



Legislation Text

File #: 061341, **Version:** 1

061341
SUBSTITUTE 1

ALD. DAVIS, BAUMAN, WITKOWSKI, ZIELINSKI, BOHL, MURPHY, DONOVAN AND HINES

A substitute ordinance relating to permits for the installation of electronic sound production devices in motor vehicles and the licensing of installers.

80-77 cr
80-90 am
81-132 rn
81-132 cr
81-133 rn
81-133 cr
81-134 rn

This ordinance creates a process for licensing any person, firm, partnership or corporation that installs electronic sound production devices in a motor vehicle that consist of or include one or more speakers with dimensions greater than 8 inches in diameter or greater than 6 inches by 9 inches. The ordinance also prohibits city residents from causing or authorizing the installation of such equipment in motor vehicles that they own without a permit to install. Application for a permit may be made by a licensed installer on behalf of the owner of the motor vehicle.

The fee for an installer's license is \$85 for a 2-year term beginning June 1 of each odd-numbered year. The fee for an permit to install is \$15 and, unless revoked, is valid for the life of the installation. Installation permits are not transferable. A copy of each permit shall be kept with the installed device.

Exceptions are provided for a motor vehicle used as an ambulance, law enforcement and fire department vehicle and any other vehicle owned or operated by state or municipal authorities in which an electronic sound production device has been installed for public safety purposes.

Forfeiture penalties of \$50 to \$500 are provided for causing or authorizing installation of a covered device without a permit, or for installing such device in the motor vehicle of another without a license.

A permit for installation of a device which is operated in such a manner as to violate specified noise prohibitions on 2 or more occasions within a 12-month period, may be revoked, and the device may be ordered to be removed from the vehicle by the department of neighborhood services. The owner of the motor vehicle may appeal the permit revocation or the removal order to the common council which shall decide the issue upon the report and recommendations of the licensing committee following a due process hearing. Failure or refusal to remove the device within 30 days of the order is prohibited and may result in a forfeiture of not less than \$25 nor more than \$200 for each day of failure or refusal after the 30-day grace period has expired.

Upon citation for a violation of noise nuisance restrictions and prohibitions committed using a

permitted device, a police officer may impound the device and the vehicle in accordance with the provisions of s. 80-75 if the person charged with the violation is the owner of the vehicle and device and has been convicted on 2 or more occasions of noise nuisance restrictions or prohibitions within a 3-year period.

The ordinance provides that the activity of installing in or upon motor vehicles any electronic sound production devices that are found to have been used to facilitate the commission of a violation of s. 346.94(16), Wis. Stats., or ss. 80-63, 80-64 or 80-65 on 3 or more occasions within a 24 month period is declared to constitute a public nuisance that may be abated in the same manner as other public nuisances.

The ordinance also provides that if 3 or more noise nuisance convictions are obtained involving devices installed by a licensee, the license may be subject to non-renewal, suspension or revocation. Licensees are provided a process for appeal.

The effective date of the ordinance is June 1, 2007.

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

Part 1. Section 80-77 of the code is created to read:

80-77. Installation of Electronic Sound Production Equipment. 1. PURPOSE. The common council finds that the installation of certain electronic sound production devices in motor vehicles constitutes a hazard to the health and safety of the public where such installations are designed or have the potential to amplify sound and to increase noise volumes and vibration levels to levels greater than may be necessary for the convenient hearing of voluntary listeners. Electronic sound production equipment that includes speakers greater than 8 inches in diameter or dimensions greater than 6 inches by 9 inches are particularly susceptible to misuse when installed in a motor vehicle. Such misuse creates risks of injury, hearing loss, distraction of drivers and pedestrians, and disturbs the peace and quiet enjoyment of the public. It is the intent of the common council to regulate the installation of electronic sound production equipment to reduce and prevent excessive noise levels without undue restriction upon the lawful, proper and safe use of such devices.

2. EXCEPTIONS. The permit and license provisions of this section shall not apply to electronic sound production devices installed in or upon or operated in or upon a motor vehicle owned or operated by any agency of local, state or federal government or a motor vehicle primarily used for fire or ambulance services.

3. PERMIT REQUIRED. a. Resident Motor Vehicle Owners. Each resident of the city, who is the owner or lessee of a motor vehicle operated on the highways of the city, shall obtain a permit from the city clerk prior to causing or authorizing the installation of an electronic sound production device that is or includes one or more speakers with a diameter greater than 8 inches or dimensions greater than 6 inches by 9 inches.

b. Permit Not Transferable. A permit for installation of an electronic sound production device shall, unless revoked for cause, be valid for the duration of the installation, and shall not be valid for reinstallation of the electronic sound production device in any other vehicle or for the installation of any different device. A permit shall not be required for routine maintenance or repair of previously installed electronic sound production devices.

c. Application and Issuance of Permit; Maintenance of Permit. The application and the permit for installation of an electronic sound production device shall include the name and address of the owner or lessee of the motor vehicle, either or both the vehicle registration number of the vehicle identification number, the name and address of the person, firm, partnership or corporation performing the installation, and such other information as the city clerk may require. The application may be completed by a licensed installer on behalf of a named motor vehicle owner. The permit shall include spaces for signatures of the installer and the owner together with the date of installation. The permit shall be kept with the device or otherwise within the motor vehicle for the life of the installation and shall be presented to a law enforcement officer upon request. Upon proper completion of the application together with payment of the fee required in ch. 81, the city clerk may issue the permit to a qualified applicant.

d. Permit Revocation. d-1. Upon a conviction of an excessive noise violation pursuant to s. 80-63, a noise limitation violation pursuant to s. 80-64, a noise nuisance violation pursuant to s. 80-65-4, or a radio or sound amplification violation pursuant to s. 346.94, Wis. Stats., and upon a finding that such violation was committed using a permitted sound production device, notice of the conviction will be provided to the city clerk by the municipal court. In the event that the permit or application identifies a licensed installer, the city clerk shall forward a copy of the notice to the installer.

d-2. Upon a conviction of a violation of s. 346.94(16), Wis. Stats., or ss. 80-63, 80-64 or 80-65, and upon a finding that the violation was committed using a permitted sound production device that is determined to have been used in the commission of another such offense within a 12 month period, the city clerk shall revoke the permit and shall provide written notice of revocation to the permit holder. Such written notice shall state that the permit must be returned to the city clerk within 30 days of the notice. The notice shall further state that the holder of the permit may alternatively file written notice of appeal of the revocation with the city clerk prior to the expiration of the 30-day period. Such appeal will be conducted according to the procedures described at subd. 6.

d-3. Upon notice of permit revocation, the commissioner of neighborhood services, or the commissioner's designee, may order the removal of the electronic sound production device from the vehicle. The order shall be in writing and dated and shall be placed in the United States mail, first-class postage prepaid, and sent to the last known address of the vehicle owner. The order shall include a statement advising the owner that the device must be removed within 30 days of the date of the order. The owner shall provide evidence to the department issuing the order to remove that the order has been satisfied. Evidence of satisfaction may include, but is not limited to, an inspection of the vehicle, proof of a valid transfer of the vehicle, or a sworn statement that the vehicle will not be operated within the city or has been permanently removed from the city.

d-4. Failure or refusal to satisfy an order to remove an electronic sound production device within 30 days is prohibited and, each day that the order remains unsatisfied after the expiration of 30 days shall constitute a separate violation. The 30-day period shall not toll while proceedings are pending before the common council upon appeal of a decision to revoke or upon an order to remove as provided in subd. 6.

d-5. Upon citation for a violation of noise nuisance restrictions and prohibitions committed using a permitted device, a police officer may impound the device and the vehicle in accordance with the provisions of s. 80-75 when the person charged with the violation is the owner of the vehicle and

device and has been convicted on 2 or more occasions of noise nuisance restrictions or prohibitions within a 3-year period.

d-6. Upon receipt of a written notice of revocation or an order to remove, the owner may file written notice of appeal with the city clerk. A hearing shall be scheduled before the licensing committee. The owner shall be notified of the hearing in writing at least 3 days before the time scheduled, excluding Saturdays, Sundays and holidays. The procedures provided at sub. 5-c for appeal of non-renewal, suspension or revocation of an installer's license shall apply.

4. DECLARATION OF NUISANCE; ABATEMENT. The activity of installing in or upon motor vehicles any electronic sound production devices that are found to have been used to facilitate the commission of a violation of s. 346.94(16), Wis. Stats., or ss. 80-63, 80-64 or 80-65 on 3 or more occasions within a 24 month period is declared to constitute a public nuisance that may be abated in the same manner as other public nuisances.

5. INSTALLER LICENSE. a. License Required. No person, firm, partnership or corporation may install electronic sound production equipment that is or includes one or more speakers with a diameter greater than 8 inches or dimensions greater than 6 inches by 9 inches in or upon the motor vehicle of another without a valid license as provided in this subsection. The owner of a motor vehicle may install such electronic sound production equipment in or upon the vehicle without license, but shall remain subject to the permit requirements of sub. 3.

b. Application. b-1. An application for the license required under this subsection shall be made in writing on forms furnished by the city clerk. The application shall be signed and sworn to by the applicant, if an individual, or by all the partners of a partnership, or by the president, secretary and duly authorized agent of a corporation or by the principal party or authorized agent of a limited liability company or other entity. Applications shall include such other information as the city clerk may require.

b-2. Each application shall be referred to the chief of police and the commissioner of neighborhood services who shall each cause an investigation to be made. A report of the findings upon investigation shall be made to the licensing committee which shall hold a hearing on whether or not to grant a new license. If it should appear that there is a possibility of denial, no hearing shall proceed unless the city clerk has provided written notice, placed in the United States mail with first-class postage prepaid, to the applicant at least 3 days prior to the scheduled hearing, excluding Saturdays, Sundays and holidays. Such notice shall include the date, time and place of the hearing and the reason or reasons for possible denial. The notice shall further contain a statement that the applicant may appear in person, may be represented by counsel at applicant's expense, may present witnesses and may cross-examine opposing witnesses

b-3. Applications may be denied for cause including but not limited to:

b-3-a. Conviction of the applicant of a felony occurring within one year of the application, the circumstances of which substantially relate to the licensed activity.

b-3-b. Conviction of an applicant for a crime or an ordinance violation of disturbing the peace, excessive noise, noise nuisance or similar conduct within 3 years of the application.

b-3-c. Conviction of an applicant of any violation of this section within one year of the application.

b-3-d. A finding that the premises intended to be used for installation activities are unsuitable.

b-3-e. Conviction of the applicant of a crime involving fraudulent or other unlawful business practices occurring within one year of the application.

b-5. Hearings held by the licensing committee on applications for an installer license shall be conducted in the same manner as alcohol beverage license application hearings are conducted pursuant to s. 90-5-8-b.

b-6. Following the hearing, the licensing committee shall prepare a written report with recommendations which shall be submitted to the common council for vote at the next meeting at which such matter may be considered.

c. Renewal, Non-renewal, Suspension and Revocation. c-1. The city clerk shall refer all applications for renewal of an installer's license to the chief of police and to the commissioner of neighborhood services for investigation to determine whether there exists any change in the qualifications or circumstances of the licensee that would warrant non-renewal. In the absence of such change in qualifications or circumstances, the application shall be forwarded to the common council for approval. A finding that 3 or more convictions of noise nuisance have been obtained within a 24-month period against persons for violating s. 346.94(16), Wis. Stats., or ss. 80-63, 80-64 or 80-65 and that such violations involved the use of one or more electronic sound production devices installed by the installer, constitutes grounds for non-renewal, revocation or suspension of a license.

c-2. If it should appear that a change in qualifications or circumstances of a licensee may support denial of the license renewal application, then a hearing of the licensing committee shall be scheduled. Written notice of the hearing shall be placed in the United States mail, first class postage prepaid, at least 3 days prior to the date set for hearing before the licensing committee, excluding Saturdays, Sundays and holidays.

c-3. The hearing before the committee on the question of renewal or non-renewal shall be conducted, and the report and recommendation of the committee shall be made to the common council, in the same manner as is provided at s. 90-11-2-b and c for alcohol beverage licenses. At the meeting of the common council, the procedures provided at s. 90-11-2-d shall apply except that the decision to accept or reject the report and recommendation of the licensing committee shall be made upon the written record and upon written exceptions that have been timely filed, if any, and oral argument shall not be heard.

c-4. If information is received by the city clerk at any time during the term of an installer's license that the licensee has engaged in conduct that would disqualify the licensee under par. b-4, or, if the city clerk is notified that 3 or more convictions have been obtained within a 24-month period against persons for violation of s. 346.94(16), Wis. Stats., or ss. 80-63, 80-64 or 80-65, and that such violations involved the use of one or more electronic sound production devices installed by the installer, the city clerk may issue a written summons and notice of hearing before the licensing committee at which the licensee shall show cause why the license should not be revoked or suspended. The summons and notice shall be placed in the United States mail, first class postage prepaid, at least 3 days prior to the date set for

hearing before the licensing committee, excluding Saturdays, Sundays and holidays.

c-5. The hearing before the committee on the question of revocation or suspension shall be conducted, and the report and recommendation of the committee shall be made to the full common council, in the same manner as is provided at s. 90-12-5-b and c for alcohol beverage licenses. At the meeting of the common council, the procedures provided at s. 90-11-2-d shall apply except that the decision to accept or reject the report and recommendation of the licensing committee shall be made upon the written record and upon written exceptions that have been timely filed, if any, and oral argument shall not be heard. The common council may accept a recommendation of suspension of the license, or may by majority vote amend a committee recommendation to provide for suspension of the license, but no suspension of a license shall be for less than 10 nor more than 90 days.

Part 2. Section 80-90 of the code is amended to read:

80-90. Penalties. Any person violating any of the following provisions of the chapter listed in column A shall be liable on conviction to penalties listed in column B and described in chapter 61:

A.	B.
80-3	Class E.
80-6 to 7	Class E.
80-12	Class E
80-13	Class E
80-15	Class D
80-17	Class M
80-19	Class E
80-22	Class F
80-27	Class E
80-29	Class E
80-31	Class E
80-42	Class E
80-44	Class E
80-45 to 80-46.5	Class E
80-48	Class E
80-49	Class K
80-60 to 80-65-3	Class E
80-65-4	Class K
80-65 to 80-68	Class E
80-69	Class C
80-70 to 80-73	Class E
>>80-77-2-a and b	<u>Class D</u>
<u>80-77-2-d-4</u>	<u>Class C</u>
<u>80-77-3-a</u>	<u>Class F</u> <<

Part 3. Sections 81-132 to 81-134 of the code are renumbered ss. 81-135 to 81-137.

Part 4. Sections 81-132 and 81-133 of the code are created to read:

81-132. Vehicle Sound Device Permit.

1. The fee for a permit to install an electronic sound production device in a motor vehicle shall be \$15.
2. Permits shall be valid for the life of the installation.

(See s. 80-77-2.)

81-133. Vehicle Sound Device Installer's License.

1. Each electronic sound production device installer's license shall be issued for a 2-year period, expiring on May 31 in odd-numbered years.
2. The fee for each license shall be \$85.
3. License renewal applications must be filed at least 45 days before the date on which the license expires. There shall be an additional fee for the filing of a late renewal of \$25.

(See s. 80-77-3.)

Part 5. This section shall be effective on and after June 1, 2007.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB07001-2

RLW

2/14/2007