



Legislation Details (With Text)

**File #:** 220053      **Version:** 1      **Name:**

**Type:** Ordinance      **Status:** Passed

**File created:** 1/6/2022      **In control:** Council

**On agenda:** 1/27/2022      **Final action:** 1/27/2022

**Title:** Amending Chapter 46, Code of Ordinances, entitled "Noise Control" by repealing it in its entirety and enacting in lieu thereof a new Chapter 46 entitled "Noise Control" of like subject matter, consisting of sections 46-1 through 46-49.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Noise Ordinance (Chapter 46) - Fact Sheet, 2. Noise Ordinance (Chapter 46) - Fiscal Note, 3. Noise Ordinance (Chapter 46) - Comparison 2015 - 2021, 4. Noise Ordinance (Chapter 46) - Summary of Changes, 5. 220053com, 6. 1.26.22 Noise Ordinance Presentation (002), 7. Authenticated Ordinance 220053

| Date      | Ver. | Action By                                       | Action          | Result |
|-----------|------|---|-----------------|--------|
| 1/27/2022 | 1    | Council   | Passed          | Pass   |
| 1/26/2022 | 1    | Neighborhood Planning and Development Committee | Adv and Do Pass | Pass   |
| 1/13/2022 | 1    | Council   |                 |        |

ORDINANCE NO. 220053

Amending Chapter 46, Code of Ordinances, entitled "Noise Control" by repealing it in its entirety and enacting in lieu thereof a new Chapter 46 entitled "Noise Control" of like subject matter, consisting of sections 46-1 through 46-49.

WHEREAS, outcomes from noise disturbances have been shown to negatively affect the health of residents; and

WHEREAS, lack of sleep is associated with anxiety, contributing to substance use disorders, and increasing the severity of psychiatric symptoms, and may play a role in cardiovascular risk factors; and

WHEREAS, in children, sleep disturbances can impair cognition and worsen attention deficit hyperactivity disorder; and

WHEREAS, the City always seeks to improve its laws to fill in gaps and make them more effective to improve the quality of life for its residents; and

WHEREAS, these changes to the current Noise Code involve entertainment districts, mixed-use developments, refuse and recycling vehicles and the creation of a new administrative citation process for enforcement; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY THAT:

Section 1. That Chapter 46, Code of Ordinances, entitled “Noise Control” is hereby amended by repealing it in its entirety and enacting in lieu thereof a new Chapter 46 of like name and subject matter, consisting of sections 46-1 through 46-49, to read as follows:

## ARTICLE I. IN GENERAL

### Sec. 46-1. Title of chapter.

This chapter shall be known and referred to as the city noise control code or the noise code.

### Sec. 46-2. Findings; general policy.

(a) The city council finds that:

- (1) Excessive sound is a serious hazard to the public health, welfare and safety and the quality of life;
- (2) A substantial body of science and technology exists by which excessive sound may be substantially abated; and
- (3) The citizens of the city have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life.

(b) It is the policy of the city to prevent excessive sound which may jeopardize the health, welfare or safety of its citizens or degrade the quality of life.

### Sec. 46-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this chapter, not defined in this section, shall be in conformance with the USA Standard Acoustical Terminology American National Standards Institute Document S1.1-1994 (R 2004).

*Ambient noise* means the total of all noise in the environment, other than the noise from the source of interest. This term is used interchangeably with background noise.

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dB(A) or dBA.

*City Code* means the Code of Ordinances of the City of Kansas City, Missouri.

*Commercial property* means property located in a district zoned as "office" or "business" or “O” or “B” under the Kansas City Zoning and Development Code, Chapter 88 and subsequent amendments, but shall also include properties zoned as DC, DX, M1-M4, US, KCIA, MPD and UR. Commercial property shall also mean any property within the area bound by the Missouri River to the north, the Kansas City Terminal Railway tracks on the south, state line to the west and Troost to the east. When a property is located in an overlay district, the

underlying zoning district will apply.

*Construction* means any site preparation, assembly, erection, repair, alteration or similar action, including demolition, for or of public or private rights-of-way, structures, utilities or similar property.

*Decibel (dB)* means 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 reference pressure, which is 20 micropascals (20 micronewtons per square meter).

*Director* means the director of the Kansas City, Missouri Health Department.

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical trauma, property damage or protection of commerce which demands immediate action.

*Emergency work* means any work performed for the purpose of preventing or alleviating the physical trauma, property damage or protection of commerce threatened or caused by an emergency.

*Entertainment district* means an urban mixed-use project containing not less than 200,000 gross leasable square feet of space intended for retail, entertainment, shopping and restaurant purposes, all within 2500 feet of a convention facility owned or operated by the City within an area designated as a development area under sections 99.915-99.980, RSMo, and which is zoned as an urban redevelopment district (URD) or a project within an area designated as a redevelopment area under sections 99.800-99.865, RSMo, containing a multipurpose arena with approximately 18,000 to 20,000 seats.

*Equivalent A-weighted sound level (Leq)* means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this chapter, a time period of not less than two continuous minutes or two minutes, whether continuous or not, of a 30-minute period shall be used, unless otherwise specified.

*Gross vehicle weight rating (GVWR)* means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle.

*Ground cover* means any of various low, dense-growing plants, such as ivy, myrtle, low weeds or brush.

*Hard test site* means any test site having the ground surface covered with concrete, asphalt, packed dirt, gravel or similar reflective material for more than half the distance between the microphone target point and the microphone location point.

*Mixed use development* means areas that contain a complimentary mix of residential and non-residential uses. Mixed use development shall also mean any property within the area bound by the Missouri River to the north, the Kansas City Terminal Railway tracks on the south, state line to the west and Troost to the east. When a property is located in an overlay district, the underlying zoning district will apply.

*Model aircraft* means any contrivance now known or hereafter invented which is used or designed for flight in the air and which is controlled by manual or remote means but which is not used or designed for the carriage of persons or objects.

*Motor vehicle* means any vehicle which is propelled or drawn on and by a motor, such as but not limited

to passenger cars, trucks, truck-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies or racing vehicles, but not including motorcycles and unlicensed construction motor vehicles as defined in this section. For purposes of this noise control code, motor vehicle shall also include electric and hybrid vehicles, or other combinations thereof.

*Motorcycle* means an unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including but not limited to motor scooters and minibikes.

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

*Noise disturbance* means any sound level which, except as authorized by permit or variance, meet or exceeds the levels in table I of this noise control code.

*Octave Band* means a frequency band where the upper band edge frequency is double its lower band edge frequency. Nine typical octave bands are identified by their center frequencies, such as 31.5, 63, 125, 250, 500, 1,000, 2,000, 4,000, and 8,000 Hertz.

*Person* includes a corporation, firm, partnership, association, organization and any other group acting as a unit as well as individuals. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law.

*Plainly audible* means any sound that can be detected by a person using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The noise control officer or police officer need not determine the title, specific words, or the artist performing the song.

*Real property boundary* means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

*Receiving property* means a property from which a noise from another property is heard. A receiving property is often a complainant's property.

*Residential property* means property that does not come within the definition of "commercial property" in this section. When a property is located in an overlay district, the underlying zoning district will apply.

*Soft test site* means any test site having the ground surface covered with grass, other ground cover, or similar absorptive material for half or more of the distance between the microphone target point and the microphone location point.

*Sound* means any oscillation in pressure, partial displacement, partial velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristic of any sound, including duration, intensity and frequency.

*Sound level* means the quantity in decibels measured by a sound level meter satisfying the requirements of American National Standards Specification for Sound Level Meters S1.4-1983 (R2006)/S1.4A-1985 (2006),

and for Integrating-Averaging Sound Level Meters S1.43-1997 (R2007). Unless indicated otherwise, the A-weighting is understood.

*Sound level meter* means a Type 1 or Type 2 instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter, octave band analyzer and weighting networks issued to measure sound pressure levels. All microphones shall be a Type 1 or Type 2 microphone.

*Sound Pressure Level* means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference of 20 micronewtons per square meter.

*Unlicensed construction motor vehicle* means any vehicle or equipment used for construction purposes, not required to be licensed by the state, which is propelled or drawn on land by a motor, such as but not limited to cranes, bulldozers, hiloaders, graders, steamshovels or earth-movers, but not including motorcycles or motor vehicles as defined in this section.

**Sec. 46-4. Prohibited noise, generally.**

(a) No person shall make, cause, suffer, continue, allow or permit the operation of any source of sound on any receiving property in such a manner as to create a sound level that equals or exceeds the sound level limits set forth in Table I, when measured at the real property boundary or within the real property lines of any of the receiving properties listed in Table I.

(b) No person shall make, cause, suffer, continue, allow or permit the operation of any source of sound that disturbs the peace, quiet and comfort of the neighboring residential inhabitants 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 the noise is generated and who are voluntary listeners, nor shall a person make a noise that is plainly audible across a residential property line 50 feet or more from the source of the noise.

(c) Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section but shall not be exempt from the specific provisions of section 46-5.

(d) *Ambient noise*. It shall not be a violation of this article unless the sound measured is at least more than five decibels, db or db(A), above ambient noise. Ambient noise shall be measured no closer than 50 feet from the source of the sound or measured at the outside wall of a building adjacent to the public right-of-way or public space from which the sound originates. If a sound cannot be excluded for an ambient reading, including due to a potential violator's failure to cooperate, a plainly audible standard may be used.

Table I: Maximum Permissible A-Weighted Sound Levels and Octave Band dB Limits

| Receiving Property * | Residential Property | Residential Property | Commercial Property | Commercial Property |
|----------------------|----------------------|----------------------|---------------------|---------------------|
|----------------------|----------------------|----------------------|---------------------|---------------------|

| Octave Band Center Frequency (Hz) | Outdoors Octave Band Sound Pressure Level (dB) |                  | Indoors Octave Band Sound Pressure Level (dB) |                  | Outdoors Octave Band Sound Pressure Level (dB) | Indoors Octave Band Sound Pressure Level (dB) |
|-----------------------------------|--|------------------|---|------------------|--|---|
|                                   | 7 a.m. - 10 p.m.                               | 10 p.m. - 7 a.m. | 7 a.m. - 10 p.m.                              | 10 p.m. - 7 a.m. |  |   |
| Time                              | 7 a.m. - 10 p.m.                               | 10 p.m. - 7 a.m. | 7 a.m. - 10 p.m.                              | 10 p.m. - 7 a.m. | 24 Hours                                       | 24 Hours                                      |
| 31.5                              | 77   | 72               | 64  | 61               | 97   | 86  |
| 63                                | 76   | 71               | 58  | 54               | 96   | 72  |
| 125                               | 69   | 64               | 51  | 46               | 89   | 64  |
| 250                               | 64   | 59               | 45  | 40               | 84   | 57  |
| 500                               | 56   | 51               | 42  | 37               | 76   | 53  |
| 1,000                             | 50   | 45               | 39  | 34               | 70   | 50  |
| 2,000                             | 47   | 42               | 36  | 31               | 67   | 47  |
| 4,000                             | 45   | 40               | 33  | 28               | 65   | 45  |
| 8,000                             | 40   | 35               | 30  | 25               | 60   | 43  |
| dBA                               | 60   | 55               | 45  | 40               | 80   | 52  |

\*Mixed-Use Developments, Entertainment Districts, and Urban Renewal Districts (URD). When measuring sound levels at the property line of a receiving residential property, if the sound emanates from a commercial property that is within a mixed-use development, entertainment district, or URD and within 250 feet of the receiving residential property, the maximum allowable decibel levels shall be the levels allowed on receiving commercial properties in Table I.

**Sec. 46-5. Specific prohibitions.**

Due to the noise inherent in certain activities and for other reasons, special rules apply to the following acts and situations:

(a) *Domestic power tools.* No person shall operate or permit the operation of any mechanically or electrically-powered saw, drill, sander, grinder, lawn or garden tool, or similar device used in a residential district between the hours of 10:00 p.m. and 7:00 a.m. on a residential property or within 250 feet of a residential real property boundary (when operated on commercial or light-industrial property), unless such activities do not exceed the limits set forth in Table I of section 46-4 above.

(b) *Loading and unloading.* No person shall load, unload, open, close or perform other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to cause a noise disturbance across a residential real property boundary, except when necessary, in the performance of construction work as defined in section 46-3 above

(c) *Portable sound systems.* Self-contained, portable, non-vehicular music or sound production or amplification devices shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 7:00 a.m. and

10:00 p.m. Between the hours of 10:00 p.m. and 7:00 a.m., sound from such equipment, operated on a public space, shall not be plainly audible by any person other than the operator. Section 46-4 shall still apply, however, to the use of such devices on property not in public spaces or on public rights-of-way.

(d) *Powered model vehicles and aircraft.* No person shall operate or permit the operation of powered model vehicles or model aircraft so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(e) *Racing events.* No person shall operate or permit any motor vehicle or motorcycle racing event at any place so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(f) *Vehicular stereos.*

(1) *Daytime.* Vehicular music amplification or reproduction equipment shall not be operated in such a manner that is plainly audible at a distance of 50 feet in any direction from the operator or sound source between the hours of 8:00 a.m. and 10:00 p.m.

(2) *Nighttime.* Vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction from the operator or sound source between the hours of 10:00 p.m. and 8:00 a.m.

(g) *Security alarms.*

(1) Security alarm systems, commercial or residential, failing to cease emitting an audible sound within 15 minutes of activation are prohibited and shall also constitute a nuisance.

(2) Security alarm systems, commercial or residential, which emit an intermittent signal failing to cease within 15 minutes of activation are prohibited and shall also constitute a nuisance.

(h) *Places of public entertainment.* No person shall operate, play or permit the operation or playing of any radio, television, music player, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound at a sound level greater than 85 db(A) as read by the slow response on a sound level meter at any point that is normally occupied by a customer in any place of public entertainment with a seating capacity of less than 500 persons, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT." Section 46-4 shall still apply, however, to places of public entertainment.

(i) *Refuse and recycling vehicles.*

(1) No person shall allow for the collection of or collect refuse or recycling materials with a refuse or recycling collection vehicle or operate the compacting mechanism of any motor vehicle that compacts refuse or recycling between the hours of 8:00 p.m. and 7:00 a.m. the following day in a residential property area or within 500 feet of such an area.

(2) No person shall allow for the collection of or collect refuse or recycling materials with a refuse or recycling collection vehicle or operate the compacting mechanism of any motor vehicle that

compacts refuse or recycling between the hours of 12:00 a.m. and 5:00 a.m. in a Commercial property area or within 500 feet of such an area.

- (3) Any person found in violation of this sub-section (i) is subject to an administrative citation as outlined in section 46-39 Code of Ordinances and/or the suspension or revocation of the building's certificate of occupancy as outlined in section 18-23, Code of Ordinances.
- (4) Evidence to determine violations shall include, among other things, photos, videos, and screenshots with a time stamp submitted to the regulatory authority, and/ or the recorded observations of an official of the designated regulatory authority.

#### **Sec. 46-6. Methods of measurement.**

(a) All sound level measurements, when taken, shall be taken using guidelines approved by the director of health. Such procedures shall be made available upon request.

(b) Noise control officers shall have the discretion and authority to take measurements using methods and testing locations that they deem appropriate in their professional judgment in certain situations. In some situations, for example, it may be more practical to measure sound at the location of the complainant, rather than at the property line.

#### **Secs. 46-7 - 46-15. Reserved.**

## **ARTICLE II. MOTOR VEHICLES AND MOTORCYCLES**

#### **Sec. 46-16. Motor vehicles.**

- (a) *Public right-of-way; plainly audible standard; nighttime hours.*
- (1) *Maximum weight of 10,000 pounds or less.* No person shall operate, cause or permit to be operated a motor vehicle with a maximum gross weight of 10,000 pounds or less, where the muffler, exhaust or other component on the motor vehicle generates a sound that is plainly audible at a distance of 300 feet or more from the motor vehicle. This subsection shall only apply when the sound is generated between the hours of 10:00 p.m. and 7:00 a.m. the following day on public right-of-way where the speed limit is 35 miles per hour or less. The detection of the sound by a person using his or her unaided hearing is sufficient to verify plainly audible sound. Plainly audible sound does not require measurement with a sound meter.
- (2) *Maximum weight greater than 10,000 pounds.* No person shall operate, cause or permit to be operated a motor vehicle with a maximum gross weight of more than 10,000 pounds, where the muffler, exhaust or other component on the motor vehicle generates a sound that is plainly audible at a distance of 350 feet or more from the motor vehicle, except when a compression release brake system is used to stop the vehicle in an emergency. This subsection shall only apply when the sound is generated between the hours of 10:00 p.m. and 7:00 a.m. the following day on public right-of-way where the speed limit is 35 miles per hour or less. The detection of the sound by a person using his or her unaided hearing is sufficient to verify plainly audible sound. Plainly audible sound does not require measurement with a sound meter.

(b) *Private property; metered readings; all hours.* No person shall operate or cause to be operated a motor vehicle on private residential property which creates a noise on private residential property that exceeds the following limits with a two-minute sound level meter reading:

(1) *Day hours.* 90 decibels between the hours of 7:00 a.m. and 10:00 p.m.

(2) *Night hours.* 55 decibels between the hours of 10:00 p.m. and 7:00 a.m.

(c) The same standards for the taking of sound level readings used elsewhere in the noise code shall apply to this subsection.

#### **Sec. 46-17. Motorcycles.**

(a) *Public right-of-way; plainly audible standard; nighttime hours.* No person shall operate, cause or permit to be operated any motorcycle where the muffler, exhaust or other component on the motor vehicle generates a sound that is plainly audible at a distance of 300 feet or more from the motorcycle. This subsection shall only apply on public right-of-way where the speed limit is 35 miles per hour or less. The detection of the sound by a person using his or her unaided hearing is sufficient to verify plainly audible sound. Plainly audible sound does not require measurement with a sound meter.

(b) *Private property; metered readings; all hours.* No person shall operate or cause to be operated a motorcycle on private residential property which creates a noise on private residential property that exceeds the following limits with a two-minute sound level meter reading:

(1) *Day hours.* 90 decibels between the hours of 7:00 a.m. and 10:00 p.m.

(2) *Night hours.* 55 decibels between the hours of 10:00 a.m. and 7:00 a.m.

(c) The same standards for the taking of sound level readings used elsewhere in the noise code shall apply to this subsection.

#### **Sec. 46-18. Mufflers or other sound-dissipative devices.**

(a) No person shall operate any motor vehicle, motorcycle or unlicensed construction motor vehicle designed and manufactured with a muffler or other sound-dissipative device unless equipped with a muffler or other sound-dissipative device in good working order and in constant operation.

(b) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repairs or replacement, any muffler or sound-dissipative device on a motor vehicle or motorcycle.

#### **Sec. 46-19. Use of horns and other signaling devices.**

No person shall sound any horn or other auditory signaling device on or in any motor vehicle or motorcycle on any public right-of-way or public space, unless reasonably necessary to ensure safe operation.

#### **Sec. 46-20. Compression release braking systems.**

It shall be unlawful for any person to utilize a motor vehicle's compression release braking system while traveling on roads or highways within the City with posted right-of-way signs that say "Noise Ordinance Enforced."

**Secs. 46-21 - 46-25. Reserved.**

### **ARTICLE III. ADMINISTRATION AND ENFORCEMENT**

#### **DIVISION 1. EXCEPTIONS AND SPECIAL PERMITS**

**Sec. 46-26. Exceptions to the noise code.**

The provisions of the noise code shall not apply to:

- (a) The emission of sound for the purpose of alerting persons to the existence of an emergency;
- (b) The emission of sound in the performance of emergency work;
- (c) Construction work, as defined in section 46-3;
- (d) The unamplified human voice;
- (e) Interstate railway locomotives and cars;
- (f) Activities for which the director has issued either a special variance or special permit pursuant to the noise code;
- (g) Noise disturbances that are the result of any act of God, war, labor disturbance, riot, catastrophe or other cause beyond the control of a person; or
- (h) Data centers (facilities operated by a business engaged primarily in data processing, hosting, and related services with installed electrical equipment having the capacity to draw at least 50 MW of demand) that are not exceeding sound levels of 80 dBA when measured at their real property boundary, excluding all ambient noise and noise caused by generators in the event of a power outage or interruption.

**Sec. 46-27. Special permits.**

(a) *Authority of director of health.* The director shall have the authority, consistent with this chapter, to grant special permits which may be requested by any person proposing to engage in any activity which the applicant believes will create a noise disturbance prohibited by this chapter.

(b) *Application; hearing.* Any person seeking a special permit pursuant to this section shall file an application with the director. The application shall contain information which demonstrates that compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. Any individual who claims to be adversely affected by allowance of the special permit may file a statement with the director containing any information to support his claim. If the director finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(c) *Granting or denial.* In determining whether to grant or deny the application, the director shall balance the hardship to the applicant, the community and other persons of not granting the special permit against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the special permit. Applicants for special permits and persons contesting special permits may be required to submit any information the director may reasonably require. In granting or denying an application, the director shall maintain a copy of the decision and the reasons for denying or granting the special permit.

(d) *Conditions.* A special permit shall be granted by notice to the applicant containing all necessary conditions on the permitted activity. The special permit shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special permit shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special permit was granted.

(e) *Procedural rules.* The director may issue rules and regulations defining the procedures to be followed in applying for a special permit and the criteria to be considered in deciding whether to grant a special permit.

**Secs. 46-28 - 46-35. Reserved.**

## **DIVISION 2. PENALTIES, ABATEMENT AND OTHER REMEDIES**

### **Sec. 46-36. Administration of noise control program.**

The noise control program established by this chapter shall be administered by the director of health.

### **Sec. 46-37. Duties.**

(a) *Investigation of violations.* The director shall have the authority to investigate and pursue possible violations of this chapter. If a complaint is made, upon presentation of proper credentials, the director may enter and inspect any property or place and inspect any relevant report or records at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act on behalf of the owner. When permission to enter is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon a showing of probable cause to believe that a violation of this chapter may exist. Such inspection may include administration of any necessary tests.

(b) *Delegation of authority.* The director may delegate his or her functions under this chapter. The city police department is hereby authorized to enforce the prohibitions established by City Code without the explicit delegation from the director of health.

### **Sec. 46-38. Abatement orders.**

The director of health may issue an order requiring abatement of any source of sound if he or she has reason to believe that it is in violation of this chapter, within a reasonable time period and according to rules and regulations which the director may prescribe.

### **Sec. 46-39. Administration citation fine for violation of chapter.**

(a) The Director of Health may issue an administrative citation for violations of any provision of this Chapter.

(b) The administrative citation fine amount for a first violation under the provisions of this Chapter shall be \$100.00 and each day that a violation continues shall constitute a separate offense for which the violator may be fined.

(c) The administrative citation fine for repeat violations of the same City Code provision by the same person within 12 months from the date of the first administrative citation shall be as set forth in the following schedule and each day that a violation continues shall constitute a separate offense for which the violator may be fined.

|     |                                  |   |
|-----|----------------------------------|---|
| (1) | First violation                  | \$100.00  |
| (2) | Second violation                 | Not less than \$100.00 but not more than \$300.00   |
| (3) | Third violation                  | Not less than \$300.00 but not more than \$500.00   |
| (4) | Fourth and subsequent violations | Not less than \$500.00 but not more than \$1,000.00 |

(d) Any administrative citation fine which is not paid on or before its due date shall accrue a one-time penalty in an amount equal to the original administrative citation fine. Said penalty shall be collected in the same manner as the underlying fine.

(e) The director may waive a portion of the amount of administrative citation fines that have accumulated as a result of non-compliance with City Code provided that the owner has achieved compliance in a timely manner and there are no other violations of chapter 46.

**Sec. 46-40. Payment of Administrative Fine**

(a) The alleged violator must either pay the scheduled administrative citation fine by the due date indicated on the administrative citation or request a hearing within 20 days from the date of the administrative citation as outlined in Sec. 46-42.

(b) Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the City Code violation that is the subject of the administrative citation.

(c) If an administrative citation fine is not paid within the time specified and no request for a hearing is timely received, the nonpayment of the fine will constitute a personal obligation of the violator. A personal obligation may be collected by the city by any appropriate legal means including assessing the applicable property pursuant to section 46-47 of the City Code.

**Sec. 46-41. Administrative citation.**

Each administrative citation shall contain the following information:

(a) The date the violation is identified;

(b) The address or a definite description of where the violation occurred, such as the receiving property line or location of the sound source;

(c) The section of the City Code violated and a description of the violation;

(d) The amount of the fine for the City Code violation;

(e) A description of the fine payment process, including a description of the time within which and the place from which a request for a hearing form to contest the administrative citation may be obtained; and

(f) The name and signature of the citing code enforcement officer.

#### **Sec. 46-42. Request for an administrative hearing.**

(a) Any recipient of an administrative citation may contest that there was a violation of the City Code or that the recipient is the responsible party by completing a request for administrative hearing petition and returning it to the director of within 20 days from the date of the administrative citation.

(b) A request for administrative hearing petition may be obtained from the environmental health services division.

(c) The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing.

(d) If the code enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five days prior to the date of the hearing.

#### **Sec. 46-43. Hearing officer designated**

The Director of Health shall designate the hearing officer for the administrative hearing.

#### **Sec. 46-44. Hearing.**

(a) A hearing before the hearing officer shall be set for a date that is not less than ten days and not more than 60 days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

(b) With the agreement of all parties, the hearing officer may attempt to mediate the dispute. If the dispute is settled as the result of mediation, the hearing will be canceled. Any mediated settlement must be commemorated by the hearing officer in writing and signed by the person filing the appeal and the city.

#### **Sec. 46-45. Administrative hearing procedures.**

(a) At the hearing on the record, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(b) The administrative citation, property record, and related documentation shall be prima facie evidence of the municipal code violation. A city employee or agent shall present the city's case although the code enforcement officer who issued the notice of violation need not be present.

(c) The hearing officer may continue the hearing to a later date to request additional information from the code enforcement officer or the recipient of the administrative citation be presented by the appropriate parties prior to issuing a written decision.

**Sec. 46-46. Written decision.**

(a) After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list the reasons for that decision. The hearing officer shall also have the authority to reduce or waive a scheduled fine upon compliance with certain conditions.

(b) If the hearing officer determines that the administrative citation should be upheld, the hearing officer shall set forth in the decision a payment schedule for the fine if it has not already been paid. If the hearing officer determines that the administrative citation should be overturned, the citation shall be voided.

(c) The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

(d) The decision of the hearing officer shall be final without any further right of administrative appeal other than as provided in Chapter 536, RSMo.

**Sec. 46-47. Final decision by hearing officer.**

(a) The hearing officer may not impose incarceration or any fines in the excess amount allowed by the schedule of fines. Any fine or costs, or part of any fine or costs, remaining unpaid after the exhaustion of or the failure to exhaust judicial review procedures under Chapter 563, RSMo, shall be a debt due and owing the city, and may be collected in accordance with applicable law.

(b) Any decision or judgment by the hearing officer will be enforced pursuant to the provisions of Chapter 479, RSMo.

(c) Any final decision or disposition of a City Code violation by a hearing officer shall constitute a final determination for purposes of judicial review. Such determination is subject to review under Chapter 536, RSMo, or, at the request of the defendant made within ten days, a trial de novo in the circuit court. After expiration of the judicial review period under Chapter 536, RSMo, unless stayed by a court of competent jurisdiction, the hearing officer's decisions, findings, rules, and orders may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. Upon being recorded in the manner required by state law or the uniform commercial code, a lien may be imposed on the real or personal property of any defendant pleading guilty to or found guilty in violation of a municipal code violation in the amount of any debt due to the city under this chapter and enforced in the same manner as a judgment lien under a judgment of a court competent jurisdiction.

**Sec. 46-48. Filing fees.**

The filing fee for application to the director of health for a special permit under this chapter shall be \$50.00 per application.

**Sec. 46-49. Other remedies.**

No provision of this chapter shall be construed to impair the city's right to pursue any other legal remedy, relief, or cause of action, including injunctive relief, related to any violation of this chapter or from any other law.

---

Approved as to form and legality:

---

Joseph Guarino  
Assistant City Attorney