

..Number

070429

..Version

PROPOSED SUBSTITUTE A

..Reference

..Sponsors

ALD. DONOVAN, DUDZIK, PUENTE, BAUMAN, ZIELINSKI, BOHL, HINES, WADE, DAVIS, MURPHY, HAMILTON, WITKOWSKI AND WITKOWIAK

..Title

A substitute ordinance clarifying complaint and prosecution procedures for certain noise nuisances.

..Sections

80-63-1 rc

80-65-4-a rc

..Analysis

The code currently authorizes the chief of police, the commissioner of the health department and the commissioner of the department of neighborhood services to commence prosecution for a noise nuisance violation upon the complaint of a member of the public. Prosecution may be commenced without a police officer or department inspector having directly observed the noise. A conviction must, however, be based upon the testimony of at least one adult affected by the noise. This ordinance clarifies complaint and prosecution procedures. The ordinance provides additional clarification relating to the persons and entities prohibited from making excessive noise and the types of devices and instruments covered by the prohibition.

The ordinance provides that, in the event a complaint is received that does not adequately identify the party causing the noise violation, a citation may nevertheless issue when authorities obtain further evidence from investigation or otherwise that establishes the identity of the alleged violator.

The ordinance also provides that owners of property or machinery from which excessive or nuisance noise has emanated may be charged or assessed the costs of investigation and enforcement for second or subsequent offenses following a warning letter for the first offense. The procedures for warning property owners and assessing costs of subsequent enforcement related to noise nuisance violations expire after January 1, 2009, at which time the provisions relating to noise nuisance violations will sunset.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 80-63-1 of the code is repealed and recreated to read:

**80-63. Excessive Noise Prohibited. 1.** No person shall produce, assist in producing, or cause to be produced noise which exceeds the limitations set forth in s. 80-64 or 80-65. It shall be unlawful for any person, firm, corporation, or other entity occupying or having charge or control of any building or premises, or any part thereof, to cause,

suffer or allow any loud, excessive or unusual noise in the operation of any radio, stereo or other mechanical or electrical device, instrument or machine, which loud, excessive or unusual noise tends to unreasonably disturb the comfort, quiet or repose of persons therein or in the vicinity.

Part 2. Section 80-85-4-a of the code is repealed and recreated to read:

**80-65. Method of Measuring Noise.**

**4. NOISE NUISANCES (AMPLIFIERS, AIR CONDITIONERS, OTHER INTERMITTENT, RANDOM AND DISRUPTIVE NOISE, etc.).** a. Purpose. Certain noises are impractical to measure to determine compliance with the community noise standards as described in s. 80-64 and this section. These noises may occur randomly or at unpredictable times or be of short duration. Whenever such noises occur and constitute a nuisance as defined in s. 80-60-11, alternate methods of processing and relief shall be applied as follows:

a-1. The chief of police or commissioner may commence prosecution for a noise nuisance violation upon the observation by a police officer or department inspector of noise or upon direct evidence of activities constituting a noise nuisance as defined in s. 80-60-11 or prohibited noise violation as set forth in s. 80-63-1.

a-2. Complaint by member of the public. As an alternative to commencement of prosecution based upon the direct observation of a police officer or department inspector, the chief of police or commissioner may commence prosecution upon receipt of a complaint submitted by a member of the public that complies with the requirements of subd. 3 and which alleges conduct that is boisterous and unreasonably loud as described in par. b.

a-3. Information contained in a complaint. A complaint by a member of the public, sufficient to authorize the commencement of a noise nuisance prosecution in the absence of direct observation of the noise by a police officer or department inspector shall include relevant information relating to the date, time and place of the alleged noise nuisance, the nature of the noise nuisance, and shall identify the person or persons responsible for or allowing the human or mechanically created noise, or alternatively, shall include information leading to the identification of the person or persons by police or a department inspector. Information included in the complaint shall also identify one or more persons who witnessed or were affected by the noise, at least one of whom is an adult available to testify in court.

a-4. Testimony required. No person shall be convicted under this procedure except upon testimony of at least one affected adult person.

a-5. Property owner responsible for costs. The last known owner of real property or machinery, including a motor vehicle, shall be sent a warning letter in the manner provided at s. 80-63-3-a-2 whenever a charge of noise nuisance or of a violation of the

prohibition against excessive noise has been filed relating to a noise emanating from the property, premises or machinery. The costs of investigation, prosecution and enforcement for a subsequent violation for a noise nuisance or excessive noise occurring within a 3-year period, but not for a violation occurring in less than 8 working days, excluding Saturdays, Sundays and city holidays, from the day the warning letter was placed in the mail, may be assessed against the real property of the owner in the manner provided in s. 80-63-3, whether or not such owner has been convicted of a noise nuisance or excessive noise violation, or, if the noise violation involves the operation of a motor vehicle or other machinery, the costs may be recovered against the owner of the motor vehicle or other machinery upon referral to the city attorney for collection.

Part 3. This ordinance takes effect June 16, 2008.

Part 4. The provisions of Part 2 of this ordinance shall be null and void after January 1, 2009.

..LRB  
APPROVED AS TO FORM

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Legislative Reference Bureau

Date: \_\_\_\_\_

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney

Date: \_\_\_\_\_

..Requestor

..Drafter

LRB07341-5

RLW

4/30/2008