

Sec. 13-57. Unreasonable noise.\*

\*Decisional law reference: As to the words "loud and raucous noises" being held sufficiently definite and clear, see *Kovacs v. Cooper*, 336 U.S. 77, 79.

Cross reference: Noise control, § 13-79 et seq.

(a) *Prohibited.* No person shall make, or cause to be made any unreasonably loud, raucous, prolonged, unnatural or unusual noise in time and place. Noise shall be deemed to be unreasonable when it disturbs, injures, or endangers the peace or quiet safety, or health of reasonable persons of ordinary sensitivity within the city, or if such noise causes unreasonable discomfort to any persons within the neighborhood from which such noise emanates or if it detrimentally or adversely affects operators of businesses, customers of businesses, or neighborhood residents within the area from which such noise emanates. Any such unreasonable noise shall be considered a noise disturbance and a public nuisance.

(b) *Factors for determining unreasonable noise.* Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:

- (1) The proximity of the sound to sleeping facilities, whether residential or commercial;
- (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- (3) The time of day or night the sound occurs;
- (4) The duration of the sound; and
- (5) Whether the sound is recurrent, intermittent, or constant.

(c) *Illustrative enumeration.* The following acts are declared to be unreasonable noises in violation of this section, but this enumeration shall not constitute an exclusive list:

(1) The sounding of any horn, signaling, or other similar device on any automobile, motorcycle, or other vehicle on any street or public place except as a danger warning; the creation by means of any such signaling device of any unreasonably loud and raucous sound; and the sounding of any such device for an unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up. More than five (5) consecutive seconds shall be a prima facie unreasonable period of time.

(2) Using, operating, or permitting to be played, used or operated any radio, television, boombox, stereo, radio receiving set, musical instrument, or other machine or device that produces or reproduces sound in a manner as to unreasonably disturb the peace and quiet of the neighboring inhabitants or any person who in the room, vehicle or chamber in which such machine or device is operated and who is not a voluntary listener, or which is plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located and unreasonably disturbs the peace and quiet of neighbors in residential or noise sensitive areas, including multifamily or single-family dwellings. The operation of such device in a manner prohibited herein between the hours of 11:00 p.m. and 7:00 a.m. shall be prima facie evidence of a violation of this section.

(3) Using, operating, or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public street for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(4) 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 person in the vicinity.

(5) The keeping of any animal or bird which by causing frequent or long-continued noise shall disturb the comfort or repose of any person in the vicinity.

(6) The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper City authorities.

(7) 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.

- (8) a. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary engine noise, grating, grinding, rattling or other noise in excess of the noise limit measured in decibels as prescribed by State standards. The noise limit applies to total noise from a motor vehicle or motorcycle including that noise of other vehicles attached thereto.
- b. The operation of any motor vehicle or motorcycle in such a manner as to create excessive noise such as squealing of tires or other noise unrelated to engine noise and noise caused by unnecessary grinding, rattling or other vehicle disrepair need not be measured in decibels to violate this section.
- (9) The creation of an unreasonably loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (10) The erection (including excavating), demolition, alteration or repair of any building, other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Commissioner. The permit may be granted for a period not to exceed three (3) days or less while the emergency continues and may be renewed for periods of three (3) days or less while the emergency continues. If the Building Commissioner shall 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 6:00 p.m. and 7:00 a.m., and further determines that loss or inconvenience would result to any party in interest, he or she may grant permission for such work to be done within the hours of 6:00 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.
- (11) The creation of any loud and raucous noise on any street adjacent to any school, institution or learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the working of such institution, or which unduly disturbs patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
- (12) The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.
- (13) The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.
- (14) The transportation of rails, pillars or columns of iron, steel or other materials over and along streets and other public places upon carts, drays, cars, trucks or in any other manner, loaded so as to cause loud and raucous noises to as to disturb the peace and quiet of such streets or other public places.
- (15) The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by unreasonably loud or raucous noise.
- (16) The operation of any noise-creating blower or power fan or any internal-combustion engine, the operation of which causes loud and raucous 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.
- (17) Any noise which blocks, interferes with, distorts, renders unintelligible, or otherwise substantially impairs the ability of public safety officers in the course of public duty to communicate with each other or with members of the public.
- (d) *Permit for playing noncommercial music in public places.* The Board of Public Works shall have the authority to grant an annual permit to persons who desire to play noncommercial music in public places. Such permit requests shall be reviewed in light of the applicant providing the following information in written form to the Board:
- (1) Name and address of applicant;
  - (2) Nature of music to be played;
  - (3) Times and dates when music will be played;
  - (4) A statement verifying that the music will be noncommercial in nature.
- Upon submission of the above information the Board shall review the same, and if it determines that a public nuisance will not be created which would disturb, injure or endanger the peace and safety of others, an annual permit shall be issued. Any permit granted by the Board of Public Works may be revoked upon a determination that the playing of such music creates a loud, raucous, unreasonable or offensive noise in violation of this section.
- (e) *Invalidity.* A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this section shall not affect the validity of the remaining parts of this section.

(Code 1962, § 26-15; Ord. No. 5610-73, § 1; Ord. No. 6771-80, § 1; Ord. No. 9642-05, § I, 11-28-05)

Sec. 13-57.05. Violations; penalties; and deposits of fine monies.

(a) Any person violating any provisions of section 13-57 addressing unreasonable noise regulations shall be subject to the following fines:

- (1) One hundred dollars (\$100.00) for a first offense;
- (2) Two hundred fifty dollars (\$250.00) for a second;
- (3) Five hundred dollars (\$500.00) for a third offense and every subsequent.

(b) Any person issued a citation for violating any provision of section 13-57 shall make payment through the Ordinance Violations Bureau. Failure to make payment within thirty (30) days of the issuance of a citation for violation any provision of section 13-57 shall result in the assessment of a late fee of fifty dollars (\$50.00).

(c) A citation for a violation of section 13-57 shall be issued to the responsible party. A responsible party is defined as the person shown to have exclusive possession of the property (a present possessory interest). If no responsible party is present upon the premises, the responsible party is deemed to be the property owner(s), as determined by reference to the records of the St. Joseph County Assessor. In such an instance, copies of the citation must be mailed to the property owner as determined from the Assessor's records.

(d) One hundred (100) percent of all monies collected and retained by the City for violation of section 13-57 addressing loud and raucous noise regulations shall be deposited into the Police Department Training Fund (Fund #220). Such monies shall be used solely for the purpose designated for such fund. Any and all interest earned on the monies deposited in Fund #220 shall not revert to the general fund. The Department of Administration and Finance shall send monthly written reports to the Office of the City Clerk detailing the amount of money collected and the amount of interest earned, with such reporting being filed no later than the last business day of each month.

(Ord. No. 8136-90, § 1; Ord. No. 8328-92, § 1, 12-14-92; Ord. No. 9503-04, § I; Ord. No. 9642-05, § II, 11-28-05)

Sec. 13-57.1. Use of police officers at large parties or gatherings requiring a second response.

(a) *Complaint and first response.* After a complaint is received about a disturbing or disorderly party or gathering, police officers responding to the complaint must determine if there is, in fact, a threat to the public peace, health, safety or general welfare upon arriving at the location. If the party or gathering appears to be a disturbance, the resident or person in charge of the party, or other responsible person shall be informed of the disturbance, the complaint, and the fact that the disturbance must cease. Information shall be further conveyed that the party or gathering shall be allowed to continue so long as the disturbance which generated the complaint ceases. They should further be informed that any continuing disturbance which precipitates another call and a second response by the police will result in a charge to the responsible person for the cost of the police service. A "First Response Notice" should then be handed to the responsible party, preferably after it is signed but the signature is not mandatory.

(b) *Second response.* If the police receive further complaints about the disturbance which requires a second response, the officers responding should again determine if there is a disturbance of the peace resulting from the party or gathering or if the complaint is unfounded. If a disturbance is occurring, the responsible party shall then be given a "Disturbance Violation Fee Notice," indicating that the City will bill the responsible party for the personnel and equipment costs, or other damage and expense, incurred as a result of the disturbance.

(c) *Responsible party.* A responsible party is defined as the person in charge of the premises and the person responsible for the event, or if either of those persons is a minor, then the parents or guardians of that minor. If no responsible party is located on the premises, the responsible party is deemed to be the property owner(s), as determined by reference to the records of the St. Joseph County Assessor. In such an instance, the responding officer(s) shall leave a copy of the "First Response Notice," as well as a copy of the "Disturbance Violation Fee Notice" if a second response is required, at the premises. Copies of these notice(s) must also be mailed to the property owner as determined from the Assessor's records.

(d) *Special security assignment.* The police personnel utilized during a second response after the first warning, to control the threat to the public peace, health, safety or general welfare, shall be deemed to be on special security assignment over and above the services normally provided.

(e) *Costs:*

(1) The costs of such special security assignment may include minor damages to City property and/or injuries to City personnel. A citation for a single incident violation of this section shall be issued to each violator imposing a fifty dollar (\$50.00) fine payable through the Ordinance Violation Bureau as addressed in section 2-213 of this Code. The City reserves its legal options to elect any other legal remedies when the costs or damage exceed fifty dollars (\$50.00).

(2) All costs assessed hereunder shall be payable through the Ordinance Violation Bureau of the City of South Bend, and shall be deposited into the Law Enforcement Continuing Education Fund.

(f) *Timeliness of notice issuance.* A "Disturbance Violation Fee Notice," issued hereunder, may be issued to a responsible party within twelve (12) hours of the issuance hereunder to that party of a "First Response Notice."

(g) *Enforcement nonexclusive of other remedies.* The enforcement of this section shall not abrogate the responding officer's enforcement of any other local ordinances or State laws which may also be violated as a result of a loud party or gathering.

(Ord. No. 8079-90, § 1)