

CHAPTER 47

NOISE

[Added on 8-5-97 as L.L. #11 (Intro No. 16) 1997]

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[HISTORY: Adopted by the Common Council of the City of Dunkirk on 8-5-1997 as L.L. #11 (Intro No.16) 1997. Amendments noted where applicable.]

§ 47-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**AUDIBLE** - Sound which is loud enough to be heard by a person.

**CITY** - The City of Dunkirk.

**KNOWINGLY** - As defined in Section 15.02(2) of the New York State Penal Law.

**PERSON** - Any individual, partnership, firm, association, corporation or any combination of the same.

**PREMISES** - An apartment, building or parcel of land; however, when restricted sound generates from an apartment, premises shall mean apartment only.

§ 47-2. General prohibition.

A. It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City.

- B. No person shall make, contrive, cause to be made, or assist in making any unreasonable noise
- C. No person who is a tenant or subtenant of a house or apartment, or any other person having any control or authority over such building or apartment, shall knowingly permit, suffer or allow unreasonable noise to exist within such building or apartment or any other area which the tenant or subtenant has authority to use or occupy.
- D. No person who is an owner of real estate or agent of such owner shall knowingly permit, suffer or allow unreasonable noise to exist within such real estate.

**§ 47-3. Prohibited acts.**

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

- A. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning.
- B. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.
- C. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound, which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure. **[Amended 6-20-2000 as L.L. #3 (Intro No. 5) 2000]**
- D. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

- E. The keeping or having possession of any pet which emits or issues any noise, bark, bray, bellow, or cry or sound that disturbs the quiet, comfort or repose of any person in the vicinity.
- F. The discharge into the open air of the exhaust of any steam engine, stationary internal-combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- G. The use of any automobile, motorcycle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- H.
  - (1) The erection (including excavating), demolition, alteration or repair of any building, other than between the hours of 7:00 A.M. and 9:00 P.M. except in the case of urgent necessity in the interest of public health and safety, and then only with a permit from the Housing, Building and Zoning Enforcement Officer, which permit may be granted for a period not to exceed three (3) days or less while the emergency continues and which permit may be renewed for periods of three (3) days or less while the emergency continues.
  - (2) If the Housing, Building and Zoning Enforcement Officer should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:00 P.M. and 7:00 A.M., and if the Housing, Building and Zoning Enforcement Officer shall further determine that loss or inconvenience would result to any party in interest, the Housing, Building and Zoning Enforcement Officer may grant permission for such work to be done within the hours of 9:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the progress of the work.
- I. The creation of any excessive noise on any street adjacent to any school or institution of learning, church or court while the same is in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.

- J. The shouting of peddlers, hawkers and solicitors which disturbs the peace and quiet of the neighborhood, except as authorized by § 39-13(D) of the City Code.
- K. The operation between the hours of 9:00 P.M. and 7:00 A.M. of any pile driver, derrick, or other equipment, the use of which is attended by loud or unusual noise.
- L. The operation of any noise-creating blower or power fan or any internal-combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
- M. The operating of a motor vehicle or motorcycle in such a manner as to cause excessive squealing or the excessive noise of the tires or motor of such vehicle or motorcycle.

**§ 47-4. Prima facie evidence.**

Any restricted sound which is plainly audible off the premises from which the sound originates and from a distance of at least thirty (30) feet from the source of such sound or building or structure from which such sound originated during the hours of 11:00 P.M. and 7:00 A.M., shall be prima facie evidence that such sound is unreasonable noise.

**§ 47-5. Presumptions.**

- A. Any person present in any apartment or portion of a building from which unreasonable noise emanates shall be presumed to have made, or assisted in making unreasonable noise.
- B. Any person present in a group in any area from which unreasonable noise emanates shall be presumed to have made, or assisted in making unreasonable noise.

**§ 47-6. Exceptions.**

- A. Nothing contained in this chapter shall be construed to prevent the production of music in connection with any military, civic or authorized parade or funeral procession, or prevent any musical performance or fireworks display conducted by consent of the City Council.
- B. The provisions of this chapter shall not apply to sound originating from any municipal, federal or state vehicle, equipment, building or

employee or agent or contractor thereof, provided such sound is a result of, and within the scope of work, thereof.

**C. [Added 6-20-2000 as L.L. #3 (Intro No. 5) 2000]**

- (1) Notwithstanding other provisions contained herein, the Dunkirk Common Council may grant special permits pursuant to this section, limited in time and scope, to groups or individuals sponsoring any particular event(s) the sounds of which may otherwise be deemed to be excessive and in violation of the Noise Ordinance, but not otherwise a nuisance or excessively loud.
- (2) The application for such permit shall provide the following information:
  - (a) Reason(s) for such event;
  - (b) Plans and specifications for amplification equipment;
  - (c) Period of time during which the permit is requested;
  - (d) Name of person(s) responsible for ensuring compliance with permit;
  - (e) When the activity for which such permit is sought is not a community-wide or public event, proof that notification of the application for such permit has been given to each person reasonably expected to be affected by the noise, the content of such notification and the manner such notification was provided.
- (3) Such written application shall be made to the City Clerk no later than thirty (30) days prior to the date(s) for which such permit is sought, and it shall be presented to the Departments of Police, Public Works and Law and any other applicable Department for review prior to Council action.
- (4) In order to further the purposes of this Chapter and to facilitate its implementation and enforcement, the Common Council shall have the authority to impose such conditions as determined to be reasonable and necessary on permits the Council issued pursuant to this section. Such conditions may govern factors which include, but are not limited to, the time and location that the involved sound source may be utilized.

- (5) (a) The issuance of permits is discretionary and shall be issued only where such permit is deemed to be reasonable and necessary and will allow an activity that is consistent with the general purposes of this Chapter, provided that no permit shall be issued pursuant to this section for any sound source that will operate between 1:00 A.M. and 7:00 A.M. of any day. **[Amended 5-3-2005 as L.L. #2-2005]**
- (b) Permits issued under this chapter for premises located within the H-1 District (as defined in Section 79 Article XII of the Dunkirk City Code, or as hereafter amended) may provide for extended hours of activity to the permit-holder, except that no sound source upon such H-1 District premises will operate between 1:00 A.M. and 7:00 A.M. of any day. **[Added 5-3-2005 as L.L. #2-2005]**
- (c) In no event shall any such sound source at any time exceed sixty (60) decibels, as measured out-of-doors within a one (1) block radius of the premises of the permit-holder. **[Added 5-3-2005 as L.L. #2-2005]**
- (6) Any permit granted under this section shall apply only to this Chapter, and not to any other law, rule, regulation or ordinance.

#### § 47-7. Penalties for offenses

- A. Any person violating any of the provisions of this chapter shall be punished, upon conviction for a first conviction by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment; for a second conviction, Five Hundred Dollars (\$500.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment; and for a third or subsequent conviction, Seven Hundred Fifty Dollars (\$750.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment.
- B. Any permit-holder found in violation of any terms or conditions of a permit granted under Section 47-6(C) of this Chapter shall be subject to, in addition to the above penalties, possible immediate restriction and/or revocation of such permit. **[Added 5-3-2005 as L.L. #2-2005]**