



Local Noise Enforcement Options and Model Noise Ordinance

With Pre-Approved Language for the State of New Jersey

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Noise Ordinance: Who Needs One?

Noise hurts. Exposure to noise in community settings can result in physiological, biochemical and psychological impacts which can roughly be termed stress. There are several approaches a local government may take to regulate community noise, one of which is the adoption and enforcement of the Model Noise Ordinance offered herein.

Every resident of the United States is entitled to the peaceable enjoyment of their private property. They should be able to conduct conversations uninterrupted and to sleep undisturbed. Community noise can have impacts far beyond the obvious transitory nuisance. The stress, tension and fatigue associated with long-term exposure to noise has destroyed marriages, cost people their jobs and forced other people to sell their houses at significant losses.

Mechanisms to Control Noise Locally

Local governments have three options to consider when confronted with a noise problem, each of which has benefits and drawbacks. There are several questions a local government should address before determining what approach to noise regulation/enforcement is appropriate.

- What is the source of the noise problem? Which enforcement method(s) address the specific problem?
- If the local government is already engaged in noise enforcement, does the current method of enforcement work, and could it resolve the problem with adequate resources?
- Is the local government desirous and willing to establish a noise enforcement program,

including the adoption of a local noise ordinance, the purchase of sound measurement equipment and the certification of enforcement officers?

Option #1

A *nuisance ordinance* is usually enforced by the police department. Under certain circumstances, noise may be seen as a public health nuisance and can be enforced by a health department. Nuisance ordinances can be enforced without a meter or certification. However, in some instances, certification has bolstered the courtroom acceptance of an officer's nuisance determination. The officer need not return to headquarters for the meter, losing time and possibly the opportunity to confirm the presence of a violation. Nuisance ordinances are very flexible in that the enforcement officer must only state that in his/her opinion the alleged violator was creating a nuisance or disturbing the peace. The subjective evaluation of nuisance, which makes enforcement of a nuisance ordinance flexible, is also the primary drawback of a nuisance ordinance. Some judges simply will not



A commercial establishment and a residence may only be separated by a few feet.

accept a non-metered nuisance case, particularly when the alleged violator is a commercial/industrial facility.

Option #2

County and local health officers certified by the New Jersey Department of Environmental Protection (NJDEP) pursuant to the County Environmental Health Act (CEHA) can enforce *New Jersey's Noise Control Regulations at N.J.A.C. 7:29-1 et. seq.* Every county in the State of New Jersey, with the exceptions of Mercer and Morris, has a certified county health agency which can investigate noise complaints. The State's Noise Control Regulations, enforced by CEHA agencies, are classified as a performance code. The performance standards within the regulation specify permissible sound level limits as measured by a sound level meter in decibels. A performance code results in less flexible enforcement than a nuisance code, as a noise that is annoying may not exceed the permissible limits, precluding enforcement. However, when the presence of a violation has been established with sound level measurements, adjudication is more certain than with a nuisance complaint.

The State's Noise Control Regulations only apply to sound emitted from industrial, commercial, public service and community service facilities. The response time for the investigation of noise complaints by the county is influenced by distance and case loads. If the sound source generating the complaints is transient and irregular, this may result in an inability to conduct a satisfactory investigation, or the necessity for multiple visits over a period of time to document a violation.

Option #3

If noise complaints are a significant problem within a jurisdiction, and there are facilities that are a chronic source of these complaints, it may be time to adopt and enforce a local noise ordinance. *The Model Noise Ordinance* was developed to be adopted, enforced, and adjudicated locally. It is a performance code designed to empower municipalities to respond to noise complaints within their community in a timely manner. The response time for the investigation of noise complaints is usually reduced if the enforcement agency is local, and cases are typically heard more expeditiously in municipal court. Local enforcement agents have the advantage of valuable familiarity in conducting investigations of local noise sources. Inter-agency cooperation is also possible and may result



When air conditioning units malfunction, complaints may arise. The Model Noise Ordinance regulates residential sound sources, whereas the State's Noise Control Regulations do not.

in more complete enforcement. For example, the health or code enforcement agency might respond to daytime and non-confrontational complaints, while the police might respond to night time or potentially confrontational complaints.

The Model Noise Ordinance regulates more sound source categories than the State's Noise Control Regulations, including residential and multi-use properties. It also allows for indoor measurements to be taken when properties share a common wall, floor or ceiling. The adoption of optional provisions may regulate these additional source categories: multi-dwelling buildings, and portable sound reproduction systems.

The adoption of the Model Noise Ordinance by a local government will require its publication in the newspaper of record, public hearings as required by law, and notification of the NJDEP that it has been adopted without changes to the pre-approved lan-



A sound level meter kit meeting the basic requirements of N.J.A.C. 7:29-2.6.

guage. The enforcement agency will have to purchase at least one sound level meter. An entry level meter kit, meeting standards set forth in N.J.A.C. 7:29-2, is approximately \$900 and includes the meter, calibrator, windscreen and carrying case. An octave analyzer kit starts at approximately \$2,100. The meter and the calibrator must be recertified annually at an approved laboratory. This costs approximately \$150 for the entry level kit. Enforcement agents must initially be certified through a DEP-approved three-day course entitled “Community Noise Enforcement.” A one-day recertification course is required biannually.

Upon adopting the model ordinance, the local government must have in place the enforcement mechanism. If the ordinance is on the books but is not enforced, the local government can be sued under the Environmental Rights Act of New Jersey at N.J.S.A. 2A:35A-1 et. seq.

The goal of enforcement is to bring the alleged violator into compliance. Once the presence of a violation has been established, there is significant leverage to gain this compliance, even without the imposition of fines. It is rare that cases go to court, and the more prepared an enforcement agency is for that possibility, the less likely it is to occur.

Who Has the Authority to Adopt a Noise Ordinance?

In the state of New Jersey, the NJDEP has the authority pursuant to the Noise Control Act, N.J.S.A. 13:1G-1 et. seq., to review and approve all local noise ordinances which set permissible sound level limits. The NJDEP also has the authority to draft a model noise control ordinance, which it has done with the assistance of the Rutgers Noise Technical Assistance Center and the New Jersey Noise Control Council. This model ordinance contains pre-approved language and may be adopted as written by local governments without further approval by the NJDEP.

In the State of New Jersey, the responsibility for community noise enforcement has shifted to the counties, municipalities, and certified local health agencies. Municipalities which are not certified pursuant to CEHA and wish to implement a noise control program, may do so by adopting the Model Ordinance. The Noise Control Act at N.J.S.A. 13:1G-21 asserts that local noise control ordinances must regulate noise more stringently than N.J.A.C. 7:29-1 et. seq., and the Noise Control Act. However, the ordinance must also be consistent with the statewide scheme of noise

regulation under the Act. During the past several years, municipalities have requested guidance in fulfilling these requirements. This led to the development of the model ordinance, which fulfills the stringency requirement while facilitating the consistent and effective implementation of noise control at the local level.

The Model Noise Ordinance should be adopted by the Board of Health in jurisdictions where enforcement will be conducted by the Board of Health or by the CEHA agency through agreement with the Board of Health. The Model Ordinance should be adopted by the town council in jurisdictions without a Board of Health, or if enforcement will be conducted by an agency other than the Health Department.

Who Can be a Noise Enforcement Officer?

A local government may designate anyone to enforce the Model Ordinance, as long as they receive the proper training. Usually, the enforcement agency is the health or police department. Other possibilities include but are not limited to: code enforcement, building inspection, animal control, fire inspection, and the environmental commission.

Adoption Process

The Model Noise Ordinance may not be adopted by reference, and the adoption process requires publication in the newspaper of record, and public hearings. The Noise Control Act requires that local noise ordinances must receive the NJDEP’s “approval” prior to adoption. The NJDEP-Office of Local Environmental Management (NJDEP-OLEM) will consider this requirement to have been fulfilled if a local government adopts the Model Ordinance as written. However, any changes made to the substance of the Model Ordinance by a local government must be reviewed and approved by the NJDEP-OLEM prior to adoption. Changes made in formatting, numbering, or other similar changes will not be considered changes to the substance of the model ordinance.

Within 30 days after a local government adopts the ordinance, the local government must submit to the NJDEP-OLEM (see “Contacts”), and the CEHA agency governing its region if one exists, a certification signed by the Township Clerk, Borough Manager or Administrator. The certification shall state:

I certify that {insert name of municipality} has adopted the Model Noise Control Ordinance without change(s). I further certify that if this statement is willfully false, I am subject to a penalty.

The ordinance shall be deemed approved and enforceable when NJDEP-OLEM receives the fully executed certification and duly adopted noise ordinance from the local government.

If a local government wishes to have its county or regional health agency enforce the Model Ordinance, written consent must be obtained from the county or regional health agency, affixed to the model ordinance, and made a part thereof. However, it must be noted that authority for enforcing the Model Ordinance has not been delegated pursuant to and does not arise from CEHA, but, rather, would be undertaken pursuant to the Noise Control Act.

Should Counties Adopt the Model Ordinance?

The Model Ordinance has been developed to meet the specific needs of local governments. The needs of communities within a county may vary. The ordinance may be customized to meet these needs by the adoption of pre-approved optional provisions. It is thus generally unsuitable for adoption by the governing body of a county.

When is Enforcement Required Pursuant to the Model Ordinance?

As previously stated, a local government must be prepared to enforce the ordinance that they adopt. The Model Noise Ordinance is a comprehensive approach to local noise regulation, and should be reviewed carefully. Complaints arising from sound emitted from the following property categories must be investigated: industrial facilities; commercial facilities; public service facilities; community service facilities; residential properties; and multi-use properties. The adoption of optional provisions within the Model Ordinance will require the investigation of sounds emitted from additional property categories and sources, examples of which would be units within a multi-dwelling unit building and portable sound reproduction systems.



Investigations are required for complaints lodged against commercial sound sources.

What Noise Sources are Not Regulated by Noise Ordinances?

There are certain noise source categories that are not regulated by either the State's Noise Control Regulations or the Model Noise Ordinance. In several of these categories enforcement officers do not have jurisdiction, as their authority has been superseded. Specific examples include: public roadways, aircraft, and railroads. Several exemptions arise as the legitimate public health issue of noise exposure has been subordinated to the greater public health issue of emergency prevention and response. Examples of this include: emergency work, emergency energy release devices, and emergency sirens. Since noise ordinances may not abridge constitutional rights, religious services and unamplified speech are exempt as well.

While these noise sources are exempt from regulation by noise ordinances, there may be alternative approaches which may bring some resolution to the problem. If you are exposed to an exempted noise source, the Rutgers Noise Technical Assistance Center (see 'Contacts') may be able to provide you with suggestions and helpful contacts. The Noise Pollution Clearinghouse is another comprehensive resource, with a particularly helpful website (see 'Contacts').

Some Portions of the Model Ordinance are Optional

At several points within the Model Noise Ordinance, a local government is presented with optional provisions or alternative approaches that may or may



Public roadways are exempt from noise regulations by N.J.A.C. 7:29-1.4. However, by the adoption of optional provisions within the Model Noise Ordinance, local governments can regulate sound emissions from personal vehicular music amplification equipment, which may be operated on public roadways.

not address a specific need of the community. While consistent noise regulation across the state is a goal, there are clearly differences between communities, as well differences in enforcement agencies. For example, some agencies may not wish to investigate dwelling-to-dwelling complaints in a multi-dwelling unit building.

Section VI(B) of the Model Ordinance, “Restricted Uses and Activities,” contains nine ordinance options. Municipalities may adopt whichever options they desire. For example, public roadways are exempt from noise regulations by N.J.A.C. 7:29-1.4. However, by the adoption of VI (B)6 and /or (B)7, municipalities can regulate sound emissions from personal vehicular music amplification equipment, which may be operated on public roadways.

The options within the Model Ordinance are described following the ordinance itself:

Model Noise Ordinance

I. Definitions

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this ordinance have the same meaning as those defined in N.J.A.C. 7:29.

“Construction” means any site preparation, assembly, erection, repair, alteration or similar action, including demolition of buildings or structures.

“Demolition” means any dismantling, destruction or removal of buildings, structures, or roadways.

“Department” means the New Jersey Department of Environmental Protection.

“Emergency work” means any work or action necessary to deliver essential public services including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions.

“Impulsive sound” means either a single pressure peak or a single burst (multiple pressure peaks) that has a duration of less than one second.

“Motor vehicle” means any vehicle that is propelled other than by human or animal power on land.

“Muffler” means a properly functioning sound dissipative device or system for abating the sound of escaping gasses on equipment where such a device is part of the normal configuration of the equipment.

“Multi-dwelling unit building” means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.



Apartment complexes are classified as multi-use properties. An air conditioning compressor unit producing elevated sound levels within residential units on the same distinct parcel of land is regulated by the Model Noise Ordinance, but not the State's Noise Control Regulations.



The Model Noise Ordinance recognizes the vertical and horizontal boundaries of a property line. A bar below an apartment is regulated by the Model Noise Ordinance, but not the State's Noise Control Regulations.

“Multi-use property” means any distinct parcel of land that is used for more than one category of activity. Examples include, but are not limited to:

1. A commercial, residential, industrial or public service property having boilers, incinerators, elevators, automatic garage doors, air conditioners, laundry rooms, utility provisions, or health and recreational facilities, or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels at another category on the same distinct parcel of land; or
2. A building which is both commercial (usually on the ground floor) and residential property located above, behind, below or adjacent.

“Noise control officer” means an employee of: (1) a local, county or regional health agency which is certified pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et. seq.) to perform noise enforcement activities; or (2) a municipality with a Department approved noise control ordinance and the employee has received noise enforcement training and is currently certified in noise enforcement. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons in order to be considered a noise control officer.

“Plainly audible” means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The noise control officer need not determine the title, specific words, or the artist performing the song.

“Private right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a non-governmental entity.

“Public right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.

“Public space” means any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

“Real property line” means either (a) the imaginary line including its vertical extension that separates one parcel of real property from another; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property, the interface between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs,

then the real property line would be the interface between the residential area and the commercial area).

“Weekday” means any day that is not a federal holiday, and beginning on Monday at 7:00 A.M. and ending on the following Friday at 6:00 P.M.

“Weekends” means beginning on Friday at 6:00 P.M. and ending on the following Monday at 7:00 A.M.

II. Applicability

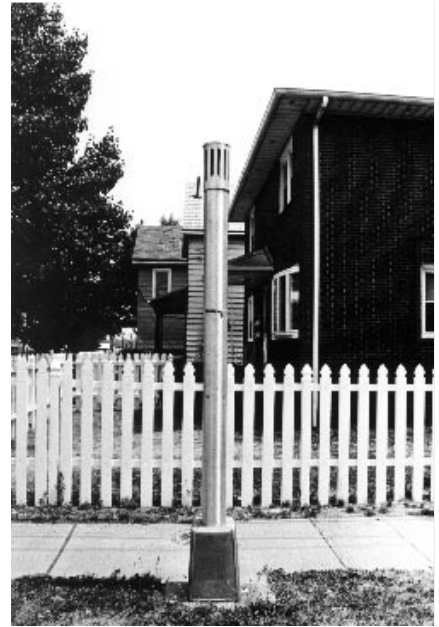
(A) This model noise ordinance applies to sound from the following property categories:

1. Industrial facilities;
2. Commercial facilities;
3. Public service facilities;
4. Community service facilities;
5. Residential properties;
6. Multi-use properties;
7. Public and private right-of-ways;
8. Public spaces; and
9. Multi-dwelling unit buildings.

(B) This model noise ordinance applies to sound received at the following property categories:

1. Commercial facilities;
2. Public service facilities;
3. Community service facilities;
4. Residential properties;
5. Multi-use properties; and
6. Multi-dwelling unit buildings.

(C) Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.3, except that the testing of the electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.



Stationary emergency signaling devices are regulated as per N.J.A.C. 7:29-1.3. The duration of daily tests are limited to less than 10 seconds in the Model Noise Ordinance.

III. Declaration of Findings and Policy

WHEREAS excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and, WHEREAS a substantial body of science and technology exists by which excessive sound may be substantially abated; and, WHEREAS the people have a right to, and should be ensured of, an environment free from excessive sound,

Now THEREFORE, it is the policy of **{insert name of municipality}** to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

This ordinance shall apply to the control of sound originating from sources within **{insert name of municipality}**.

IV. Noise Control Officers

(A) The provisions of this ordinance shall be enforced by noise control officers. A person shall be qualified to

be a noise control officer if the person meets the criteria set forth in the definition above and completes, at a frequency specified by the Department in N.J.A.C. 7:29-2.11, a noise certification and recertification course which are offered by the Department of Environmental Sciences of Cook College, Rutgers, The State University of New Jersey or any other noise certification or recertification course which is offered by an accredited university and approved by the Department.

(B) Sound measurements made by a noise control officer shall conform to the procedures set forth at N.J.A.C. 7:29-2, except that interior sound level measurements shall also conform with the procedures set forth in sections V(B) and V(C) of this regulation and with the definition of “real property line” as contained herein.

(C) Noise control officers shall have the power to:

1. Coordinate the noise control activities of all departments in **{insert name of municipality}** and cooperate with all other public bodies and agencies to the extent practicable;
2. Review the actions of **{insert name of municipality}** and advise of the effect, if any, of such actions on noise control;
3. Review public and private projects, subject to mandatory review or approval by other departments or boards, for compliance with this ordinance; and
4. Investigate and pursue possible violations of this ordinance for sound levels which equal or exceed the sound levels set forth in Tables I and II, when measured at a receiving property located within the designated jurisdiction of the noise control officer, in accordance with Section VII below.
5. Cooperate with noise control officers of adjacent municipalities in enforcing one another’s municipal noise ordinances.



Indoor measurements shall be taken if the sound source is on or within the same property as the receiving property. An apartment above a laundromat would be an example of this.

V. Maximum Permissible Sound Levels

(A) No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in II(A) above in such a manner as to create a sound level that equals or exceeds the sound level limits set forth in Tables I and II when measured at or within the real property line of any of the receiving properties listed in Tables I and II, except as specified in (B). below.

(B) When measuring total sound or residual sound within a multi-use property, or within a residential unit when the property line between it and the source property is a common wall, all exterior doors and windows shall be closed and the measurements shall be taken in the center of the room most affected by the noise. Residual sound shall be measured in accordance with N.J.A.C. 7:29-2.9(b)2. When measuring total sound or residual sound, all sound sources within the dwelling unit must be shut off (e.g., television, stereo). Measurements shall not be taken in areas which receive only casual use such as hallways, closets and bathrooms.

(C) Indoor measurements shall only be taken if the sound source is on or within the same property as the receiving property, as in the case of a multi-use property (e.g., sound generated within a commercial unit of a multi-use property building and received within a residential unit of the same building) or multi-dwelling unit building. In addition, indoor

measurements shall be taken if the property line between the receiving property and the source property is a common wall, such as in a multi-dwelling unit building. The allowable sound level standards for indoors are as shown in Tables I and II.

(D) Impulsive Sound

{Note: either one of the following must be adopted.}

1. Impulsive sound shall not equal or exceed 80 decibels at all times.

OR

2. Between 7:00 A.M. and 10:00 P.M., impulsive sound shall not equal or exceed 80 decibels. Between 10:00 P.M. and 7:00 A.M., impulsive sound which occurs less than four times in any hour shall not equal or exceed 80 decibels. Impulsive sound which repeats four or more times in any hour shall be measured as impulsive sound and shall meet the requirements as shown in Table I.

Table I. Maximum Permissible A-Weighted Sound Levels

1. No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in II(A) above in such a manner as to create a sound level that *equals or exceeds* the sound levels listed below.

(A) Outdoors

Receiving Property Category	Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility
	7 A.M.-10 P.M.	10 P.M.-7 A.M.	
Time	7 A.M.-10 P.M.	10 P.M.-7 A.M.	24 hours
Maximum A-Weighted sound level standard, dB	65	50	65

(B) Indoors

Receiving Property Category	Residential property, or residential portion of a multi-use property		Commercial facility,* or non-residential portion of a multi-use property
	7 A.M.-10 P.M.	10 P.M.-7 A.M.	
Time	7 A.M.-10 P.M.	10 P.M.-7 A.M.	24 Hours
Maximum A-Weighted sound level standard, dB	55	40	55

*In those instances when a commercial facility shares a common wall/ceiling/floor with another commercial facility that is producing the sound.

Table II. Maximum Permissible Octave Band Sound Pressure Levels in Decibels

1. No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in II(A) above in such a manner as to create a sound pressure level that *equals or exceeds* the sound levels listed below in one or more octave bands.
2. When octave measurements are made, the sound from the source must be constant in level and character. If octave band sound pressure level variations exceed plus or minus 2 dB in the bands containing the principal source frequencies, discontinue the measurement.

Receiving Property	Residential property, or residential portion of a multi-use property		Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility	Commercial facility*, or non-residential portion of a multi-use property
	OUTDOORS		INDOORS		OUTDOORS	INDOORS
Octave Band Center Frequency, Hz.	Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB	Octave Band Sound Pressure Level, dB
Time	7 A.M.-10 P.M.	10 P.M.-7 A.M.	7 A.M.-10 P.M.	10 P.M.-7 A.M.	24 hours	24 hours
31.5	96	86	86	76	96	86
63	82	71	72	61	82	72
125	74	61	64	51	74	64
250	67	53	57	43	67	57
500	63	48	53	38	63	53
1,000	60	45	50	35	60	50
2,000	57	42	47	32	57	47
4,000	55	40	45	30	55	45
8,000	53	38	43	28	53	43

*In those instances when a commercial facility shares a common wall/ceiling/floor with another commercial facility that is producing the sound.

VI. Restricted Uses and Activities

1. Except as provided in (B) below, the provisions of this ordinance shall not apply to the exceptions listed at N.J.A.C. 7:29-1.4.
2. Construction and demolition activities are exempt from the sound level limits set forth in Tables I and II, except as provided for in (B) below.

(B) *{Note: This section is optional; any numbered paragraph may be adopted in its entirety.}*

Notwithstanding the provisions of Tables I and II, the following standards shall apply to the activities or sources of sound set forth below:

1. Non-commercial or non-industrial power tools and landscaping and yard maintenance equipment shall not be operated between the hours of 8:00 P.M. and 8:00 A.M., unless such activities can meet the applicable limits set forth in Tables I and II. All motorized equipment used in these activities shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to non-commercial or non-industrial power tools and landscaping and yard maintenance equipment;

2. Commercial or industrial power tools and landscaping and yard maintenance equipment, excluding emergency work, shall not be operated on a residential property or within 250 feet of a residential property line when operated on commercial or industrial property, between the hours of 6:00 P.M. and 7:00 A.M. on weekdays, or between the hours of 6:00 P.M. and 9:00 A.M. on weekends or federal holidays, unless such activities can meet the limits set forth in Tables I and II. In addition, commercial or industrial power tools and landscaping and yard maintenance equipment, excluding emergency work, utilized on commercial or industrial property shall meet the limits set forth in Tables I and II between the hours of 10 P.M. and 7 A.M. All motorized equipment used in these activities shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to commercial or industrial power tools and landscaping and yard maintenance equipment;



Malfunctioning electrical equipment may produce a steady pure tone that is best measured with an octave band analyzer. The Model Noise Ordinance and the State's Noise Control Regulations both regulate pure tones more strictly than mixed tones, as pure tones are generally regarded as being more annoying.

3. Construction and demolition activity, excluding emergency work, shall not be performed between the hours of 6:00P.M. and 7:00A.M. on weekdays, or between the hours of 6:00P.M. and 9:00A.M. on weekends and federal holidays, unless such activities can meet the limits set forth in Tables I and II. All motorized equipment used in construction and demolition activity shall be operated with a muffler. At all other times, the limits set forth in Tables I and II do not apply to construction and demolition activities;

4. Motorized snowblowers, snow throwers, and lawn equipment with attached snow plows shall be operated at all times with a muffler. At all times, the limits set forth in Tables I and II do not apply;

5. An exterior burglar alarm of a building or motor vehicle must be activated in such a manner that the burglar alarm terminates its operation within five (5) minutes for continuous airborne sound and fifteen (15) minutes for impulsive sound after it has been activated. At all times, the limits set forth at Tables I and II do not apply;

6. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a residential property line between the hours of 10:00 P.M. and 8:00 A.M.;

7. Personal vehicular music amplification equipment shall not be operated in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 A.M. and 10:00 P.M.;

8. Self-contained, portable, hand-held music or sound ampli-



Agriculture is exempt, as long these activities are performed on farmlands in order to cultivate the soil, produce crops, or raise livestock (N.J.A.C. 7:29-1.1).

fication or reproduction equipment shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 A.M. and 10:00 P.M. Between the hours of 10:00 P.M. and 8:00 A.M., sound from such equipment shall not be plainly audible by any person other than the operator;

9. Sound levels exceeding the limits set forth in Table I, **{the following phrase is optional: “and Table II”}** shall be prohibited between residential units within the same multi-dwelling unit building. Measurements shall be taken indoors as per Section V(B) and V(C).

VII. Enforcement

- (A) Violation of any provision of this ordinance shall be cause for an enforcement document to be issued to the violator by the noise control officer according to procedures set forth at N.J.A.C. 7:29-1.6. The recipient of an enforcement document shall be entitled to a hearing in municipal court having jurisdiction to contest such action.
- (B) Any person who violates any provision of this ordinance shall be subject to a civil penalty for each offense of not more than \$3,000. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.
- (C) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this ordinance or from other law.

VIII. Severability and Repealer

- (A) If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.
- (B) All ordinances or parts of ordinances which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.



Options Within the Ordinance

Each community has specific needs that might be addressed by optional provisions presented by the Model Ordinance. These optional provisions were developed as a result of public input to the NJDEP, the Rutgers Noise Technical Assistance Center, and the New Jersey Noise Control Council in the form of letters, calls, public meetings, previously submitted local ordinances, and other communications. The following is a discussion of the relative merits of these options. The discussion is limited to pre-approved options appearing in the ordinance.

In unique situations, a community may desire to draft and adopt a provision not presented here. This would necessitate NJDEP approval. It would be advis-



The unamplified human voice is exempt. However, police have several enforcement options including nuisance codes.

able to contact the Rutgers Noise Technical Assistance Center for assistance, as this will expedite the process and increase the probability of NJDEP approval. For example, an option that specifically addresses the bass rhythm from bars is not included in the ordinance. A provision could be drafted to address this specific situation, while remaining consistent with the rest of the ordinance.

Pre-Approved Options Within the Model Noise Ordinance

V(D). Impulsive Sound

Impulsive sounds, that repeat more than four times in an hour, may either be limited to 80 dBA 24 hours a day, or they may be limited at night to 50 dBA.

Discussion

Impulsive sounds must be regulated, the option is whether or not to adopt the more restrictive standard for night time hours.

There are industrial applications or mechanical malfunctions that may emit impulsive sounds during night time hours. Examples include nail guns, punch presses, and a fan blade occasionally striking its housing. Under the Noise Control Regulations at N.J.A.C. 7:29-1 et. seq., and previously published versions of the Model Ordinance, sounds of a duration of less than one second were held to the relatively non-restrictive limit of 80 dBA. Presumably, this was to allow industries the occasional “accident” without penalty. However, impulsive sounds are integral to some industrial operations, and not merely the result of an “accident.” If these operations continue into evening and nighttime hours, and if there is a sensitized receptor, complaints will arise.

This provision still allows for occasional “accidents,” as long as they occur less than four times in an hour, but it does provide meaningful protection to residents who are subjected to repetitive impulse sounds. This provision will not impact on emergency work, which is exempted.

This provision would require the investigation of residential complaints that some agencies may consider to be of a minor nature, such as complaints about a neighbor’s wind chimes.

VI(B)1. Residential Power Tools and Landscaping Equipment

The operation of residential power tools and land-



Lawn maintenance equipment may be curfewed with the adoption of VI(B)1 and/or 2.

scaping and yard maintenance equipment is curfewed under this provision.

Discussion

The use of residential power tools and landscaping and yard maintenance equipment is curfewed between the hours of 8 P.M. and 8 A.M. During the curfewed hours, power equipment and other landscaping and yard maintenance equipment may be used if it meets the limits in Tables I and II. An example of landscaping equipment that may be quiet enough to use during the curfewed hours is an electric or push mower.

No sound level limits are set for residential power equipment from 8 A.M. to 8 P.M., provided the equipment is operated with a muffler. While a decibel limit was not established for this category of equipment (more discussion below), the hours of the curfew are more restrictive than the hours in the body of the ordinance. Tables I and II allow the more permissive daytime sound level limits between the hours of 7 A.M. and 10 P.M. For additional discussion of curfew hours, see VI(B)2, below.

One significant benefit to the establishment of a curfew is that the verification of a curfew violation does not require the use of a sound level meter. The investigation of a curfew complaint is usually simple, direct and quick.

It was determined that current power equipment did not allow for the establishment of a meaningfully protective sound level limit, without prohibiting much of the equipment currently available. This would have been inappropriate for the Model Ordinance. However, communities may be allowed to establish a decibel limit for yard maintenance equipment without

the need to seek NJDEP approval. A bill to allow the establishment of these sound level limits was under consideration by the New Jersey Assembly (A2587) at press time for this publication. Interested parties should contact the Rutgers Noise Technical Assistance Center for the current status of the bill, to determine if they have been granted the authority to establish sound level limits for this category of equipment.

VI(B)2. Commercial/Industrial Power Tools and Landscaping Equipment

The operation of commercial or industrial power tools and landscaping and yard maintenance equipment is curfewed under this provision. There are separate curfews established based on the proximity to a residential property. The curfew is less restrictive if the activity is conducted 250 feet or more from the nearest residential property. During the curfewed hours, power equipment may be used if it meets the limits in Tables I and II.

No sound level limits are set for commercial or industrial power tools and landscaping and yard maintenance equipment outside of the curfewed hours, provided the equipment is operated with a muffler.

Discussion

Commercial landscapers are permitted to operate between the hours of 7 A.M. and 6 P.M. on weekdays, without applicable sound level limits. It was determined that during the week these services may need to operate an hour earlier than a homeowner (see VI(B)1, above), but they are also curfewed at 6P.M., so that they will not interfere with the dinner hour and early evening activities. A homeowner may continue these



Construction and demolition may be curfewed by the adoption of VI(B)3.

activities until 8 P.M., so that they may have several hours available to them after the average work day. On the weekend, or holidays, commercial landscapers may not begin operating power equipment before 9 A.M., while a homeowner may begin at 8 A.M., again allowing the homeowner some additional hours of operation outside of the average work week.

VI(B)3. Construction and Demolition

Construction and demolition activities are curfewed with this provision, and are otherwise exempted from applicable sound level limits outside of the hours of the curfew.

Discussion

It is necessary to specifically exempt construction and demolition from permissible sound level limits, as these activities are frequently unable to meet the limits in Tables I and II. Curfewing these activities is a reasonable approach, and this provision allows the activities to continue into the curfewed hours if they can meet the applicable limits in Tables I and II. Examples of construction activities that produce negligible sound emissions are the taping and spackling of sheet rock or hand painting.

VI(B)4. Snow Removal Equipment

Snow removal equipment must be operated with a muffler.

Discussion

Snow removal activities cannot be curfewed, as public health must be protected. Additionally, a local government could be held liable if a curfew of snow removal resulted in an injury such as a slip and fall.

VI(B)5. External Burglar Alarm

Audible external burglar alarms must terminate after a specified time period.

Discussion

Burglar alarms are designed for high intensity sound emissions. Requiring them to terminate after a reasonable time period will allow them to perform their intended service, without becoming a permanent fixture on the soundscape.

The investigation of a time limit complaint does not require the use of a sound level meter, and is thus simple, and direct.



Burglar alarms that ring for extended periods of time can be regulated with the adoption of VI(B)5.

VI(B)6. Vehicular Sound Reproduction Equipment—Night Time

Vehicular sound reproduction equipment may not be plainly audible at a residential property line between the hours of 10 P.M. and 8 A.M.

Discussion

There are few categories of noise that generate more complaints than broadcasting vehicles. Loud music emanating from a vehicle is disruptive to the peace and quiet of a community. Loud music in a vehicle also poses a public safety risk, as it may impair the ability of the operator in such a vehicle to hear emergency signals.

Enforcement of a performance standard is difficult in this situation, as the sound is transient and the source is mobile. While some jurisdictions enforce a curblinesound level limit, the enforcement agency must set up in advance in the location at which they suspect a violation may occur. While enforcement and deterrence is extremely effective during the operation of such an enforcement action, it is only effective at the time and in the place this action occurs. Outside of these parameters, deterrence is minimal.

An alternative enforcement standard is required to address this specific sound source, if enforcement is to be regular and predictable, thus providing the desired deterrence. If the deterrent was not successful, the enforcement standard must lead to successful prosecution. After a careful review of precedents and challenges in other jurisdictions, it was clear that any successful standard would have to be objective, specific and easily understood. A “plainly audible” standard has been applied in numerous jurisdictions across the United States, and this standard has been

held to be neither vague nor overbroad (*State v. Ewing*, 914 P.2d 549, Haw. 1996). It is also clearly understandable to those it is intended to regulate. There is no subjectivity to the determination of a plainly audible sound source; there is no value judgment associated with such a determination, as there might be if the standard were “disturbing” or “loud and raucous.”

This is an extremely powerful tool now made available to address a demonstrated problem. However, curbing a vehicle is potentially confrontational, and only law enforcement agencies are empowered to curb vehicles. It is part of their police powers and cannot be assumed by a health department or some other entity charged with noise control.



Religious services are exempt as are bells, chimes or carillons associated with religious services. External loudspeakers are not.

VI(B)7. Vehicular Sound Reproduction Equipment—Day Time

Vehicular sound reproduction equipment may not be plainly audible at a distance of 50 feet between the hours of 8 A.M. and 10 P.M.

Discussion

This provision establishes a less restrictive standard for daytime hours when compared to the standard for night-time hours. Please see VI(B)6, above, for further discussion.

VI(B) 8. Portable Sound Systems

Portable sound systems may not be plainly audible at a distance of 50 feet between the hours of 8A.M. and 10P.M., nor may they be plainly audible to anyone other than the operator of the sound system between the hours of 10 P.M. and 8 A.M.

Discussion

This provision regulates the sound emissions from hand-held personal sound reproduction systems, and parallels VI(B)6 and 7, above. The discussion for VI(B)6 is applicable to this provision, as well. This provision was designed to assist communities with controlling nuisance type situations without having to use a sound level meter, or when the sound crosses no real property line. It may be used to control amplified speech, but as such it should be judiciously applied. It must be remembered that unamplified speech is exempted from regulation under a noise ordinance.

VI(B)9. Dwelling-to-Dwelling Complaints in a Multi-Dwelling Building

This provision regulates sound levels generated and received between residential units within the same multi-dwelling unit building.

Discussion

Dwelling-to-dwelling noise complaints are common in some jurisdictions. This provision allows for the indoor measurement of sound levels to determine if a violation exists. An additional option is the enforcement of permissible octave band sound pressure level limits, in response to a complaint about a pure tone.

Dwelling-to-dwelling noise complaints may be handled as a nuisance investigation, but this is a subjective evaluation. The enforcement of a performance code will bolster the courtroom acceptability of the determination that a violation does exist. As with any performance code violation, it generally takes longer to complete such an investigation when compared to a nuisance code investigation.

In general, this is a police matter, and many health departments do not wish to become involved. There is the potential for a confrontational situation.

Conclusion

Communities that are confronted with noise problems have three options available to them: a nuisance code, enforcement of the State's Noise Control Regu-

lations by the CEHA agency, or the adoption of the Model Noise Ordinance. Each of these options has distinct benefits and drawbacks. Each municipality, in consultation with their legal council, must carefully evaluate the most appropriate noise control method for their community. The Rutgers Noise Technical Assistance Center, listed below, can assist communities in making these decisions.

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