

BOROUGH OF LEONIA

ORDINANCE NO. 2022-02

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 181 ENTITLED "NOISE"
OF THE CODE OF THE BOROUGH OF LEONIA**

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 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 the Borough of Leonia.

Be it ordained that Chapter 181 of the Code of the Borough of Leonia is hereby amended and supplemented in its entirety as follows:

Section 1.

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 of buildings or structures.

"dBC" means the sound level as measured using the "C" weighting network with a sound level meter meeting the standards set forth in ANSI S1.4-1983 or its successors. The unit of reporting is dB(C). The "C" weighting network is more sensitive to low frequencies than is the "A" weighting network.

"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 at the site of an emergency to restore or deliver essential 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 or a state of emergency declared by a governing agency.

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

"Minor Violation" means a violation that is not the result of the purposeful, reckless or criminally negligent conduct of the alleged violator; and/or the activity or condition constituting the violation has not been the subject of an enforcement action by any authorized local, county or state enforcement agency against the violator within the immediately preceding 12 months for the same or substantially similar violation.

"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 on engines or equipment where such 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.

"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, below, or otherwise adjacent to.

"Noise Control Officer" (NCO) means an employee of 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 an employee of a municipality with a Department-approved model noise control ordinance. All NCOs must receive noise enforcement training as specified by the Department in N.J.A.C. 7:29 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.

"Noise Control Investigator" (NCI) means an employee of a municipality, county or regional health commission that has a Department-approved model noise control ordinance and the employee has not received noise enforcement training as specified by the Department in N.J.A.C. 7:29. However, they are knowledgeable about their model noise ordinance and enforcement procedures. A Noise Control Investigator may only enforce sections of the ordinance that do not require the use of a sound level meter. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons.

"Plainly audible" means any sound that can be detected by a NCO or an NCI using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, the detection of the rhythmic

bass component of the music is sufficient to verify plainly audible sound. The NCO or NCI 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 vertical boundary that separates one parcel of property (i.e., lot and block) from another residential or commercial property; (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 as defined herein, the vertical or horizontal boundaries 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, or if there is an outdoor sound source such as an HVAC unit on the same parcel of property, the boundary line is the exterior wall of the receiving unit). Note- this definition shall not apply to a commercial source and a commercial receptor which are both located on the same parcel of property (e.g., a strip mall).

"Sound production device" means any device whose primary function is the production of sound, including, but not limited to any, musical instrument, loudspeaker, radio, television, digital or analog music player, public address system or sound-amplifying equipment.

"Sound reduction device" means any device, such as a muffler, baffle, shroud, jacket, enclosure, isolator, or dampener provided by the manufacturer with the equipment, or that is otherwise required, that mitigates the sound emissions of the equipment.

"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.

Section 2.

Applicability

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

1. Industrial facilities;
2. Commercial facilities;
3. Community service facilities;
4. Residential properties;
5. Multi-use properties;
6. Public and private right-of-ways;

7. Public spaces; and
8. Multi-dwelling unit buildings.

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

1. Commercial facilities;
2. Community service facilities (i.e. non-profits and/or religious facilities)
3. Residential properties;
4. Multi-use properties;
5. Multi-dwelling unit buildings.

(C) Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.4, except that the testing of the electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.

Section 3.

Exemptions

- (A) The provisions of this ordinance shall not apply to the exceptions listed in N.J.A.C. 7:29-1.5.
- (B) Sound production devices required or sanctioned under the Americans with Disabilities Act (ADA), FEMA or other government agencies to the extent that they comply with the noise requirement of the enabling legislation or regulation. Devices which are exempted under N.J.A.C. 7:29-1.5 shall continue to be exempted.
- (C) Construction and demolition activities are exempt from the sound level limits set forth in tables I and II and III.

Section 4.

Enforcement Officers

- (A) Noise Control Officers shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance and pursue enforcement activities.
- (B) Noise Control Investigators shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance that do not require the use of a sound level meter (i.e., plainly audible, times of day and/or distance determinations) and pursue enforcement activities.
- (C) Noise Control Officers and Investigators may cooperate with NCOs and NCIs of an adjacent municipality in enforcing one another's municipal noise ordinances.

Section 5.

Measurement Protocols

(A) 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 Section 5(B) of this ordinance and with the definition of "real property line" as contained herein.

(B) When conducting indoor sound level measurements across a real property line the measurements shall be taken at least three feet from any wall, floor or ceiling and all exterior doors and windows may, at the discretion of the investigator, be closed. The neighborhood residual sound level shall be measured in accordance with N.J.A.C. 7:29-2.9(b)2. When measuring total sound level, the configuration of the windows and doors shall be the same and 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.

Section 6.

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 Section 3(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, II or III when measured at or within the real property line of any of the receiving properties listed in Tables I, II or III except as specified in Section 5(B).

(B) Impulsive Sound

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 continuous sound and shall meet the requirements as shown in Tables I and II.

**TABLE I
MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS
WHEN MEASURED OUTDOORS**

| RECEIVING PROPERTY CATEGORY | Residential property, or residential portion of a multi-use property | | Commercial facility, non-residential portion of a multi-use property, or community service facility |
|---|--|----------------|---|
| 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 |

**TABLE II
 MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS
 WHEN MEASURED 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 |
| 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 |

Note: Table II shall only apply when the source and the receptor are separated by a real property line and they also share a common or abutting wall, floor or ceiling, or are on the same parcel of property.

**TABLE III
MAXIMUM PERMISSIBLE OCTAVE BAND
SOUND PRESSURE LEVELS IN DECIBELS**

| Receiving Property Category | Residential property, or residential portion of a multi-use property | | Residential property, or residential portion of a multi-use property | | Commercial 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 |
| 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 |

Note: 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.

Section 7.

Sound Production Devices

No person shall cause, suffer, allow, or permit the operation of any sound production device in such a manner that the sound crosses a property line and raises the total sound levels above the neighborhood residual sound level by more than the permissible sound level limits set forth in Table IV when measured within the residence of a complainant according to the measurement protocol in Section 5(B) of this ordinance. These sound level measurements shall be conducted with the sound level meter set for "C" weighting, "fast" response.

**TABLE IV
 MAXIMUM PERMISSIBLE INCREASE IN TOTAL SOUND LEVELS
 WITHIN A RESIDENTIAL PROPERTY**

| | |
|--|-----------------|
| Weeknights 10:00 p.m. - 7:00 a.m. Weekend nights 11:00 p.m. and 9:00 a.m. | All other times |
| 3 dB(C) | 6 dB(C) |

Section 8.

Enforcement

(A) Violation of any provision of this ordinance shall be cause for a Notice of Violation (NOV) or a Notice of Penalty Assessment (NOPA) document to be issued to the violator by the Noise Control Officer or Noise Control Investigator.

(B) Any person who violates any provision of this ordinance shall be subject to a civil penalty for each offense of not more than the maximum penalty pursuant to N.J.S.A. 40:49-5, which is \$2,000 as of December 2014. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

(C) Upon identification of a violation of this ordinance the Noise Control Officer or Noise Control Investigator shall issue an enforcement document to the violator. The enforcement document shall identify the condition or activity that constitutes the violation and the specific provision of this ordinance that has been violated. It shall also indicate whether the violator has a period of time to correct the violation before a penalty is sought.

(D) If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a minor violation (as defined in Section 1 of this ordinance) a NOV shall be issued to the violator.

1. The document shall indicate that the purpose of the NOV is intended to serve as a notice to warn the responsible party/violator of the violation conditions in order to provide them with an opportunity to voluntarily investigate the matter and voluntarily take corrective action to address the identified violation.

2. The NOV shall identify the time period (up to 90 days), pursuant to the Grace Period Law, N.J.S.A. 13:1D-125 et seq. where the responsible party's/violator's voluntary action can prevent a formal enforcement action with penalties issued by the Health or Police Department. It shall be noted that the NOV does not constitute a formal enforcement action, a final agency action or a final legal determination that a violation has occurred. Therefore, the NOV may not be appealed or contested.

(E) If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a non-minor violation, the violator shall be notified that if the violation is not immediately corrected, a NOPA with a civil penalty of not more than the maximum penalty allowed pursuant to N.J.S.A. 40:49-5, which is \$2,000 as of December 2014, will be issued. If a non-minor violation is immediately corrected,

a NOV without a civil penalty shall still be issued to document the violation. If the violation occurs again (within 12 months of the initial violation) a NOPA shall be issued regardless of whether the violation is immediately corrected or not.

(F) The violator may request from the Noise Control Officer or Noise Control Investigator an extension of the compliance deadline in the enforcement action. The Noise Control Officer or Noise Control Investigator shall have the option to approve any reasonable request for an extension (not to exceed 180 days) if the violator can demonstrate that a good faith effort has been made to achieve compliance. If an extension is not granted and the violation continues to exist after the grace period ends, a NOPA shall be issued.

(G) The recipient of a NOPA shall be entitled to a hearing in a municipal court having jurisdiction to contest such action.

(H) The Noise Control Officer or Noise Control Investigator may seek injunctive relief if the responsible party does not remediate the violation within the period of time specified in the NOPA issued.

(I) Any claim for a civil penalty may be compromised and settled based on the following factors:

1. Mitigating or any other extenuating circumstances;
2. The timely implementation by the violator of measures which lease to compliance;
3. The conduct of the violator; and
4. The compliance history of the violator.

Section 9.

Consistency, 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 part of ordinances, which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.

(C) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this ordinance or from other law.

Section 10.

Severability

If any article, section, subsection, sentence, clause or phrase of this ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

Section 11.

Repealer


All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 12.

Effect

This ordinance will take effect immediately upon publication.

| RECORD OF VOTE | | | | | | | | | | | | |
|--|------------------|---|---|---|---|----|-------------------|---|---|---|---|----|
| Council | First Reading | | | | | | Second Reading | | | | | |
| | February 7, 2022 | | | | | | February 23, 2022 | | | | | |
| | M | S | Y | N | A | AB | M | S | Y | N | A | AB |
| Flaim | | ✓ | ✓ | | | | | | ✓ | | | |
| Davis | ✓ | | ✓ | | | | ✓ | | ✓ | | | |
| Fusco | | | ✓ | | | | | | ✓ | | | |
| Grandelis | | | ✓ | | | | | | ✓ | | | |
| Terrell | | | | | | ✓ | | ✓ | ✓ | | | |
| Ziegler | | | ✓ | | | | | | ✓ | | | |
| Mayor Zeigler | | | | | | | | | | | | |
| M - Motion S - Seconded Y- Yes N - No A - Abstain AB - Absent | | | | | | | | | | | | |



 Judah Zeigler, Mayor

ATTEST:



 Trina Lindsey, RMC
 Borough Clerk