

Noise Ordinance  
Current and Proposed Changes  
4/17/2019

Section	Current	Proposed
Sec. 15-61. - Loud, disturbing noises prohibited generally	<p>Unlawful to “create” or “assist in creating” the noise</p> <p>No Noise Buffers</p>	<p>Clarifies intent - updated to state that it is unlawful to “intentionally produce” or “intentionally participate in producing” the noise</p> <p>Create Noise Buffers within 200 ft. of property line of schools, houses of worship, and medical facilities during their service hours.</p> <p>Noise buffer requirement: posting of service hours that can be seen from street, in addition medical facilities must state that the location is a “Health Care Facility Quiet Zone”.</p>
Sec. 15-62. – Measurement	Only measures db(A)s, A-weighting scale for sound measurements	Adds option to include C sound weighting scales for measurements to capture different components of sound.
Sec. 15-63. - Sounds impacting residential life	<p>Among other noise aspects, specifically covers “construction machinery”</p> <p>No noise reference chart</p>	<p>Provides examples of “construction machinery” for additional clarity</p> <p>Includes noise reference chart of common sounds and the associated decibels.</p>
Sec. 15-65. - Permits for additional amplification	Requires “affidavit” that notices of amplified sound use have been distributed	Requires “notarized statement” that notices of amplified sound use have been distributed. Update to align with current practice.
Sec. 15-65.1. - Outdoor amplification and music at commercial establishments	Currently use A-weighting scale	Based on the type of noise, propose to use C-weighting scale which can measure the bass components of sound.
Sec. 15-65.3. - Chronic commercial and industrial noise	Process to identify and mitigate a business as being a chronic noise producer	Construction sites added to establishment types covered under chronic noise producer regulation, and associated noise mitigation plan requirement.
Sec. 15-68. - Enforcement and penalties	<p><b>Current Penalties</b></p> <p>General Penalty: \$100 for each offense</p> <p>Front-End Loader: \$200 each offense</p> <p>Late Fee: none</p>	<p><b>Proposed Penalties</b></p> <p>General Penalty: Escalating fines over course of 12-month period 1<sup>st</sup> Offense - \$100 2<sup>nd</sup> Offense - \$500 3<sup>rd</sup> and subsequent offenses - \$1,000</p> <p>Front-End Loader: Escalating fines over course of 12-month period 1<sup>st</sup> Offense - \$200 2<sup>nd</sup> Offense - \$500 3<sup>rd</sup> and subsequent offenses - \$1,000</p> <p>Late Fee: \$50</p>
Sec. 15-69. Severability	Section not included in current ordinance	Provides that if any phrasing or wording is found to be unconstitutionally invalid, the remaining portions of the code would still be in effect.
Administrative Updates	Updates department references and sections to the correct names, references and citations.	

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**State Law reference**— Authority to regulate noise, G.S. 160A-184.

Sec. 15-61. - Loud, disturbing noises prohibited generally; **noise buffers**

- (a) It shall be unlawful for any person to ~~create~~**intentionally produce, intentionally cause to be produced, or assist**~~intentionally participate~~ in ~~creating~~**producing** any unreasonably loud and disturbing noise in the city.

(Ord. No. 4663, § 1, 5-23-2011)

(b) **The following are unlawful in the city:**

- (1) **While within 200 feet of the property line of a school where classes or other educational activities are occurring: (i) to produce amplified sound or (ii) to intentionally produce, intentionally cause to be produced, or intentionally participate in producing any sound so unreasonably loud that, because of its volume, it disturbs or threatens to imminently disturb those classes or activities.**
- (2) **While within 200 feet of the property line of a church, temple, synagogue, or other house of worship where a service is occurring: (i) to produce amplified sound or (ii) to intentionally produce, intentionally cause to be produced, or intentionally participate in producing any sound so unreasonably loud that, because of its volume, it disturbs or threatens to imminently disturb that service. This subsection shall apply only if the house of worship has posted at least one sign that is visible from the public streets and sidewalks adjacent to the house of worship and that provides notice that a service is occurring. The house of worship shall bear the cost of those signs, and the signs shall comply with all applicable regulations.**
- (3) **While within 200 feet of the property line of a health care facility that is open or otherwise caring for patients: (i) to produce amplified sound or (ii) to intentionally produce, intentionally cause to be produced, or intentionally participate in producing any sound so unreasonably loud that, because of its volume, it unreasonably disturbs, injures, or endangers the health, peace, or safety of patients in the facility. "Health care facility," as used in this subsection, includes, but is not limited to, hospitals, physicians' offices, walk-in medical centers, medical diagnostic centers, medical clinics, surgical centers, and any facilities that are licensed, certified or otherwise authorized to provide health care services in this state. "Health care facility" shall not include residential homes, convalescent homes or other facilities that provide long-term residency. This subsection shall apply only if the health care facility has posted at least one sign that is visible from the public streets and sidewalks adjacent to the facility, that identifies the location as a "Health Care Facility Quiet Zone," and that contains a citation to this ordinance provision. The health care facility shall bear the cost of those signs, and the signs shall comply with all applicable regulations.**
- (c) **For purposes of this section, to produce amplified sound means to intentionally produce, intentionally cause to be produced, or intentionally participate in producing any sound by using a bullhorn, megaphone, loudspeaker, or any other mechanical or electronic device to the extent that the device is used to produce unreasonably loud or raucous sound.**
- (d) **In determining whether a noise or sound is unreasonably loud for purposes of this section, factors that may be considered include, but are not limited to: (1) its volume, (2) the volume of background noise, if any, in the area where it is produced, (3) its proximity to residences or other developments where people sleep, (4) the zoning and character of the area where it is produced, (5) the time of day or night that it is produced, (6) its duration, and (7) whether it is recurrent, intermittent, or**

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constant. The determination of whether a noise or sound is unreasonably loud shall be made without considering the content of any message conveyed by the noise or sound.

- (e) This section shall not apply to: (1) the sirens of police or other emergency vehicles, (2) horns or other warning signals used in a *bona fide* attempt to avoid an imminent automobile accident, or (3) any amplified sound or other noise that is produced within an enclosed building and not audible outside of that building.
- (f) It shall be no defense to a violation of this section that the noise or sound produced in violation of this section: (1) complied with any other provision of this Code, including any provision authorizing the use of sound amplification equipment or (2) was produced pursuant to any permit issued by the city authorizing the use of sound amplification equipment.

Sec. 15-62. – Measurement

For the purpose of determining db(A)s as referred to in this article, the noise shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

For the purpose of determining db(C)s as referred to in this article, the noise shall be measured on the C-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-63. - Sounds impacting residential life

- (a) It shall be unlawful to carry on the following activities in any residentially zoned area of the city or within 300 feet of any residentially occupied structure in any zone of the city:

- (1) The operation of a front-end loader for refuse collection between the hours of 9:00 p.m. and 7:00 a.m.
- (2) The operation of construction machinery between the hours of 9:00 p.m. and 7:00 a.m.

a. "Construction machinery" shall include but not be limited to the use of the following:

- 1. Air compressors,
- 2. Pile drivers
- 3. Sledgehammers
- 4. Bulldozers
- 5. Front-end loader/ Backhoes
- 6. Cranes
- 7. Steam or electric hoists
- 8. Off-road construction vehicles other than trucks
- 9. Pumps
- 10. Pneumatic tools
- 11. Blasting
- 12. Power tools
- 13. Tunneling machines
- 14. Construction devices with internal combustion engines
- 15. Construction devices that emit impulsive sound

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- 16. Construction devices that create vibration
- 17. Metal plates used in street construction to temporarily cover excavations
- 18. Any other construction devices or related activities

(3) The operation of garage machinery between the hours of 9:00 p.m. and 7:00 a.m.

(4) The operation of lawn mowers and other domestic tools out-of-doors between the hours of 9:00 p.m. and 7:00 a.m.

(b) Any mechanical noise other than that regulated in subsection (a) which registers more than 70 db(A) at the nearest complainant's property line is a violation.

**Noise Reference Chart**

Type	Decibels dB(A)
Whisper	30
Normal conversation/ laughter	50-65
Vacuum Cleaner at 10 feet	70
Washing machine/ dishwasher	78
Motorcycle	88
Lawnmower	85-90
Train	100
Jackhammer/ power saw	110
Thunderclap	120
Stereo/ boom box	110-120
Nearby jet takeoff	130

(c) This section shall not apply to:

(1) Emergency operations designed to protect the public health and safety; or

(2) Work by city crews or city contractors in a right-of-way or utility easement when the department responsible for the work has determined that it is necessary to undertake the work between the hours of 9:00 p.m. and 7:00 a.m.:

- a. In order to avoid unreasonably impacting the flow of traffic (this determination shall be made in consultation with the Charlotte Department of Transportation);
- b. In order to avoid unreasonably disrupting the provision of a utility service; or
- c. Because of a North Carolina Department of Transportation requirement.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-64. - Amplified Sound.

(a) It shall be unlawful to:

(1) Operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 db(A) between 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday or 50 db(A) at any other time, as measured anywhere within the boundary line of the nearest residentially occupied property.

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- (2) As to multifamily structures including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined, operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 db(A) between 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday or 50 db(A) at any other time, as measured 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.
- (3) Operate or allow the operation of any sound amplification equipment in the public right-of-way, including streets or sidewalks, or in the public city controlled parks: (i) without having actual on-site possession of a permit issued by the Charlotte-Mecklenburg Police Department; (ii) so as to produce sounds registering more than 75 db(A) ten feet or more from any electromechanical speaker between the hours of 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday; or (iii) at times other than those specified in (ii). Sound amplification equipment operated pursuant to this subsection may not be located more than ten feet off the ground. In addition to the person operating or allowing the operation of sound amplification equipment in violation of this subsection, the person to whom the permit was issued must be present at the location and during the times permitted and shall be liable for any and all violations.

An application for a permit pursuant to this subsection shall: (i) be submitted to the Charlotte-Mecklenburg Police Department at least one full business day but no more than seven calendar days before the permit time requested; and (ii) specify the proposed location of the sound amplification equipment and the date and time that the sound amplification will begin and end. Permits shall be issued on a first come, first served basis. A permit shall not be issued for a location that is within: (a) 100 feet of another location for which a permit has been issued for the same time, (b) ~~or in or within~~ 100 feet of the area permitted for a public assembly pursuant to article XI of this chapter unless issued to the holder of the public assembly permit, or (c) 200 feet of the property line of a school, church, temple, synagogue, other house of worship, or health care facility as defined in section 15-61(b)(3), for any time during which amplified sound is prohibited in that area under section 15-61(b).

The use of mobile sound amplification equipment (e.g., a car radio, unless the vehicle is parked) shall be exempt from the permitting requirement of this subsection and the prohibition of (iii) in the first paragraph of this subpart, however sounds produced during the times otherwise prohibited in (iii) in the first paragraph of this subpart may not register more than 60 db(A) ten feet or more from the equipment. Sound amplification produced in conjunction with public assembly permit shall be exempt from this entire subsection.

- (b) The limitations on the operation of sound amplification equipment in subsection (a) of this section shall not apply to the operation of horns, sirens, or other emergency warning devices actually being used in emergency circumstances, or to the operation of sound amplification equipment regulated pursuant to section 15-65.1 or in accordance with a permit issued pursuant to section 15-65 or section 15-65.2.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-65. - Permits for additional amplification.

- (a) *Application.* An application for a permit for additional amplification on private property under this section shall be submitted to the Charlotte-Mecklenburg Police Department at least ten business

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days in advance of the planned use. The application shall designate and provide contact information for an individual person who shall be in control of the sound amplification equipment and ensure that its use complies with the terms of the permit. Activities regulated under subsection 15-64(a)(3) and section 15-65.1 shall not be eligible for an additional amplification permit under this section.

- (b) *Notice of tentative approval.* Upon tentative approval, the applicant for a permit shall be responsible for giving written notice of the name, nature, date, and time period of the event, and the name of and contact information for the permit holder to the occupants of each property within 1,000 feet of the property for which the permit has been granted. The notice shall be hand delivered to each occupant or, if the occupant is unavailable, affixed to the front door of the building or business or residential unit at least 72 hours in advance of the event. The permit shall not be actually granted and issued until the applicant submits a **notarized statement affidavit** to the Charlotte-Mecklenburg Police Department that such notices have actually been so delivered.
- (c) *Limits on hours.* Permits for additional amplification at a property, or adjacent properties under common ownership, shall be limited to 15 hours in a calendar year. Permits issued pursuant to this section may allow additional amplification only between 8:00 a.m. and 9:00 p.m. Sunday through Thursday and between 8:00 a.m. and 11:00 p.m. on Friday or Saturday.
- (d) *Sound limits.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 db(A) anywhere within the boundary line of the nearest residentially occupied property.
- (e) *Denial; issuance of exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, he shall promptly submit a copy of the denied permit application together with a short statement of the reasons he believes he is entitled to a permit to the city manager or his designee. The city manager or his designee shall have the discretion to grant an exceptional permit waiving locational, time, and/or db(A) requirements, upon his determination that the applicant has made a substantial showing of legal entitlement. Any such exceptional permit shall be promptly reported to the city council.
- (f) *[Violation.]* It shall be unlawful to violate the restrictions or requirements of this section or the terms of a permit issued pursuant to this section.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-65.1. - Outdoor amplification and music at commercial establishments.

- (a) Except in accordance with a permit issued pursuant to section 15-65.2, it shall be unlawful for any commercial establishment (including but not limited to a restaurant, bar, or nightclub) to operate or allow the operation of sound amplification equipment out of doors or directed out of doors or to allow live acoustic music out of doors or directed out of doors other than during the times listed below or so as to create sounds registering in excess of:
  - (1) 85 ~~db(A)~~ **db(C)** Sunday through Thursday between 8:00 a.m. and 9:00 p.m.;
  - (2) 60 ~~db(A)~~ **db(C)** Sunday through Thursday between 9:00 p.m. and 2:00 a.m. the following day;
  - (3) 85 ~~db(A)~~ **db(C)** Friday or Saturday between 8:00 a.m. and 11:00 p.m.; or
  - (4) 60 ~~db(A)~~ **db(C)** between 11:00 p.m. and 2:00 a.m. the following day.

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An establishment may be cited for violating this section only if the enforcing authority determines that the sound being produced is, using a reasonable person standard and taking into consideration the day of week and time of day, unreasonably loud and disturbing to the quiet enjoyment and use of residentially occupied property. For purposes of this section, hotels, motels, other short-term accommodations shall be considered residentially occupied property.

- (b) The decibel limits prescribed in this section shall be measured at the property line of the commercial property at which the sound is being generated.
- (c) An establishment that has been determined to be non-cooperative pursuant to subsection 15-65.3(e) shall be subject to enhanced civil penalties pursuant to subsection 15-68(5) and, after two violations of this section within one year after having been determined to be non-cooperative shall not operate or allow the operation of sound amplification equipment out of doors or directed out of doors or allow live acoustic music out of doors or directed out of doors for a period of 18 months after the second violation. The 18-month prohibition shall apply to the establishment and the property on which the establishment is located.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-65.2. - Permits for large outdoor music facilities.

- (a) For purposes of this section, a "large outdoor music facility" means a facility with a capacity of 1,000 or more persons and that offers musical entertainment at least five times a year.
- (b) A large outdoor music facility may, but is not required to, submit an application for a large outdoor music facility permit to ~~neighborhood & business services (N&BS)~~ **Housing and Neighborhood Services (H&NS)**. After consulting with the applicant and investigating the design and layout of the facility, its proximity to residentially zoned property, and the nature of any intervening property, ~~N&BS~~ **H&NS** shall issue a permit that contains restrictions and requirements designed to strike an appropriate balance between the legitimate use and operation of the facility and the noise impacts on residential life. These restrictions and requirements may include, but are not limited to, restrictions on days of week or hours of operation, number of events, operational rules and restrictions, self-monitoring and reporting requirements, and design or structural requirements. Permits issued pursuant to this section shall be for a term of not more than one year and shall expire on December 31. In the event that ~~neighborhood & business services (N&BS)~~ **H&NS** determines that the facility's approved zoning plan adequately regulates the use and operation of the facility in terms of its potential noise impact on residential life, ~~N&BS~~ **H&NS** may incorporate the zoning plan into a permit.
- (c) A facility that has been issued a permit pursuant to this section shall not be subject to the provisions of section 15-65.1.
- (d) It shall be unlawful for a large outdoor music facility to violate the terms of a permit issued pursuant to this section.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-65.3. - Chronic commercial, **construction**, and industrial noise.

- (a) The purpose of this section is to establish a collaborative process through which the city and a business that has been identified as a chronic source of objectionable noise (i.e., "chronic noise producer") will develop and implement a noise mitigation plan intended to bring the noise to



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acceptable levels. A chronic noise producer is an establishment that, because of the sound generated by or at the business **or construction site**, is an annoyance to adjacent or nearby residences, lodgings, schools, businesses, or other places where people may congregate with a reasonable expectation of undisturbed activity. A business **or construction site** may be a chronic noise producer without having violated this article.

- (b) The chief of police (or designee) may designate a **construction site**, commercial, or industrial business as a "chronic noise producer." In making such a designation, the chief of police (**or designee**) shall take into consideration the following factors:
- (1) The number and frequency of valid noise complaints;
  - (2) The proximity and physical relationship between the business and complaining locations;
  - (3) The severity of sound events, both observed or measured;
  - (4) The times and days of the week of sound events;
  - (5) The **offender's business'** history of cooperation and efforts to alleviate the **surrounding** problem; and
  - (6) The history and context of the location, including whether the sound producing activity predates the occupation of the complaining locations and whether the sound producing location is located in what is generally recognized as an entertainment area.

Upon designation, the chief of police (**or designee**) shall inform the business that it has been designated a chronic noise producer and refer the business to ~~neighborhood & business services (N&BS)~~ **Housing and Neighborhood Services (H&NS)** along with the information that established the basis for the designation.

- (c) Upon receiving a chronic noise producer referral, ~~N&BS~~ **H&NS** shall schedule a mandatory initial meeting with the ~~offender business~~ that it has been designated a chronic noise producer. At the initial meeting, ~~N&BS~~ **H&NS** and the business shall review the information that formed the basis for the designation and any evidence or information concerning the complained of noise provided by the business. Following the initial meeting, ~~N&BS~~ **H&NS** shall determine whether a mitigation plan is warranted. If ~~N&BS~~ **H&NS** determines that a mitigation plan is not warranted, it shall notify the business and CMPD of that determination and no further action shall be taken. ~~under section~~
- (d) If ~~N&BS~~ **H&NS** determines that **use of** a mitigation plan is warranted, ~~N&BS~~ **H&NS** and the business shall together develop and sign a noise mitigation plan. The plan may include, among other things:
- (1) Restrictions on days of week or hours of noise producing activity;
  - (2) Placement, orientation, and operation of sound producing activity or equipment;
  - (3) Structural changes including but not limited to sound attenuation and baffling;
  - (4) Self-monitoring and reporting requirements;
  - (5) A schedule for implementation; and
  - (6) A schedule for review for possible revision or termination of the plan.
- (e) In the event that a business designated as a chronic noise producer: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan; (ii) refuses to agree to a noise mitigation plan; or (iii) fails to implement or comply with an agreed to noise mitigation plan, ~~N&BS~~ **H&NS** may designate the business as non-cooperative and shall notify the business and CMPD of that determination. Should a business designated as non-cooperative cure the basis for the designation, ~~N&BS~~ **H&NS** shall remove the designation and notify the business and CMPD of that determination.
- (f) In the event that a noise enforcement action is taken against a business that has been designated a chronic noise producer, evidence regarding the business' participation in the development and



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implementation of and compliance with the noise mitigation plan shall be relevant to any prosecution or administrative or judicial review or appeal of the enforcement action. Specifically, the business' participation and compliance shall be a mitigating factor and may, but is not required to be a justification for dismissing the enforcement action. A business that has been designated by ~~N&BS~~**H&NS** as non-cooperative shall not be entitled to the benefits of this subsection unless the designation has been removed.

- (g) Appeals. A business that has been designated a chronic noise producer or non-cooperative may appeal such designation within ten days after receiving notice of such designation. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of CMPD or ~~N&BS~~**H&NS**. The appellant shall have the right to present evidence at said hearing. A ruling on appeal is subject to review in the superior court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-66. - Animals.

It shall be unlawful for any person to own, keep or have in his possession, or harbor, any dog, other animal or bird which, by frequent or habitually howling, yelping, barking or otherwise, causes loud noises and produces seriously annoying disturbance to any person or to the neighborhood.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-67. - Motor vehicles.

It shall be unlawful to operate or allow the operation of any motor vehicle in the city:

- (1) Which has had its muffler-exhaust and/or other noise-control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.
- (2) By engaging in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.
- (3) Off the boundaries of a public street for racing or other operations which create unreasonably loud and disturbing noises.

(Ord. No. 4663, § 1, 5-23-2011)

Cross reference — Motor vehicles and traffic, ch. 14.

Sec. 15-68. - Enforcement and penalties.

Where there is a violation of any section of this article, the city, at its discretion, may take one or more of the following enforcement actions:

- (1) ~~The violator may be assessed a \$100.00 civil penalty. For purposes of this subsection, a violation committed after a civil penalty has been assessed shall constitute a separate violation.~~ **The violator may be assessed a civil penalty for violations of this article by a police officer. The violator shall be assessed a civil penalty of one-hundred dollars (\$100.00) for the first violation. For the second**

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violation within one-year of the first violation a civil penalty of five-hundred dollars (\$500.00) shall be assessed. For their third and subsequent violation(s) within one-year of the first violation a civil penalty of one-thousand dollars (\$1,000.00) shall be assessed. For purposes of this subsection, a civil penalty for a violation may be assessed each calendar day.

- (2) The violator may be charged with a misdemeanor and be subject to ~~any penalty prescribed by section 2-21~~ a maximum fine not to exceed five-hundred dollars (\$500.00) as stated in N.C.G.S. §14-4.
- (3) A civil action seeking an injunction and order of abatement may be directed toward any person creating or allowing the creation of any unlawful noise, including the owner or person otherwise having legal or actual control of the premises from which it emanates.
- (4) A police officer may issue a notice of violation, as provided in section 2-24 of this Code, subjecting the violator of subsection 15-63(a)(1) to a civil penalty of two-hundred dollars (\$200.00) for their first violation, five-hundred dollars (\$500.00) for their second violation, and one-thousand (\$1000.00) for their third and subsequent violation(s) within one year from the initial violation. Violations of subsection 15-63(a)(1) shall be determined by location of the offense and not by the company as a whole. ~~of \$200.00.~~ For the purposes of this subsection, the term "violator" means either the operator of the front-end loader; the employer of the operator; or the company, partnership, corporation or other person or entity which owns, possesses or controls the front-end loader utilized by the operator.
- (5) The violator may be assessed a one-thousand dollar (\$1,000.00) civil penalty for any violation of section 15-61 or section 15-65.1 that occurs within one year after the commercial establishment has been determined to be "non-cooperative" pursuant to subsection 15-65.3(e). After two such violations, the prohibition on sound amplification and live acoustic music established in subsection 15-65.1(c) shall apply.
- (6) If a violator fails to pay any civil penalty within thirty (30) days after it is assessed, a late fee of fifty dollars (\$50) shall apply. The City may recover the civil penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.

(Ord. No. 4663, § 1, 5-23-2011)

Sec. 15-69 Severability

Without limiting any other provision in this Code providing for the severability of any Code provisions, it is hereby declared to be the intention of the city council ~~that~~ the sections, paragraphs, sentences, clauses and phrases of this Article are severable, and if any phrase, clause, sentence, paragraph or section of this Article shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Article, since the phrases, clauses, sentences, paragraphs and sections of this Article would have been enacted by the city council without the incorporation into this Article of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Secs. 15-~~69~~70—15-80. - Reserved.

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## ***Questions and Answers***

### ***Neighborhood Development Committee***

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**Questions below were based discussion on the City's Noise Ordinance at the March 20, 2019 Community Safety Committee Meeting**

**Question 1:** *Where are the survey and engagement respondents from?*

*(See attached for map of zip codes as reported by respondents)*

**Question 2:** *What has happened with buffers in other jurisdictions? (provide highlights)*

#### **Cases Upholding Noise Buffers:**

1. *Pine v. City of West Palm Beach, FL (11<sup>th</sup> Cir. 2014)*
  - A city ordinance banned amplified sound or shouting, including on private property, within 100 feet of the property line of a health care facility.
  - The court interpreted and limited the ordinance to prohibit only “loud, raucous, or unreasonably disturbing” amplified sound (e.g., a subdued cellphone conversation wouldn’t violate the ordinance).
  - For the restriction to apply, a health care facility had to post signage along abutting streets that alerted people they were in a quiet zone.
  - A lower court denied protestors’ request to issue a preliminary injunction against the ordinance, and 11<sup>th</sup> Circuit affirmed, ruling that the ordinance was likely valid. The court never made a final decision on the ordinance’s validity.
  
2. *March v. Mills, Attorney General for the State of Maine (1<sup>st</sup> Cir. 2017)*
  - A statute prohibited the following: After being ordered by a law enforcement officer to stop making a noise, intentionally continuing to make that noise so that it can be heard within a building, if your intent is to jeopardize the health of those receiving health services within the building or to interfere with the provision of those health services.
  - The law was interpreted not to apply when a health care facility is closed or when there are no patients inside.
  - A lower court granted a protestor’s request to issue a preliminary injunction against the statute, but the 1<sup>st</sup> Circuit reversed the ruling. The court never made a final decision on the ordinance’s validity.
  
3. *Medlin v. Palmer, Councilwoman Dallas TX (5<sup>th</sup> Cir. 1989)*
  - A city ordinance barred using loudspeakers within 150 feet of schools that are in session, residential buildings, or medical facilities.
  - The ordinance was challenged by anti-abortion protestors on a variety of grounds.
  - A lower court granted summary judgment for the city, and the 5<sup>th</sup> Circuit affirmed, upholding the ordinance.

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## **Questions and Answers**

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4. *Grayned v. City of Rockford, Illinois (Supreme Court 1972)*

- A city ordinance prohibited a person from, while adjacent to a school when school was in session, willfully making any noise that disturbed or tended to disturb the school session.
- A protestor was convicted for violating this ordinance and challenged the ordinance's validity on appeal.
- United States Supreme Court upheld the conviction because it found the ordinance to be valid.

5. *Dickinson v. Brown, of North Seattle College, Washington (9<sup>th</sup> Cir. 2018)*

- A state regulation provided that First Amendment activity on a public college's buildings, facilities, or grounds could not "substantially interfere" with educational activities.
- This regulation was challenged by a preacher who was barred from a college campus for preaching too loudly.
- A lower court refused to issue a preliminary injunction against the regulation, and the 9<sup>th</sup> Circuit affirmed, ruling that the regulation was likely valid. The court never made a final decision on the ordinance's validity.

6. *United States v. Renfro (11<sup>th</sup> Cir 2017)*

- After causing a disruption at a Department of Veteran Affairs (VA) hospital, Renfro was convicted of violating a federal regulation that prohibited making "loud or unusual noise" on VA property that obstructed or disrupted hospital operations or the provision of medical services.
- 11<sup>th</sup> Circuit found the regulation valid and not unreasonably vague.

**Question 3:** *Is there any overlap in issues of picketing at the airport that should be considered during the current noise ordinance assessment?*

The airport has restrictions unique from other public areas because the United States Supreme Court has held that airport terminals are not public forums. There are specific restrictions that apply within and surrounding the terminals.

**Within terminals:**

Picketing and demonstrating may be conducted only on sidewalks outside the terminal building. Per City Code ARTICLE III. - AIRPORT CHARITABLE SOLICITATION AND DEMONSTRATION CONTROL section 4-72 (c) (1), No picketing or demonstrating is allowed within the terminal building.

**On sidewalks that are outside of airport terminals:**

Per City Code ARTICLE III. - AIRPORT CHARITABLE SOLICITATION AND DEMONSTRATION CONTROL section 4-75 (4) b. "No permittee shall make loud noises or create any other disturbances. No dancing; no chanting; no use of drums, cymbals, other musical instruments, or noisemaking devices shall be permitted".

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## ***Questions and Answers***

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#### **Airport premises:**

Except for the sidewalks around the terminals, all other picketing on airport property follows the same regulation as picketing at any other public location per City Code ARTICLE X. – PICKETING, Sec. 19-303. - Picketing regulations, which includes following the City’s Noise Ordinance. However, if notice is given, airport staff can work in advance to accommodate parking for persons planning to picket.

#### **Question 4: *Provide information about New York City subway Musician or Performer Permit***

The Music Under New York (MTA MUSIC) program coordinates special events throughout the transit system. MTA MUSIC selects performers by an annual audition process. Performers do not have to be part of the program to perform in the subway system, but must follow the Metropolitan Transportation Authority’s (MTA’s) rules of conduct.

#### **Highlights of applicable MTA rules of conduct Section 1050.6 Use of the transit system:**

C. ...The following non-transit uses are permitted by the Authority, provided they do not impede transit activities and they are conducted in accordance with these rules: public speaking; campaigning; leafletting or distribution of written noncommercial materials; activities intended to encourage and facilitate voter registration; artistic performances, including the acceptance of donations; solicitation for religious or political causes; solicitation for charities....

C. (4) No activity is permitted which creates excessive noise or which emits noise that interferes with transit operations. The emission of any sound in excess of 85 dBA on the A weighted scale measured at five feet from the source of the sound or 70 dBA measured at two feet from a station booth is excessive noise and is prohibited. Notwithstanding any other provision of this section, the use on subway platforms of amplification devices of any kind, electronic or otherwise, is prohibited.

C. (6) Where an activity permitted by the authorization contained in this section includes the use of a sound production device, no person shall begin or continue the use of such sound production device during any announcement made over the public address system or by a New York City police officer or by an Authority employee.

Link to MTA Rules of Conduct: <http://web.mta.info/nyct/rules/rules.htm>