

39.04.2 NOISY PARTIES AND GATHERINGS.

- (1) Prohibition. No person shall, between the hours of 10:00 p.m. and 7:00 a.m. congregate at, or participate in any party or gathering of two or more people from which noise emanates of a sufficient volume so as to disturb the peace, quiet, or repose of another person. No person shall knowingly remain at such a noisy party or gathering.

- (a) Evidence. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring; or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of a violation of this section.

(b) Duty to Disperse. When a police officer determines that a party or gathering is in violation of this section, the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. No person shall knowingly remain at such a party or gathering.

(c) Exceptions. The following are exempt from a violation of this section:

- (i) Activities which are duly authorized, sponsored or licensed by the City of Winona, so long as the activity is conducted pursuant to the conditions of the license, permit or contract authorizing such activity;
- (ii) Church bells, chimes or carillons; and
- (iii) Persons who have gone to a party for the sole purpose of abating the violation.
- (d) Penalties. Every owner or tenant of the premises where a party or gathering in violation of this section occurs, who is present at such party or gathering, is guilty of a misdemeanor. Any person who refuses to disperse from a party or gathering in violation of this section after being ordered by a police officer to do so, is guilty of a misdemeanor.

(e) Enforcement. The Police Department shall be charged with the responsibility of enforcing this section.

- (2) Owner's Liability. For purposes of this section, owner is defined to include corporations and partnerships as well as individual owners.

- (a) The owner of a licensed residential structure constituting one or more buildings (licensed premises) shall be responsible to cause persons occupying a rental dwelling unit situated within the licensed premises to conduct themselves in such a manner so as to not cause the licensed premises to be in violation of the prohibition against noisy parties and gatherings set forth in Section 39.04.2 of this Code.

(b) Upon determination by the Police that the licensed premises or any rental dwelling unit within such were used in a manner in violation of Section 39.04.2, the Department of Community Development shall notify the owner and manager by regular mail of such violation and direct the owner and manager to take steps to prevent further violations at the licensed premises.

(c) If another violation of the noise pollution regulations occurs at the licensed premises within twelve (12) months of an incident for which notice provided in subsection (b) of this section was given, the owner and manager shall be notified of the subsequent violation by the Department of Community Development and shall be required to submit a written report of actions taken by the owner and/or manager to eliminate future violations of the noise pollution ordinance. This written report shall be submitted to the Department of Community Development within five (5) days, excluding intervening weekends and holidays, of the notice of violation, and shall detail all actions taken by the owner and/or the manager in response to all notices of violations at the licensed premises within the preceding twelve (12) months.

(d) Further violations of the noise pollution regulations shall be dealt with as follows:

- (i) On licensed premises where a single rental dwelling unit is located, if another violation of the noise pollution regulations occurs on the licensed premises within twelve (12) months after receipt of notice pursuant to subsection (b), the city council may impose a civil fine not to exceed \$1,000 and, additionally, the rental housing license may be suspended or revoked for such dwelling unit.

(ii) On licensed premises where the licensed residential structure contains two or more rental dwelling units, if three violations of the noise pollution regulations have occurred in one rental dwelling unit or if four violations of the noise pollution regulations have occurred on the licensed premises within twelve (12) months after receipt of notice pursuant to subsection (b), the city council may impose the following sanctions. If three violations of the noise pollution regulations have occurred in one rental dwelling unit within such twelve (12) month period of time, the City Council may impose a civil fine not to exceed \$1,000 and, additionally, the rental housing

license for such rental dwelling unit may be suspended or revoked. If four violations of the noise pollution regulations have occurred on the licensed premises within such twelve (12) month period of time, the City Council may impose a civil fine not to exceed \$1,000 and, additionally, the rental housing license may be suspended or revoked for the licensed premises.

- (e) Any decision to suspend or revoke a license or impose a civil fine shall be made by the City Council in accordance with the notice and hearing requirements of Section 51.03 of this Code.

(f) The rental housing license may be reinstated by the Department of Community Development after suspension or revocation or payment of a fine by the licensee, upon receipt of payment to the City of a reinstatement fee as set forth in Chapter 51 of this Code.

(g) No suspension or revocation shall be imposed for a violation of section (1) which occurred during the pendency of eviction proceedings (unlawful detainer) or within Thirty (30) days, or such other time period required by the lease, of notice given by the owner or manager to a tenant to vacate the premises, where the violation related to or occurred in the unit for which eviction proceedings were undertaken or notice to vacate was given. Eviction proceedings shall not be a bar to sanctions pursuant to this section unless the owner or manager provides a notarized copy to the Department of Community Development at the time of delivery to the tenants. No action shall be taken under this section against an owner who was himself/herself, or through his/her agent, the complainant on the underlying violation of Section 39.04.2. The owner or manager shall provide and maintain at the Department of Community Development a current listing of all managers, caretakers or agents to verify the preceding.

(h) All written leases for licensed rental housing premises which shall be in effect after August 1, 2001, shall contain a clause providing that conduct which would be violative of subsection (a) of this section, shall constitute a material breach of the lease and grounds for termination of such lease.

(i) It shall be irrelevant to proceedings hereunder that the dwelling owner or others were not criminally prosecuted or were acquitted of criminal charges for the incidents serving as the basis of the suspension or revocation, but a prerequisite to any action by the City Council hereunder shall be the arrest of either the dwelling owner or of others in attendance at a party or gathering.

(j) Any person, firm, corporation or partnership that shall violate section (1) shall be guilty of a misdemeanor. Each violation of this section shall constitute a separate offense.

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• **39.05 DECLARATION OF NUISANCES.**

The following acts are declared to be public nuisances:

(a) The use of sound amplification equipment between the hours of 10:00 o'clock p.m. and 8:00 o'clock a.m.:

- (1) In Lake Park, or

(2) On any other public property not included in (1) hereof, provided, the use of sound amplification equipment is not a public nuisance if the sound produced cannot be heard on adjacent property, or

(3) In any other area of the city, provided, the use of sound amplification equipment is not a public nuisance if the sound produced cannot be heard beyond the property lines of the property from which the sound emanates.

- (b) The use of sound amplification equipment emitting music between the hours of 8:00 o'clock a.m. and 10:00 o'clock p.m. in Lake Park, provided the use of sound amplification equipment emitting music is not a public nuisance if the sound produced cannot be heard beyond the boundaries of Lake Park.

(c) Noise on any street adjacent to any school, learning institution, religious institution, or court, or adjacent to any hospital, or home for the aged, or other similar institution which interferes with the working of such institution or disturbs or annoys an inhabitant in the institution, provided that conspicuous signs indicating the presence of such institutions or buildings are displayed near streets by such institutions.

(d) The operation of any motor vehicle or any minibike or motorbike or other similar vehicle or device in any way which results in the squealing of tires or other unnecessary noise on any highway, private road, public or private parking lot, driveway, or other property in the city, except when there is reason to do so for safe operation.

(e) Repairing, building, rebuilding, running, operating or testing any motor vehicle or other internal combustion engine in such a manner to create unnecessary noise.

(f) The operation of any radio receiving set, tape or disc player, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner, considering the time and place and the

purpose for which the sound is produced, so as to disturb the peace, quiet or repose of a person or persons of ordinary sensibilities.

- (1) The play, use or operation of any radio, tape or disc player, musical instrument, phonograph or other machine or device for the production or reproduction of sound in such a manner as to be plainly audible at a distance of fifty feet from such machine or device shall be prima facie evidence of a violation of this section.

(2) When sound violating this section is produced or reproduced by a machine or device that is located in or on a vehicle, the vehicle's owner is guilty of the violation, provided, however, that if the vehicle's owner is not present at the time of the violation the person in charge or control of the vehicle at the time of the violation is guilty of the violation.

(3) This section shall not apply to sound procured by the following:

 - (i) Amplifying equipment used in connection with activities which are authorized, sponsored or permitted by the City, so long as the activity is conducted pursuant to the conditions of the license, permit, or contract authorizing such activity;
 - (ii) Church bells, chimes or carillons;
 - (iii) School bells;
 - (iv) Anti-theft devices; or
 - (v) Machines or devices for the production of sound on or in authorized emergency vehicles.
- (4) With the exception of the machines or devices listed in subsection (3) above, this subdivision shall apply to all radios, tape and disc players, musical instruments, phonographs, and machines and devices for the production or reproduction of sound, whether on public or private property.

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