

City Council Meeting Date: June14, 2016

To: Mayor and City Council
City Administrator

From: Monte Nelson, Chief of Police

..Title

Discussion Item: Proposed changes to existing Disorderly Conduct and Loud Party Ordinances, and a new/proposed Unlawful Noise Ordinance.

..Body

Action Requested:

The Northfield City Council is requested to review and discuss the attached proposed changes to the City ordinance related to Disorderly Conduct and Loud Parties/Assemblies, and a proposed new Unlawful Noise section. In particular, Council is asked to discuss the proposed Noise Ordinance as it relates to outdoor performances and provide direction to staff for future Council action.

Summary Report:

The proposed changes to the City ordinance related to Disorderly Conduct and Loud Parties/Assemblies and new section of Noise Ordinance were previously presented to Council at the May 3rd City Council meeting. Parts of the new Noise Ordinance relate directly to music/noise generated at bars and restaurants, as well as other private homes or venues. Please see and review the attachments including the proposed Ordinance, the current Disorderly Conduct and Loud Party Ordinance, and the staff report from the May 3rd City Council meeting.

Staff recommends the proposed Noise Ordinance to address noise complaints and issues that have been received for years and have proven difficult, if not impossible to resolve with reasonable, ordinance-supported action. Section 50-90 (d) (3) addresses the playing of loud, amplified and unamplified music/sounds/noise:

(d) (3) The use, operation, or permitting the playing, use, or operation of any radio receiving set, musical instrument, phonograph, or other machine or device for the amplification, production or reproduction of sound at any time in such manner as to be likely to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of ordinary sensibilities who might be in its vicinity, or between the hours of 10:00 P.M. and 7:00 A.M. Sunday through Thursday and 11:00 P.M. and 7:00 A.M. Friday and Saturday, at such a volume so as to be plainly audible at the real property boundary of the building, structure, residence or other area in which the device is located;

Staff believes this section is fair and an important part of the proposed noise ordinance. Note there are exceptions contained in 50-90 (e) (3) for events such as the Defeat of Jesse James Days. In addition, outdoor bands at restaurants are allowed to perform during the same hours as permitted for community events such as the Defeat of Jesse James Days.

50-90 (e) (3) Government sponsored or permitted or licensed activities. Certain government, and/or government permitted or licensed public or private activities related to public entertainment, including but not limited to community events such Defeat of Jesse James Days, Fourth of July Fireworks, concerts in public parks, carnivals, and parades, shall be exempt from the provisions of this Section.

City staff and City Attorney Hood reviewed other cities ordinances, model language from the League of Minnesota Cities, and polled cities across Dakota County regarding their ordinance language and enforcement. Important information that supports this section of the ordinance includes:

- The language allows the City to address all sources of sound/music that are annoying to a “reasonable person,” regardless of the source, IE: a bar/restaurant, a private residence, a college event, etc. It allows for consistent enforcement across the City.
- This section includes two important parts, including the general description of music/sound that is considered a violation and then the time and manner of noise that is presumed a violation. Thus, the language describes what is considered a violation and then also includes time restrictions that allow for a clear public understanding of when and at what level, music/sound is prohibited.
- This portion of the Noise Ordinance is based on recommendations from the League of Minnesota Cities (LMC,) ordinances of other cities, and experiences in Northfield. Staff believes the language is legally defensible and is also reasonable based on past practice.
 - o Many other city ordinances use time restrictions to clearly define/prohibit noise. Of those cities polled, all that used times, set the timeframe as 10:00 p.m. to 7:00 (or 8:00) a.m., and only one city had a later time frame of 10:30 p.m. to 7:00 a.m., for all days of the week. Staff proposes the 10:00 p.m. Sunday – Thursday and 11:00 p.m. Friday – Saturday standard based on past practice. The Northfield Police Department has officially and unofficially used these timeframes for years when trying to resolve noise complaints. The timeframes have been generally well received by both those complaining about noise and those who are the source of the noise. But there has never been any clear language in ordinance to back these actions.
 - o The “...reasonable person” standard in the ordinance is recognized by courts, the LMC, and other cities as acceptable and defensible language.
 - o The definition of timeframes provides clear guidance for all members of the community regarding noise standards.
 - o Timeframes also help reduce/eliminate arbitrary enforcement, or lack thereof, by police.

Staff asks the Council to approve this section of the ordinance as proposed to provide a reasonable community standard for enforcement related to music/noise generated from various sources across the City.

Alternative Options:

1. The City Council may choose to amend the time restrictions to earlier or later times. We used a combination of past practice and comparable cities when proposing these times. However, there is a level of subjectivity in determining the appropriate times for limits and would be appropriate for the City Council to help define that expectation of reasonableness for Northfield.
2. The City Council may choose to delete the proposed language of this section. If the remainder of the ordinance is passed, police would rely on the less specific language in other parts of the ordinance to make a “judgement” on each different complaint.
 - a. Staff does not recommend alternative as it could lead to inconsistent/arbitrary enforcement, because there are no clear timeframes.
3. The City Council may choose to either include new “decibel level” language in the Noise Ordinance or rely on “decibel level” language currently in the Land Development Code (LDC.)
 - a. Staff and City Attorney Hood did find city ordinances that include decibel level language in their Noise Ordinance, but language varies quite a bit from city to city.
 - b. Staff does not recommend this action. Northfield Police have attempted to use the decibel level standards currently in our LDC, and it has proven difficult. These decibel levels are generally standard across the state, as most are based on a state standard of pollution control. Northfield Police Department has used sound meters in the past to monitor outdoor performances; the recorded levels have not been in excess of the LDC levels, but were clearly audible and bothersome at the location of the complainants.
4. The City Council may choose to permit exceptions to the noise ordinance. Staff found several cities that allow private parties to apply for a permit to exceed city ordinance standards. These types of ordinances were the minority of cities polled. One city limited the number of permits each year to three per business. Most cities required City Council approval of the permit. Most of those ordinances with permitting focus or limit the permits to temporary expansion of liquor licenses and/or limit to permits on public property, similar to our Community Events. Staff does not recommend permitting private exceptions to the ordinance for the following reasons:
 - a. The proposed ordinance already provides exceptions for Community Events approved by the City. Private performances on private property do not normally meet Community Event definitions.
 - b. Past experience with Community Events approved by the City does not support the idea of more permits to violate noise standards. Every year during the Defeat of Jesse James Days celebration, complaints are received about the loud music permitted until late in the evening. Staff believes it is reasonable to limit the number of such exceptions for the general peace and repose of the community at large. As noted above, outdoor bands at restaurants have been allowed to perform

during the same hours as permitted for community events such as the Defeat of Jesse James Days.

- c. Permits would require Council approval. Additional permitting and Council action does not seem prudent or efficient in this matter.
- d. The permitting process would essentially mean the City would regularly endorse noise generation that annoys and disturbs the public at large. Such permits would be contrary to the other language of the Noise Ordinance. This is problematic in many ways. Such regular city-endorsed permits to exceed community standards would call into question not just the Noise Ordinance section, but potentially the Disorderly Conduct and Loud Party Ordinance sections. How would the City justify and manage the many additional potential requests for permitted exception to the Noise Ordinance and community standards?

Tentative Timelines:

Staff will follow the direction of Council regarding future action related to the ordinance.