Legislation Text

File #: 070429, **Version:** 4

070429
SUBSTITUTE 4

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WADE, DAVIS, MURPHY, HAMILTON, WITKOWSKI, WITKOWIAK AND KOVAC
A substitute ordinance clarifying complaint and prosecution procedures for certain noise violations and noise nuisances.
80-60-12 am
80-63-4 cr
80-63-1 rc
80-65-4-0 rc
80-65-4-a rc
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 real property or of vehicles and machinery operated on the highways from which excessive or nuisance noise emanates 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.
Whereas, Members of the public have a right to and should be ensured an environment free from excessive noise that jeopardizes health, welfare or safety, or degrades the quality of life; and

Whereas, Excessive noise generated by vehicles and other machinery operated on public highways is a hazard to traffic and pedestrian safety, and adversely affects the health, safety and welfare of persons in the vicinity; and

Whereas, Abatement of excessive noise, and especially noise generated from vehicles as opposed to fixed sources, requires significant expenditures of resources for enforcement and control; and

Whereas, It is the policy of the State of Wisconsin to prohibit and prevent the illegal use of radios or other electronic sound devices and to authorize local jurisdictions to impound vehicles and remove sound-producing devices under circumstances delineated at ss. 66.0411(1m)(b) and 346.94(16), Wis. Stats.; and

Whereas, The Common Council of the City of Milwaukee declares that it is a priority of the City to reduce and prevent unnecessary and harmful noise produced by car stereos, radios, amplification equipment and other sound-producing devices; now, therefore

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

Part 1. Section 80-60-12 of the code is amended to read:

80-60. Definitions.

12. PERSON means an owner as that term is defined in s. 200-08-66, an operator as that term is defined in s. 200-08-64 and occupant as that term is defined in s. 200-08-61. >>For purposes of enforcing the provisions of s. 80-63, “person” shall also mean the owner or operator, as defined in s. 340.01(41), Wis. Stats., of a vehicle or other machinery on the public highways. <<

Part 2. 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 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. It shall be unlawful for any person having charge or control of any vehicle or machinery, or owning a vehicle or machinery, 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 upon the highways, which loud, excessive or unusual noise tends to unreasonably disturb the comfort, quiet or repose of persons therein or in the vicinity.

Part 3. Section 80-63-4 of the code is created to read:

4. a. A person who owns or operates a vehicle or machinery upon the highways shall be liable for all of the costs of administration and enforcement of this subsection whenever all of the following occur:

a-1. A person operating or occupying the vehicle or machinery has been charged with violating the noise limitations set forth in s. 80-64 or 80-65.

a-2. The police department has sent by first class mail a written notice of the violation described in subd. 1, addressed to the last known address of the owner or operator. Written notice shall state that the operator or owner may be subject to the costs of investigation, administration and enforcement associated with subsequent charges of noise violations involving the same vehicle or machinery.

a-3. A person operating or occupying the vehicle or machinery is found to have been charged with violating the noise limitations set forth in s. 80-64 or 80-65 upon a credible complaint, and that violation occurred not less than 8 business days after mailing of notice under subd. 2. The violation shall involve the same vehicle or machinery, but need not involve the same operator or occupant for whom notice of violation was sent under subd. 2.

b. The chief of police shall provide a record of each charged violation of s. 80-64 or 80-65 and the costs of investigation, administration and enforcement to the city attorney.

c. In the event of the occurrence of all the provisions set forth in par. a., the costs of the investigation, administration and enforcement of the second and all subsequent charged violations referred to in par. a-3, may be charged to the owner or operator and in whole or in part and collected as a city receivable. The city shall establish a reasonable charge for the costs of administration and enforcement of this subsection.

d. Appeal of the determination of the chief of police imposing costs against the owner or operator may be submitted to the administrative review appeals board as provided by s. 320-11.

Part 4. Section 80-65-4-0 and 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.

Part 5. This ordinance takes effect June 16, 2008.

Part 6. The provisions of Part 2 of this ordinance shall be null and void after January 1, 2009.
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: _____

LRB07341-9
RLW

Clerical edit -- jro -- 05/29/08