

ORDINANCE NO. 1996

AN ORDINANCE AMENDING CITY OF DANVILLE, KENTUCKY CODE OF ORDINANCE CHAPTER 8 (NUISANCES) ARTICLE III (CONTROL OF SOUNDS) SECTION 5-12, TO EXEMPT SOUNDS FROM RETAIL ESTABLISHMENTS, SIDEWALK CAFES AND OUTDOOR ENTERTAINMENT AND EVENT VENUES IN THE CITY OF DANVILLE.

WHEREAS, the Board of Commissioners deems it necessary and appropriate to amend its existing ordinance pertaining to the control of sounds within the City so as to provide exemptions of sounds from retail establishments, sidewalk cafes and outdoor dining, and outdoor entertainment and event venues;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DANVILLE, KENTUCKY, as follows:

SECTION ONE: Chapter 8 (Nuisances) Article III (Control of Sounds) in the City of Danville Code of Ordinances is hereby amended to read as follows:

ARTICLE III. CONTROL OF SOUNDS

§ 8-41. Applicability.

This article and the rules and regulations created hereby shall apply to the control of all sound originating within the incorporated areas of the city pursuant to KRS 224.710 to 224.800. It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which exceeds the limits set forth in section 8-43, Table 1.

(Ord. No. 1454, § 1, 2-11-91)

§ 8-42. Terminology and standards.

(a) Terminology: All terminology used in this article and not defined below shall conform with applicable publications and standards of the American National Standards Institute (ANSI) or its successor body, the Commonwealth of Kentucky, and other applicable industry standards.

(1) A-weight sound level: The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated db(A).

(2) Classification of use occupancies: For the purpose of defining the "use occupancy," all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing transient commercial sleeping quarters shall be considered commercial use. All premises containing business where sales, professional or another commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In case of multiple use, the more restrictive use category shall prevail. Hospitals, nursing homes, schools, libraries

and church uses shall be considered residential uses. Any area not otherwise classified shall conform to commercial standards.

(3) Decibel (db): A unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micronewtons per square meter.

(4) Emergency work: Any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

(5) Gross vehicle weight rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(6) Motor vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.

(7) Noise control officer or NCO: The city codes enforcement officer or person(s) designated by the city manager, shall be the noise control officer (NCO).

(8) Noise-sensitive zone: See section 8-44(8).

(9) Person: Any individual, association, partnership or corporation and includes any officer, employee, department, agency, or instrumentality of the United States, the state or any political subdivision thereof.

(10) Sound level: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI s1.4-1971, Type 2 or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(11) Sound level meter: An instrument which includes a microphone, amplifier, RMS detector, response dampening circuit, output meter, and weighting network used to measure sound pressure levels.

(12) Sound pressure level: Twenty (20) times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference of twenty (20) micronewtons per square meter. RMS sound pressure means the square root of the time averaged square of the sound pressure.

(13) Unreasonably loud, harsh, or excessive noise: Any manufactured noise plainly audible at a distance of fifty (50) feet from its point of origination or emanation.

(b) Measurement Standards: Standards, instrumentation, personnel, measurement procedures, and reporting procedures to be used in the measurement of sound as provided for in this section shall be consistent with accepted and sound principles of noise measurement in accord with the standards of the American National Standards Institute, or its successor body, the Commonwealth of Kentucky, or other applicable industry standards.

(Ord. No. 1454, § 2, 2-11-91; Ord. No. 1778, § 1, 10-25-10)

§ 8-43. Maximum permissible sound levels by use occupancy category.

Unless otherwise provided in this article, no person shall operate or cause to be operated any source of sound from any land or property in such a manner as to create a sound level which exceeds the limits set forth for the type of use occupancy category of lands or properties receiving the sound as described in Table 1 when measured at or beyond the property boundary of the land use from which the sound emanates.

Table 1
Sound Levels by Use Occupancy Category

Use Occupancy Category of Receiving Use	Time	Sound Level Limit Db(A)
Residential or public space	7:00 a.m. - 10:00 p.m.	70
	10:00 p.m. - 7:00 a.m.	60
Commercial or business	7:00 a.m. - 10:00 p.m.	75
	10:00 p.m. - 7:00 a.m.	70
Manufacturing industrial or agricultural	All times	85
Noise-sensitive zone	All times	55

In addition, for any source of sound, the maximum sound level shall not exceed the sound level in Table 1 above for the use occupancy categories from which it emanates, measured by single incident.

(Ord. No. 1454, § 3, 2-11-91)

§ 8-44. Specific prohibitions against different types of noises.

In addition to the general prohibitions set out above and the maximum permissible sound levels set out in Table 1, and unless otherwise exempted by this article or by resolution(s) of the city, the following specific acts and noises, or the causing or permitting thereof, are hereby prohibited and declared to be in violation of this article:

(1) Radios, television sets, musical instruments and similar devices: Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument or similar device which produces or reproduces sound:

a. Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create unnecessary noise across a residential real property line or through a floor, ceiling or wall separating apartment units, condominium units or other such residential units.

b. Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create excessive and unnecessary noise in a noise-sensitive area.

(2) Loudspeakers: Using or operating for any purpose any loudspeaker, loudspeaker system or similar device in areas within or adjacent to residential, commercial or noise-sensitive areas, except for any noncommercial public speaking, public assembly or other activity for which a special permit has been issued by the NCO or the city.

(3) Street sales: Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise-sensitive zone of the city except by special permit issued by the NCO or the city.

(4) Animals: Owning, possessing or harboring any animal or bird which, frequently or for continued duration, howls, barks, meows, squawks or makes other sounds which creates excessive and unnecessary noise across a residential zoned or commercial zoned real property line or within a noise-sensitive zone. Notwithstanding the above-mentioned provision, the owning, possessing, or harboring of any barking dog, the sound from which creates excessive and unnecessary noise across any property line, is prohibited. For the purposes of this regulation, "barking dog" is defined as a dog that barks, bays, cries, howls, or makes any other noise continuously and/or incessantly for a period of ten (10) minutes or barks intermittently for one-half hour or more to the disturbance of any person at any time of day or night regardless of whether the dog is physically situated in or upon private property; however, a dog shall not be deemed a "barking dog" for the purposes of this regulation if, at the times the dog is barking or

making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other similar cause which teased or provoked the dog.

(5) Construction and demolition: Operating or causing the operation of any tools and equipment used in construction, drilling, repair, alteration, or demolition work between the hours of 7:00 p.m. and 7:00 a.m. on weekdays, or between 6:00 p.m. and 10:00 a.m. on weekends or holidays in or within fifty (50) yards of any residential area or noise-sensitive zone, except for emergency work by public service utilities or by special permit issued by the NCO or the city. This section shall not apply to the use of domestic power tools that are regulated in paragraph (9) below.

(6) Powered model vehicles or model airplanes: Operating or permitting the operation of powered model vehicles:

a. Between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends or holidays in or within one hundred (100) feet of any residential area or noise-sensitive zone; or

b. In such a manner as to exceed the levels set for public space land use, measured at any point on the public space or public right-of-way.

(7) Motorboats: Operating or permitting the operation of any motorboat or motor-powered device in any lake, river, stream, or other waterway in such a manner as to cause noise within a residential area or noise-sensitive zone, that exceeds eighty-five (85) db(A) when measured at least fifty (50) feet from the craft.

(8) Noise-sensitive zones:

a. Creating or causing any excessive and unnecessary noise within or adjacent to any noise-sensitive zone containing a hospital, nursing home, school, court or other designated area provided that conspicuous signs are displayed indicating the presence of the noise-sensitive zone. Noise-sensitive zones are those zones that are created from time to time by resolutions of the city commissioners upon a finding that the subject area contains a land use which is sensitive to or subject to adverse reactions from noise.

b. Creating or causing any sound within any noise-sensitive zone so as to exceed the decibel levels set forth for such zone when measured at a distance of at least twenty-five (25) feet from the sound source, provided that conspicuous signs are displayed indicating the presence of the noise-sensitive zone.

(9) Domestic power tools: Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 7:00 a.m. the following day on weekdays, or 10:00 p.m. and 8:00 a.m. on weekends and holidays unless such equipment is operated inside a building or other structure so that the sound therefrom does not travel across any residential real property line or noise-sensitive zone and exceed the levels set forth in Table 1. All such equipment shall be properly muffled and maintained in working order so as not to create excessive and unnecessary noise.

(10) Multifamily dwellings: Operating or permitting the operation within a multifamily dwelling of any of the equipment described in subparagraph (9) above, in a manner as to exceed fifty-five (55) db(A) from 7:00 a.m. to 10:00 p.m. when measured within an adjacent intrabuilding dwelling. The maximum permissible sound level when measured in an adjacent intrabuilding area between 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays shall be fifty (50) db(A).

(11) Recreational motorized vehicles operating on or off public rights-of-way: No person shall operate or cause to be operated any recreational motorized vehicle, motorcycle, "moped", dune buggy or any other type of motorized vehicle that exceeds the limits set forth in Table 1 on

or off the public right-of-way in any residential or noise-sensitive zone. This section shall apply to all motorized vehicles noted above, whether or not duly licensed and registered.

(12) Whereas KRS 277.190 provides that:

"Every railroad company shall provide each locomotive engine running over any of its lines with a bell of ordinary size and a whistle. The bell shall be rung or the whistle sounded, outside of cities, at a distance of at least fifty (50) rods from the place where the track crosses upon the same level any highway or crossing at which a signboard is required to be maintained, and the bell shall be run or the whistle sounded continuously or alternately until the engine has reached the highway or crossing. In cities such signals shall be given as the legislative body of the city requires (786)",

The emission of audible warning signals of bells or whistles by railroad trains operating in the city exceeding Table 1 standards [is prohibited], except as may be preempted by federal law.

(13) Motor vehicles and motorcycles on public rights- of-way: No person shall operate or cause to be operated any vehicle or motorcycle in such manner as to produce an unreasonably loud, harsh or excessive noise, or to discharge into the open air the exhaust of any vehicle except through a muffler or other device which will effectively prevent any unreasonably loud, harsh or excessive noises therefrom.

(14) Adequate mufflers or sound disruption devices:

a. No person shall operate or cause to be operated any motor vehicle or motorcycle not 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 caused to be removed or rendered inoperative, other than for purposes of maintenance, repair or replacement, any muffler or sound-dissipative device on a motor vehicle or motorcycle.

(15) Refuse collection vehicles: No person or entity shall:

a. Operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse, between the hours of 7:00 p.m. and 7:00 a.m. the following day in a residential area or noise-sensitive zone.

b. Collect refuse with a refuse collection vehicle between the hours of 6:00 p.m. and 6:00 a.m. the following day in a residential area or noise-sensitive zone.

(16) Standing motor vehicles: No person or entity shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such a vehicle for a period of longer than five (5) minutes in any hour while the vehicle is stationary for reasons other than traffic congestion, on a public right-of-way or public space within one hundred fifty (150) feet (46 meters) of a residential area or designated noise-sensitive zone, between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(17) Explosives, firearms, and similar devices: The use or firing of explosives, firearms or similar devices which create impulse sound so as to cause a noise disturbance across a real property boundary or on a public space or right-of-way without first obtaining a permit from the NCO or the city. Such permit need not be obtained for licensed game-hunting activities on property where such activities are authorized.

(Ord. No. 1454, § 4, 2-11-91; Ord. No. 1778, § 2, 10-25-10)

§ 8-45. Method of sound level measurement.

Sound level measurement shall be made with a sound level meter using the A-weighting scale, in accordance with standards promulgated by American National Standards Institute or other reasonable standards adopted by commonwealth or the city.
(Ord. No. 1454, § 5, 2-11-91)

§ 8-46. Exempt noises.

The following are exempt from the provisions of sections 8-41, 8-43 and 8-44:

(1) Lawn mowers, yard equipment and agriculture equipment during daylight hours (7:00 a.m. to 10:00 p.m.) when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and proper operating condition.

(2) Nonamplified crowd noises resulting from activities such as those planned by student, governmental or community groups.

(3) Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition. Such construction shall not begin prior to 7:00 a.m. and shall cease by 7:00 p.m. unless a special permit has been granted by the noise control officer or the city.

(4) Noises of safety signals, warning devices, emergency pressure relief valves, and bells and chimes of churches. This exemption shall not nullify section 8-44(12).

(5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.

(6) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the NCO or the city in accordance with this article. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and in the sections or subsections of this article authorizing the issuance of the permit.

(7) Noises made by persons having obtained a permit to use the streets or other public space.

(8) All noises coming from the normal operations of aircraft (not including model aircraft) and aircraft ground testing operations between 8:00 a.m. and 8:00 p.m. Monday through Saturday and only on Sunday from 12:00 noon to 5:00 p.m.

(9) Any noise, including but not limited to, noise relating to the operation of trains, regulation of which is preempted by the federal government, but only to the extent of such federal preemption.

(10) Noises related to retail establishments, including amplified and unamplified sound; provided that all outdoor amplified sound (a) shall only be permitted during the retail establishment's regular business hours and in no event later than 10:00 p.m. on Monday, Tuesday, Wednesday, and Thursday, and 11:00 p.m. on Friday and Saturday, and 9:00 p.m. on Sunday, and (b) shall not exceed 120% of the maximum permitted sound levels applicable to commercial businesses in § 8-43 above, and (c) shall not be in violation of any other provision of the Code of Ordinances, including, but not limited to, § 11-1 "Shouting, etc., and use of sound-amplifying devices."

(11) Noises related to sidewalk cafes and other outdoor dining areas, including noise created by dining patrons, outdoor televisions and music speakers, and outdoor live entertainment, including amplified and unamplified sound; provided that all outdoor amplified sound (a) shall be directed toward the interior of the sidewalk café and not directed outward toward the public right-of-way, (b) shall only be permitted until 10:00 p.m. on Monday, Tuesday, Wednesday, and Thursday, 11:00 p.m. on Friday and Saturday, and Sunday between 10:00 a.m. to 9:00 p.m., (c)

shall not exceed 120% of the maximum permitted sound levels applicable to commercial businesses in § 8-43 above, and (d) shall not be in violation of any other provision of the Code of Ordinances, including, but not limited to, § 11-1 "Shouting, etc., and use of sound-amplifying devices."

(12) Noises related to private outdoor entertainment and event venues, including noise created by patrons and attendees, outdoor music speakers, and outdoor live entertainment and shows, including amplified and unamplified sound; provided that all outdoor amplified sound (a) shall only be permitted until 10:00 p.m. on Monday, Tuesday, Wednesday, and Thursday, 11:00 p.m. on Friday and Saturday, and Sunday between 10:00 a.m. to 9:00 p.m., (b) shall not exceed 120% of the maximum permitted sound levels applicable to commercial businesses in § 8-43 above, and (c) shall not be in violation of any other provision of the Code of Ordinances, including, but not limited to, § 11-1 "Shouting, etc., and use of sound-amplifying devices." For purposes of this Subsection 12, "private outdoor entertainment and event venues" shall mean a private establishment providing outdoor space for group events and live entertainment such as performances, and that may include eating and drinking.

§ 8-47. Special permits to exceed noise levels.

Application for a permit for relief from the maximum noise level limits designated in this article may be made in writing to the NCO. Any permit granted by the NCO hereunder must be in writing and shall contain all conditions, including the time periods and beginning and ending dates, upon which the permit is granted. In determining whether to grant or deny the permit, the NCO shall allance the hardship to the applicant, the community, and other persons of not granting the 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 permit. The NCO may grant the applied for special permit only as follows:

(1) The NCO may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound-attenuating devices.

(2) Permits for entertainment. Permits may be granted for the purpose of participatory and/or spectator entertainment, the primary purpose of which is not to promote the sale of goods or services, under the following conditions:

a. The permit will be effective for only twelve (12) hours in each twenty-four-hour day during the length of the permit period.

b. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight during the permit period.

c. The beginning and ending times and dates of the permit period shall be stated on the permit.

(3) Other special permits for nonentertainment special purposes may be issued by the NCO or the city under the following conditions:

a. If the special purpose relates to the operation of a trade or business, the special purpose must not be in the ordinary course of that trade or business and must be necessary to the operation of the trade or business.

b. If the special purpose does not relate to the operation of a trade or business, the special purpose must not be an ordinary event in the affairs of the applicant and must be compatible with the ordinary activities within the neighborhood in which the special purposes is proposed to occur.

~~c. If the special purpose is a recurring one, int must not recur more than four (4) times each calendar year.~~

d c. Except in emergency situations, as determined by the NCO, the special permit may be issued for eight (8) hours (between 7:00 a.m. and 12:00 midnight) only.

e d. Special permits may be issued for no longer than fifteen (15) consecutive days, renewable by further application to the NCO.

(4) No permit may be issued to permit the use of any loudspeaker or sound-amplifying device on the exterior of any building which at any time exceeds the sound level limits in Table 1 except those used for emergency warnings.

(Ord. No. 1454, § 7, 2-11-91)

§ 8-48. Inspections.

The NCO and law enforcement officers may:

(1) Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or records at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this article may exist. Such inspection may include administration of any necessary tests.

(2) Stop any motor vehicle, motorcycle or motorboat operated on a public right-of-way, public space or public waterway that the law enforcement officer or the NCO has probable cause to believe is violating any provision of this article; issue an abatement order; and/or require the motor vehicle, motorcycle or motorboat to be inspected or tested as the law enforcement officer or NCO may reasonably require.

(Ord. No. 1454, § 8, 2-11-91)

§ 8-49. Enforcement responsibility.

The noise control officer and the city shall have primary enforcement responsibility for this article. The NCO shall coordinate with the city police department and the county attorney's office concerning the issuance of complaints and the prosecution of persons and entities isolating this article. The NCO shall also coordinate with federal and state authorities and as necessary enforce federal statutes and regulations to the extent authorized by the Federal Quiet Communities Act, and other applicable law.

(Ord. No. 1454, § 9, 2-11-91)

§ 8-50. Penalties.

Each of the following penalties and remedies, either singularly or collectively, may be imposed or applied upon the occurrence of a violation of this article:

(1) Prosecution: Any person violating any of the provisions of this article shall be prosecuted as a misdemeanor violator and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed ninety (90) days or by both such fine and imprisonment. Each time that an offense or violation of this article occurs shall be deemed a separate offense.

(2) Cease-and-desist order:

a. Upon a determination by the NCO that a source of noise is being conducted in violation of this Article, the NCO shall issue an order directing the operator or operators thereof to cease and desist such operations until the violation is corrected. Such order shall be served by personal delivery to the source of noise or by deposit in the U.S. Mail by registered or certified mail addressed to the operator of the noise facility at the location thereof. If such order is delivered personally, a copy of the order shall be posted on the property concerned. If any

operator shall fail to comply with a valid, duly served cease-and-desist order, he shall be guilty of a separate and additional violation of this article for such failure to comply. Each day's continuing violation shall constitute a separate and distinct offense.

b. Any person receiving a cease-and-desist order may appeal such order to the NCO by serving a notice of appeal upon the NCO with ten (10) days of receipt of such order. Such notice may be served by deposit in the U.S. Mail by registered or certified mail addressed to the Noise Control Officer c/o City of Danville, Municipal Building, or the then current office mailing address. Upon receipt of a notice of appeal, the NCO shall grant a hearing to the appellant at the earliest possible date not later than ten (10) days following the receipt of notice of appeal. At such hearing, the appellant is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter. The decisions of the NCO may be appealed in writing to the city commissioners with ten (10) days following such a decision by filing a written notice of appeal and grounds therefor with the city clerk.

(3) Civil proceedings: Upon determination by the NCO that a source of noise is being conducted in violation of this article or in violation of a cease-and-desist order issued by the NCO, in addition to other remedies provided in this article and by the laws of the commonwealth, city, the NCO may, upon authorization by the commissioners, cause to be instituted any appropriate legal action or proceedings to restrain, correct or abate such violations or otherwise prevent the unlawful use of such noise operation or the unlawful operation of such facility by any person or entity.

(Ord. No. 1454, § 11, 2-11-91)

SECTION TWO: This ordinance is effective upon its publication.

SECTION THREE: If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED 04.27.2022.

GIVEN SECOND READING AND PASSED 07.11.2022.

PUBLISHED IN THE ADVOCATE-MESSENGER.

APPROVED:


G. MICHAEL PERROS, MAYOR

ATTEST:


ASHLEY RAIDER, CITY CLERK

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