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MEMORANDUM

To: Mayor and City Council

From: Steve Foote, AICP
 Community Development Director

Date: February 27, 2017

Subject: Amendment to City of Dunwoody Ordinances – 2nd Read
 Chapter 18 - Noise

ITEM DESCRIPTION

Request to consider a text amendments to the City of Dunwoody code at Chapter 18, Noise, to prescribe exemptions and exceptions thereto. The proposed revisions are attached to this memo.

BACKGROUND

The city's noise regulations are contained in Chapter 18 and address noise from various sources, such as, vehicles, animals, horns, loudspeakers, construction, exhaust, etc. From time to time staff has received inquiries from contractors desiring to perform work outside of the hours/days allowed for construction work. As written, the code does not permit any exceptions to the work limitations. Staff is recommending the code be amended to provide for exemptions and exceptions to the noise regulations.

DISCUSSION

Exemptions would address 'emergency' work as determined by the City of Dunwoody. Emergency work is not addressed in today's code. The current code does included a statement on street repair. However, this statement is inappropriately contained under "Sound Trucks". The proposal is to delete this reference and include new provisions for both measures under a new subsection (c).

Exceptions are intended to address construction work only. Many times significant commercial projects have been denied approval to perform work outside the hours of our construction limitations, when in reality due to the geographic location of the site or the short duration of the work it would not have created an impact on Dunwoody residents. Staff suggests a common sense approach to providing for reasonable exceptions to the time/day restrictions.

The current regulations for construction activities is provided below.

(10) Construction or repair.

- a. Construction work of any type, including, but not limited to, the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, stream or electric hoist, automatic nailer or stapler, or any similar equipment attended by loud or unusual noise, shall be prohibited during the following times:*



1. *Before 7:30 a.m. or after 8:30 p.m. on weekdays;*
2. *Before 8:00 a.m. or after 8:30 p.m. on Saturdays; and*
3. *At any time on Sundays and/or the following legal holidays:*
 - (i.) *New Year's Day (observed);*
 - (ii.) *Memorial Day (observed);*
 - (iii.) *Independence Day (observed);*
 - (iv.) *Labor Day (observed);*
 - (v.) *Thanksgiving Day; and*
 - (vi.) *Christmas Day (observed).*

The draft changes will accomplish the following:

1. Provide exemptions for emergency work;
2. Provide exemptions for utility/road work performed under the authority of DeKalb County, City of Dunwoody, and the State of Georgia; and
3. Provide for an exception application and approval process to perform work outside of the time/day limitations listed above. This process incorporates an administrative approval process.

UPDATE

Following 1st read staff inserted an additional review consideration in response to City Council discussion. This insertion is in Section (d)(2)vi. and states:

(2) The review of the application shall, at a minimum, consider the following factors:

vi. Any inconvenience, imposition, and impact on surrounding residences and the duration of said impact weighed against the hardship compliance would create;

RECOMMENDATION

2nd Reading. Staff recommends approval of the noise ordinance amendments as proposed.

Attachments:

Proposed Amendment to Chapter 18, Noise

**AN ORDINANCE AMENDING CHAPTER 18 OF THE CITY OF DUNWOODY
CODE OF ORDINANCES BY PROVIDING FOR CERTAIN EXCEPTIONS TO THE
NOISE ORDINANCE FOR COMMERCIAL CONTRUCTION AND REPAIR**

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody’s Noise Ordinance, Chapter 18, currently does not expressly state that the City, DeKalb County, and the State of Georgia are exempt from the ordinance under certain circumstances; and

WHEREAS, furthermore, there is no process for commercial, office, institutional, and industrial contractors to request special permission to work outside the designated construction hours; and

WHEREAS, the City Council acknowledges that there are certain situations when commercial contractors need to work outside of the designated construction hours; and

WHEREAS, the Mayor and City Council find it necessary to revise Chapter 18 to allow commercial contractors to apply for exceptions, in certain situations, to the designated construction hours.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Noise, Chapter 18 of the City of Dunwoody Code, Article II (Prohibited Noises), Section 18-19(b)(16) (Sound Trucks) is hereby amended by deleting sub-section 18-19(b)(16)(b) in its entirety.

Section 2: Noise, Chapter 18 of the City of Dunwoody Code, Article II (Prohibited Noises), Section 18-19 (Loud and disturbing noises) is hereby amended by adding a new Sections 18-19 (c) and (d) to read as follows:

Sec. 18-19

- (c) Exemptions
 - (1) Emergency repair work as determined by the City of Dunwoody is exempt from this Section.
 - (2) Utility and/or road work and repairs done under the approval or authority of the City of Dunwoody, DeKalb County, or State of Georgia are exempt from this Section.
- (d) Exceptions for commercial, office, institutional, and industrial construction-related activities. An application for a Noise Ordinance

Exception may be submitted to the City of Dunwoody Community Development Director or his/her designee, and the Chief of Police, on a form and according to a schedule determined by the City. Within ten (10) days of receipt, applications shall be either (1) approved or conditionally approved in part or whole or (2) denied.

- (1) Such application shall state the following:
 - i. The reason that an exception from the provisions of this section are needed;
 - ii. The impact that a denial would have on the applicant's project;
 - iii. How the exception may reduce the impact on the public health, safety or welfare;
 - iv. How the exception is critical to ongoing construction needs and how it would be impractical or unreasonable to perform this work during normal prescribed days/times;
 - v. What measures are being incorporated or offered to protect the public health, safety and welfare;
 - vi. What notice will be provided to surrounding property owners regarding potential noise;
 - vii. The time during which the proposed activity will occur;
 - viii. The duration of the proposed activity; and
 - ix. Incomplete applications will not be accepted.
- (2) The review of the application shall, at a minimum, consider the following factors:
 - i. The entirety of the application and information provided therewith;
 - ii. The impact that denial would have on the project and property in the general vicinity;
 - iii. Whether compliance with the prescribed construction noise regulations would impose an unreasonable hardship on the applicant;

- iv. Whether compliance would create a hardship on the general public, including public roads and infrastructure, that would be alleviated by the exception;
 - v. Whether noise levels generated from the proposed activity will constitute a danger to the public health, safety, or welfare;
 - vi. Any inconvenience, imposition, and impact on surrounding residences and the duration of said impact weighed against the hardship compliance would create;
 - vii. The ability of the applicant to apply best management practices for controlling noise;
 - viii. The location of the activity and the nature of the surrounding area; and
 - ix. The time/duration of the activity being requested.
- (3) Reasonable conditions may be imposed by the reviewing authority to minimize the public impact, whether by duration, sound proofing, construction methods, hours of operation, sound levels, alternative access routes or equipment, or other appropriate measures.
- (4) Any approved Construction Noise Exception may be revoked by the Director of Community Development and the Chief of Police if the terms of the authorization are violated.
- i. An exception may be revoked if there is a:
 - 1. Violation of one or more conditions of the approval;
 - 2. Material misrepresentation of fact in the application;
 - 3. Material change in any of the circumstances relied upon in granting the approval.
- (5) Due to unforeseen and changing circumstances an approved exception may be rescheduled by the city approving authority.

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

#9.

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2017-XX-XX

SO ORDAINED, this ____ day of _____, 2017.

Approved:

Denis L. Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney

ARTICLE II. - PROHIBITED NOISES

Sec. 18-19. - Loud or disturbing noises.

- (a) *Noises deemed nuisance.* Noises considered loud or disturbing to health are deemed a nuisance. It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise, or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in the city.
- (b) *Acts declared violations.* The following acts are declared to be loud, disturbing, and unnecessary noise in violation of this section, but this enumeration shall not be deemed to be exclusive:

(10) *Construction or repair.*

- a. Construction of any type, including, but not limited to, the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, stream or electric hoist, automatic nailer or stapler, or any similar equipment attended by loud or unusual noise, shall be prohibited during the following times:
 - 1. Before 7:30 a.m. or after 8:30 p.m. on weekdays;
 - 2. Before 8:00 a.m. or after 8:30 p.m. on Saturdays; and
 - 3. At any time on Sundays and/or the following legal holidays:
 - (i.) New Year's Day (observed);
 - (ii.) Memorial Day (observed);
 - (iii.) Independence Day (observed);
 - (iv.) Labor Day (observed);
 - (v.) Thanksgiving Day; and
 - (vi.) Christmas Day (observed).

(16) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes; the use of sound trucks for noncommercial purposes during hours and in places and with volume as would constitute this use as a public nuisance, provided that the provisions of this section shall not apply to or be enforced against:

- a. Any vehicle of the city while engaged in necessary public business;
- ~~b. Excavations or repairs of streets by or on behalf of the city, county, or state at night when the public welfare and convenience renders it impossible to perform such work during the day;~~
~~or~~
- be. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

(c) *Exemptions*

- (1) Emergency repair work as determined by the City of Dunwoody is exempt from this Section.
- (2) Utility and/or road work and repairs done under the approval or authority of the City of Dunwoody, DeKalb County, or State of Georgia are exempt from this Section.

- (d) Exceptions for commercial, office, institutional, and industrial construction related activities. An application for a Noise Ordinance Exception may be submitted to the City of Dunwoody Community Development Director, or his/her designee, and the Chief of Police, on a form and according to a schedule determined by the City. Within ten (10) days of receipt, applications shall be either; (1) approved or conditionally approved in part or whole, or (2) denied.
- (1) Such application shall state the following:
 - i. The reason that an exception from the provisions of this section are needed;
 - ii. The impact that a denial would have on the applicant's project;
 - iii. How the exception may reduce the impact on the public health, safety or welfare;
 - iv. How the exception is critical to ongoing construction needs and how it would be impractical or unreasonable to perform this work during normal prescribed days/times;
 - v. What measures are being incorporated or offered to protect the public health, safety and welfare;
 - vi. What notice will be provided to surrounding property owners regarding potential noise;
 - vii. The time during which the proposed activity will occur;
 - viii. The duration of the proposed activity; and
 - ix. Incomplete applications will not be accepted.
 - (2) The review of the application shall, at a minimum, consider the following factors:
 - i. The entirety of the application and information provided therewith;
 - ii. The impact that denial would have on the project and property in the general vicinity;
 - iii. Whether compliance with the prescribed construction noise regulations would impose an unreasonable hardship on the applicant;
 - iv. Whether compliance would create a hardship on the general public, including public roads and infrastructure, that would be alleviated by the exception;
 - ~~(e)v.~~ Whether noise levels generated from the proposed activity will constitute a danger to the public health, safety, or welfare;
 - vi. **Any inconvenience, imposition, and impact on surrounding residences and the duration of said impact weighed against the hardship compliance would create;**
 - vii. The ability of the applicant to apply best management practices for controlling noise;
 - viii. The location of the activity and the nature of the surrounding area; and
 - ix. The time/duration of the activity being requested.
 - (3) Reasonable conditions may be imposed by the reviewing authority to minimize the public impact, whether by duration, sound proofing, construction methods, hours of operation, sound levels, alternative access routes or equipment, or other appropriate measures.
 - (4) Any approved Construction Noise Exception may be revoked by the Director of Community Development and the Chief of Police if the terms of the authorization are violated.
 - i. An exception may be revoked if there is a:
 1. Violation of one or more conditions of the approval;
 2. Material misrepresentation of fact in the application;
 3. Material change in any of the circumstances relied upon in granting the approval.
 - ~~(4)~~(5) Due to unforeseen and changing circumstances an approved exception may be rescheduled by the city approving authority.