limit noisy activities to certain times of the day in an effort to allow residents to peacefully enjoy their property.

City staff has worked with the Mayor and City Attorney's office to add a new subsection to the City's existing noise ordinance that states private development construction activity which produces plainly audible noise within 150 feet of the construction area is prohibited after 11:00 p.m. and prior to 7:00 a.m. on each day of the week except Sunday, when the "quiet" time shall extend to 9:00 a.m. The ordinance also defines a process for allowing for emergency repair work on a development site, and also gives the ability for a variance to be requested and granted for necessary and temporary after-hours construction activities. Public infrastructure development by the city, city contractors, county, state, etc., which are not private development activities and must at times be conducted in off-peak times are not subject to these restrictions.

BUDGET IMPACT

None.

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
David Jurgens, Utilities Director
Chris Brown, City Engineer

FROM: Kit Williams, City Attorney



DATE: July 23, 2013

RE: Revised proposed new section in Noise Chapter of Fayetteville Code

Pursuant to comments from Jeremy Pate and directions from Mayor Jordan, I have revised the ordinance enacting a new subsection "(D) *Late Night Construction Noise Near Residences.*"

Because of Jeremy's report of complaints about early morning construction noise near residences on Sundays, Mayor Jordan decided to recommend to the City Council that the "quiet" time of 11:00 pm until 7:00 a.m. be extended until 9:00 a.m. on Sundays. I have incorporated that into the opening section.

In response to Jeremy's concerns, I have expressly noted in a new (D)(4) that a "variance pursuant to § 96.07 **Permit For Variance** may also be requested and granted for necessary and temporary after-hours construction activities." This should help construction contractors to find the proper variance procedure if late night noisy construction activity such as concrete pours are necessary during hot weather. Subsection (D)(2)

remains as a secondary variance procedure to allow “(e)mergency construction activity to repair or prevent a dangerous condition in order to protect the health, safety and welfare of Fayetteville citizens or the workers on the development project site...”

I would like to see this brought forward for the Agenda by Development Services unless Jeremy has further problems with this proposal. I really do not think this is a difficult or confusing proposal and so I would not start it or send it to the Ordinance Review Committee which should handle the more complex proposed ordinances such as the proposal booting regulation ordinance.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND § 96.02 UNREASONABLE OR EXCESSIVE
NOISE PROHIBITED; EXCEPTIONS TO RESTRICT LATE NIGHT
CONSTRUCTION ACTIVITY NOISES NEAR RESIDENCES**

WHEREAS, the noise from late night and early morning construction of private developments near residences can unreasonably disturb the residents' sleep and the peaceful enjoyment of their homes or apartments; and

WHEREAS, restrictions on such late night construction noise near residences during the period of 11:00 p.m. until 7:00 a.m. is reasonable, proper and necessary to protect the peace, health and safety of Fayetteville citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends § 96.02 **Unreasonable or Excessive Noise Prohibited; Exceptions** by enacting a new subsection (D) *Late Night Construction Noise Near Residences* as shown below:

“(D) *Late Night Construction Noise Near Residences.*

For the purposes of this section, construction noise from private development construction activity shall be deemed annoying or disturbing to a person, reasonably calculated to disturb the peace and unreasonably offensive and injurious to the public if the sound or noise is produced later than 11:00 p.m. everyday and prior to 7:00 a.m. on all days except Sundays when the “quiet” time shall extend until 9:00 a.m. and is plainly audible at or near any residence (apartment, home, condo, etc.) within 150 yards of the construction activity.

- (1) The measurement standard shall be by auditory senses and includes transient construction activity noise sources.
- (2) Emergency construction activity to repair or prevent a dangerous condition in order to protect the health, safety and welfare of Fayetteville citizens or the workers on the development project site is exempt from this provision if authorized in advance or ratified later by the Mayor.

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Ordinance No.

- (3) This subsection takes precedence over any conflicting and less restrictive noise limitation provisions in § 96.04 **Limitations By Land Use Category** (D) *Transient Source* and (E) *Construction*.
- (4) A variance pursuant to § 96.07 **Permit For Variance** may also be requested and granted for necessary and temporary after-hours construction activities.

PASSED and **APPROVED** this 6th day of August, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Current Ordinance

FAYETTEVILLE CODE OF ORDINANCES TITLE IX GENERAL REGULATIONS

CHAPTER 96: NOISE CONTROL

ARTICLE I GENERAL PROVISIONS

96.01 Definitions

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Decibel (dB). A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the referenced pressure, which is 20 micropascals (20 micronewtons per square meter).

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

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

Gross vehicle weight rating (GVWR). The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR) which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Motor carrier vehicle engaged in interstate commerce. Any vehicle for which regulations apply pursuant to Section 18 of the Federal Noise Control Act of 1972 (PL92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Noise. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance. Any sound which:

- (1) Endangers or injures the safety or health of humans or animals;
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

Public right-of-way. Any street, avenue, boulevard, highway, sidewalk or alley or similar place which is

owned or controlled by a government entity.

Public space. Any real property or structures thereon which are owned or controlled by a governmental entity.

Sound level. The weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, such as A, B, or C as specified in the American National Standards Institute's specifications for sound level meters. If the frequency weighing employed is not indicated, the A-weighing shall apply.

Sound level meter. An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, or output meter, and weighing network used to measure sound pressure levels.

Sound pressure level. Twenty times the logarithm to the base ten of the ratio of the RMS sound pressure to reference pressure of 20 micropascals ($20 \times 10^{-6} \text{ N/m}^2$).

Transient sound source. Noise, the source of which is lawn equipment, an implement of husbandry, a domestic power tool, or the repairing, rebuilding, modifying or testing of any motor vehicle or motorcycle.

(Code 1965, §13-8.1(j); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Code 1991, §96.01)

96.02 Unreasonable Or Excessive Noise Prohibited; Exceptions

- (A) Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to make, or continue or cause or permit to be made or continued, any noise disturbance.
- (B) The provisions of this section shall not apply to:
 - (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 movement of aircraft which is in all respects conducted in accordance with, or pursuant to applicable federal laws or regulations;

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 TITLE IX GENERAL REGULATIONS

- (4) The use of bells or chimes in conjunction with places of religious worship; and
- (5) The intentional sounding or permitting the sounding of any fire, burglar or civil defense alarm, siren, whistle or similar stationary or emergency signaling device, for emergency purposes or for testing, provided such testing uses only the minimum cycle test time.

the boundary of the property from which the sound or noise was emanating. Except between the hours of 10:00 p.m. and 1:00 a.m., a complaint under this section must be brought by a property owner or leaseholder affected by excessive noise on their property.

(C) For the purpose of this section, the use of an amplification devise, radio, television, phonograph, drum, musical instrument or similar devise which produces, reproduces, or amplifies sound shall be deemed annoying or disturbing to a person, reasonably calculated to disturb the peace and unreasonably offensive and injurious to the public if the sound is produced between the hours of 1:00 a.m. and 8:00 a.m., and is plainly audible a distance of 150 feet or more from the source of the sound.

(1) Plainly audible means any sound produced as set forth above which clearly can be heard at a distance of 150 or more feet. The measurement standard shall be by the auditory senses, based on direct line of sight. Words or phrases need not be discernable and bass reverberations are included.

(2) This provision shall not apply to athletic or school related events.

(Code 1965, §13-8.1(a), (b); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Ord. No. 4052, §1, 9-2-97; Code 1991, §96.02)

Cross reference(s)--Penalty, §96.99.

96.03 Measurements

Sound level measurements shall be made with a sound level meter Type II or better using the A-weighted scale in conformance with the standards promulgated by the American National Standards Institution.

(Code 1965, §13-8.1(k); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Code 1991, §96.03)

96.04 Limitations By Land Use Category

(A) No person shall operate or cause to be operated, or permit, contract or allow to be operated on premises on public or private property any identifiable source of sound in such a manner as to create a sound level within the use districts in Table 1 below which exceeds the maximum noise levels as set forth in Table 1 as measured at any point on

TABLE 1

Use Districts	Time	Maximum Noise Levels
All residential zones	7:00 a.m. to 11:00 p.m.	60 dB(A)
All residential zones	11:00 p.m. to 7:00 a.m.	55 dB(A)
All commercial zones	7:00 a.m. to 11:00 p.m.	75 dB(A)
All commercial zones	11:00 p.m. to 7:00 a.m.	70 dB(A)
All industrial zones	7:00 a.m. to 11:00 p.m.	80 dB(A)
All industrial zones	11:00 p.m. to 7:00 a.m.	75 dB(A)

All measurements shall be taken with a sound level meter in its fast or peak level setting.

(B) *District boundaries.* When a noise source can be identified and its noise measured in more than one use district, the noise level limits of the most restrictive use district shall apply at that district boundary.

(C) *Commercial source.* Notwithstanding the zoning classification of the underlying parcel, restaurants, night clubs, private clubs, auditoriums, dance halls, and rehearsal studios are defined as commercial sound sources existing in commercial zones for the purposes of this chapter.

(D) *Transient source.* For a transient sound emanating in any land use category, the peak noise level shall not exceed 20 decibels above the limit set in Table 1 above.

(E) *Construction.* Construction projects shall be subject to the limitations specified for industrial zones for the period of time allowed by the building permit.

(Code 1965, §13-8.1(c); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Ord. No. 3624, §1, 8-4-92; Ord. No. 3724, §1, 9-21-93; Ord. No. 3926, §1, 10-3-95; Ord. No. 4047, 7-15-97; Code 1991, §96.04)

Cross reference(s)--Penalty, §96.99.

(D) Added here →

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**96.05 Motor Vehicle And Motorcycle
 Sound Limit**

(A) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way or private property at any time and in such a manner that the sound level emitted by the motor vehicle or motorcycle exceeds the level set forth in Table II below.

TABLE II

**MOTOR VEHICLE AND MOTORCYCLE
 SOUND LIMIT**

(Measured at 25 Feet From the Near
 Side of the Nearest Lane Monitored)

Sound Level in dB

Vehicle class	Speed limit 35mph or less	Speed limit over 35mph	Stationary Run-up
Motor vehicle carrier engaged in interstate commerce of GVWR or GCWR of 10,000 lbs. Or more	86	90	88
Any other motor vehicle or any combination of vehicles towed by any such motor vehicles	78	78	78
Motorcycles	78	78	78

- (B) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation.
- (C) No person shall sound any horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public place, except as a warning of danger.
- (D) Operating or causing to operate any sound amplification device from within a vehicle so that the sound is plainly audible at a distance of 30 feet or more from the vehicle whether in a street, a highway, an alley, parking lot or driveway, whether public or private property, is prohibited and declared to be a noise disturbance in violation of this chapter.

(E) No person shall operate or cause to be operated a motor vehicle or motorcycle by rapidly advancing its throttle (revving) such that a noise disturbance occurs.

(Code 1965, §13-8.1(d), (e), (f); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Ord. No. 3926, §2, 10-3-95; Code 1991, §95.05; Ord. 4747, 9-06-05; Ord. 5059, 9-18-07)

Cross reference(s)--Penalty, §96.99.

**96.06 Radios And Loudspeakers Used
 For Certain Purposes Prohibited**

It shall be unlawful for any person to use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets from a point of origin located on private property, for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(Code 1965, §13-8; Ord. No. 1211, 7-27-59; Code 1991, §96.06)

Cross reference(s)--Penalty, §96.99.

96.07 Permit For Variance

(A) *Application; issuance.*

- (1) The mayor shall have the authority to issue a permit, upon a showing of undue hardship, for a variance from the provisions of this section upon a showing by the applicant that:
 - (a) Additional time is necessary for the applicant to alter or modify his activity or operations to comply with this section; or
 - (b) The activity, operation or noise source will be of a temporary duration and cannot be done in a manner that would comply with this section; and
 - (c) No reasonable alternative is available to the applicant.
- (2) An application for a variance permit shall be in writing on a form prescribed by the mayor. In issuing a variance permit, the mayor may impose reasonable conditions or requirements necessary to minimize adverse effects upon the surrounding neighborhood. For events to be attended by the public, the written application for a variance shall be filed with the

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mayor a minimum of 14 days prior to the date on which a variance is requested.

- (B) *Denial; appeal.* An applicant who is denied a variance by the mayor may appeal to the Fayetteville City Council by filing written notice of appeal with the city clerk within 10 days from the date of the mayor's decision. The notice of appeal shall specifically state the reasons why the applicant considers the mayor's findings and decision to be in error.

(Code 1965, §13-8.1(g); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Code 1991, §96.07)

96.08 Order In Lieu Of Notice Of Violation

- (A) In lieu of issuing a notice of violation, a noise control officer responsible for enforcement of any provision of this section may issue an order requiring abatement of any source of sound alleged to be in violation of this section within a reasonable time period. An abatement order shall not be issued when the noise control officer has reason to believe that there will not be compliance with said order.
- (B) A violation of any provision of this section shall be cause for a notice of violation to be issued by the noise control officer.

(Code 1965, §13-8.1(i); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Code 1991, §96.08)

96.09 Compression Release Engine Brake

- (A) A compression release engine brake, or other hydraulically operated device that converts a power producing diesel or gas engine into a power absorbing retarding mechanism with a correspondingly increased amount of noise emission shall not be engaged or used within the city limits of Fayetteville except in the case of failure of the service brake system, adverse weather conditions, or other emergency necessitating the compression release engine brake's use
- (B) Fire trucks, and those municipal vehicles equipped with the Quiet Brake and Silent Partner System are exempted from the requirements of this section.

(Ord. 5132, 4-15-08; Ord. 5228, 3-17-09)

96.10-96.98 Reserved

96.99 Penalty

The violation of any provision of this chapter shall be punished by a fine of not more than \$500.00 or double that sum for each repetition of such violation. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuation thereof shall not exceed \$250.00 for each day that the same is unlawfully continued.

(Code 1965, §13-8.1(h); Ord. No. 2580, 12-4-79; Ord. No. 2873, 11-2-82; Ord. No. 2911, 4-5-83; Ord. No. 2937, 9-6-83; Code 1991, §96.99)