

SUBSTITUTE ORDINANCE NO. BL2019-1631

An ordinance to create Title 9, Noise and Amplified Sound, and to consolidate existing provisions regulating noise, excessive noise, and construction noise into the new Title 9. (Proposal No. 2019Z-014TX-001).

NOW, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Sections 6.75.245, ~~8.12.010~~, 10.44.110; 11.12.070; 12.32.050; ~~13.24.390~~; ~~13.32.110~~; and Chapter 16.44; and Section 17.28.090 of the Metropolitan Code of Laws shall be deleted in their entirety.

Section 2. That a new Title 9 – Noise and Amplified Sound, is hereby established as follows:

Title 9 – Noise and Amplified Sound

Chapter 9.10 – General provisions

9.10.010 – Definitions

The following definitions shall apply to this title:

"A-weighted sound pressure level" means the sound pressure level as measured with a sound level meter using the "A" Weighting Network. The standard notation is Db(A).

"Construction equipment" means any equipment or devices, such as, but not limited to, pile drivers, power shovels, jackhammers, derricks, hoist tractors, dump trucks, loaders, rollers, concrete-hauling motor vehicles, pavement breakers, backhoe, clam shells, bulldozers, crawler-tractors, rotary drills and augers, cranes, ditchers, trenchers, scrapers, graders, wagons, pumps, compressors and pneumatic power equipment or other mechanical apparatus operated by fuel or electric power in the construction, repair or demolition of any building, structure, land, driveway or appurtenance thereto.

"Decibel" means a logarithmic unit of measure often used in measuring magnitudes of sound. The symbol is Db.

"Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work to restore public utilities or work required to protect persons or property from an imminent exposure to danger.

"Noise" means sound that is measured as the sound pressure level in decibels (Db).

"Person" means any person, firm, group, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner.

"Plainly audible" means any sound which clearly can be heard by unimpaired auditory senses, however, words or phrases need not be discernible and said sound shall include bass reverberation.

"Premises" means any building, structure, land, utility or portion thereof, including all appurtenances, and shall include yards, lots, courts, inner yards, common hallways in multiple-family dwellings, common areas for one or more multiple-family dwellings, and real properties without buildings or improvements, owned or controlled by a person.

"Property line" means an imaginary line exterior to any enclosed structure, at the ground surface, and its vertical extension, which separates the real property or rental unit owned or leased by one person from that owned or leased by another person.

"Public right-of-way" means any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a governmental entity.

"Sound" means oscillation in pressure, stress, particle displacement and particle velocity which induce auditory sensation.

"Sound amplification equipment" means a radio, tape player, compact disc player, digital audio player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic sound-making device that produces, reproduces or amplifies sound

"Sound level meter" means an apparatus or instrument including a microphone, amplifier, attenuator, output meter and frequency weighting networks for the measurement of sound levels. The sound level meter shall be a design and have the characteristics of a type 2 or better instrument as established by the American National Standards Institute, publication S1.4-1971, entitled "Specification for Sound Level Meters."

"Sound pressure level" means twenty times the logarithm to the base ten of the ratio of the pressure of a sound to the reference pressure of twenty micronewtons per square meter (20×10^{-6} newtons/meter²) and is expressed in decibels (Db).

9.10.020 - Noise sound pressure levels — Measurement.

For the purpose of determining noise sound pressure levels as set forth in this title, the following test procedures and measurements are applicable:

- A. The instrument for determining noise sound pressure levels shall be with a sound level meter of standard design as defined in this section. Sound pressure level measurements shall be made with the "A" Weighting Network.
- B. Noise sound pressure levels shall be measured from a point as close as possible to the outside walls of any residential structure located on the property affected by the noise at a height of four feet above the immediate surrounding surface.

Chapter 9.20 – Excessive noise

9.20.010 – Sound amplification equipment

- A. Except for properties lying within an area zoned DTC district and properties zoned CF district that are contiguous to those zoned DTC district, it shall be unlawful for any person to:
 1. Operate or allow the operation of any sound amplification equipment so as to create sounds that are plainly audible from the boundary line of the nearest residentially occupied property. For multifamily structures, including apartments, condominiums, or other residential arrangements where boundary lines can not readily be determined, it shall be unlawful to operate or allow the operation of any sound amplification equipment so as to create sounds that are plainly audible from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property. This subsection shall not apply to a special event, mass gathering or other permitted activity by the metropolitan government or its boards or commissions. Further, the provisions of this section shall not apply to entertainment facilities constructed to provide outdoor entertainment owned by metropolitan government or its agencies and parks under the control of the board of parks and recreation.
 2. Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which are plainly audible at or on the boundary of the nearest public right-of-way or park.

3. Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in parks under control of the board of parks and recreation, so as to produce sounds that are plainly audible fifty feet or more from any electromechanical speaker.
- B. The provisions of this subsection B. shall be applicable for properties lying within an area zoned DTC district and properties zoned CF district that are contiguous to those zoned DTC district:
1. Except as provided in subsection B.5. of this section, it shall be unlawful to operate or allow the operation of any amplification device mounted to the exterior of a building or structure, or to operate such device outside of the premises.
 2. It shall be unlawful for interior speakers of an establishment during business operating hours to be aimed or oriented toward the exterior opening of a building, when said speakers produce sounds registering more than eighty-five Decibels (A weighted), as measured at street level fifty linear feet from the outside wall of the structure within which the noise is produced. Other than during business operating hours, it shall be unlawful for any establishment to operate or allow the operation of interior speakers producing sounds registering more than seventy Decibels (A weighted) at or on the boundary of the nearest public right-of-way or park. For purposes of this subsection, "business operating hours" means the hours during which an establishment is open to customers or patrons.
 3. All prerecorded music shall be limited to the 85 Decibel limit (A weighted), regardless of the source including, but not limited to: vinyl records, compact disks, digital video disks, digital audio players, hard drives, solid state memory, tape drives, radio sets or television sets. Such sound measurement shall be taken at street level fifty linear feet from the outside wall of the structure within which the noise is produced. Notwithstanding the foregoing, live music is expressly exempt from the 85 Decibel limitation. Live music shall mean that musicians, instruments and singers will not be prerecorded.
 4. If a commercial operation functions primarily as a dining establishment with outside seating, that establishment shall be exempt from the speaker prohibition but must limit the sound output to 85 Decibels (A weighted), as measured at street level fifty linear feet from the property line of the dining establishment from which the noise is produced.
 5. The following shall be exempt from the provisions of subsection B.1. above:
 - a. Special events, mass gatherings, or other permitted activities by the State of Tennessee or the metropolitan government or any of its boards or commissions;
 - b. Entertainment facilities constructed to provide outdoor entertainment owned by the State of Tennessee, the metropolitan government (or its agencies), or the parks under the control of the State of Tennessee or the metropolitan board of parks and recreation;
 - c. Churches or facilities used for religious worship.

9.20.020 – Motor vehicle noise

- A. It shall be unlawful for any person to:
1. Operate any motor vehicle that is not equipped with a muffler in good working order and in constant operation to prevent excessive noise.
 2. Operate a motor vehicle equipped with a cut-out, by-pass, or similar muffler elimination unit, or to operate a motor vehicle with devices that amplify motor noise or motor vehicle exhaust noise.
 3. Operate a motor vehicle if the exhaust noise is plainly audible at two hundred feet.

4. Operate or allow the operation of buses in a parking or staging area if noise from the engine, exhaust, or back-up alert beeper is plainly audible from the nearest exterior wall of a transient lodging establishment within the commercial attraction (CA) zoning district.
- B. No person operating or occupying a motor vehicle on any street, highway, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty or more feet from the vehicle or, in the case of a motor vehicle on private property, beyond the property line.

9.20.030 – Outdoor entertainment and mass gatherings

- A. Except for properties lying within an area zoned DTC district and properties zoned CF district that are contiguous to those zoned DTC district, no person or persons owning, operating, or having the care, custody, or control of any facility located within fifty feet of a residence and/or of a natural conservation area shall permit to be operated any musical instrument or other entertainment device using amplification unless such music or other entertainment is provided within a totally enclosed structure. Such music or other entertainment may be provided outside of a structure only between the hours of seven a.m. and eleven p.m., except when exempted under provisions of the code as a special event, mass gathering or other permitted activity by metropolitan government or its boards or commissions. The provisions of this section shall not apply to entertainment facilities constructed to provide outdoor entertainment owned by metropolitan government or its agencies and parks under the control of the board of parks and recreation.
- B. Outdoor entertainment events within the downtown area.
 1. No person shall operate an outdoor music and/or entertainment event that produces amplified sound which registers more than eighty-five Db(A), as measured from any point within the boundary line of the nearest residentially occupied property at the street level.
 2. The provisions of this subsection shall only apply to:
 - a. properties lying with an area zoned DTC district and properties zoned CF district that are contiguous to those zoned DTC district;
 - b. properties lying within an area bounded by properties fronting Music Square West and 17th Avenue South from Division Street to Edgehill Avenue;
 - c. properties along the north portion of Edgehill Avenue between 17th Avenue South and 16th Avenue South;
 - d. properties fronting 16th Avenue South and Music Square East between Edgehill Avenue and Division Street;
 - e. properties lying within an area fronting on the east side of 21st Avenue South from Scarritt Place to Edgehill Avenue; and
 - f. the properties fronting on the north side Edgehill Avenue to 17th Avenue South.
- C. The sound level measured at the boundaries of the mass gathering site shall be no more than eighty-five Db(A).

9.20.040 – Commercial noise.

- A. No person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment, vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any other business or commercial activity between the hours of 9:00 p.m. and 6:00 a.m. which would emit, cause to be emitted, or permit the emission of any noise in excess of seventy Db(A) as measured from a

point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface.

- B. For business or commercial facilities located within the DTC and CF zoning districts, no person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment, vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any other business or commercial activity between the hours of 9:00 p.m. and 6:00 a.m. which would emit, cause to be emitted, or permit the emission of any noise in excess of eighty-five Db(A) as measured from a point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface.
- H. Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the metropolitan government or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of the metropolitan government.

9.20.050 – Excessive noise on a pedal carriage

No music or amplified sound shall be played, nor yelling or conversation be conducted, on a pedal carriage in such a manner that it would be plainly audible from a distance of fifty feet.

9.20.060 – Enforcement

The Metropolitan Nashville Police Department shall be responsible for the enforcement of violations of this chapter.

Chapter 9.30 – Construction Noise

9.30.010 - Construction sites — Restrictions.

It is unlawful for any person engaged in the construction, repair or demolition of buildings, structures, land, driveways or appurtenances thereto located within or adjoining a residential zone district within the area of the metropolitan government, including transportation of materials to and from a construction site, between the hours of nine p.m. and six a.m., to emit, cause to be emitted, or permit the emission of any noise in excess of seventy Db(A) from construction equipment as measured from a point as close as possible to the outside walls of any residential structure located on the property affected by the noise at a height of four feet above the immediate surrounding surface.

9.30.020 - Exemptions.

The following activities shall be exempt from the requirements of Section 9.30.010:

- A. Highway, bridge, road, street, dredging in navigable waters, or other public works construction activities, utility work such as water, sewer, gas, electrical or telephone construction activities and any vehicles used to transport materials to and from such construction activities, so long as the vehicles remain within the highway, road, street or construction right-of-way or easement;
- B. Emergency work;
- C. Transporting and unloading of construction materials, other than blast materials, between five a.m. and six a.m.

9.30.030 - Variances.

- A. Any person seeking to perform construction activities which would be in violation of Section 9.30.010 must, prior to engaging in activities prohibited under Section 9.30.010, make an application to the director of the department of codes administration and obtain a permit to

perform such activities. Such a permit shall not be granted unless the applicant establishes the following:

1. Any noise, resulting from the construction, repair or demolition activities, even though the applicant might create noise in excess of that permitted in Section 9.30.010, will not be of such magnitude as to interfere with normal activities conducted within the residential zone district during the hours of the proposed construction activities; and
 2. The applicant has obtained all other approvals and permits for said construction activities as required by the metropolitan code of laws; or
 3. The overriding public interest (as opposed to the private interest of the applicant or the owner of the property upon which said construction activities shall occur) will be significantly promoted by permitting the applicant to create noise in excess of that permitted in Section 9.30.010.
- B. Notice of an application for a variance shall be given by the director of the department of codes administration to persons who may be adversely affected by the granting of the variance and to the district councilmember. Any person who claims to be adversely affected by such a variance, if allowed, may file a written statement with the director. Such statement shall contain sufficient factual information to support the claim.
- C. Variances shall be granted by notice to the applicant containing any necessary conditions, including a time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate it and subject the person holding it to the requirements of Section 9.30.010.

9.30.040 – Enforcement.

The metropolitan department of codes administration shall be responsible for the enforcement of this chapter.

Section 3. That this Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

Freddie O'Connell
Member of Council