

Sec. 24-255. - Unlawful excessive sound.

(a) *Excessive sound prohibited.* It shall be unlawful for any person to create excessive sound, as described in this section.

(b) *Definitions.* The following terms shall have the meanings indicated, for purposes of applying and enforcing this section:

*Calibrator.* A scientific device that is commonly used for the purpose of calibrating sound meters.

*dBA.* The sound pressure level in decibels as measured on a sound level meter using the A-weighting network.

*Sound.* An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristics of such sound, including duration, intensity and frequency.

*Sound level.* The weighted sound pressure level obtained by use of a sound level meter and frequency weighting network, such as A, B or C as specified in the American National Standards Institute specifications for sound level meters (ASA 47-1983, or a later revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

*Sound level meter.* An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and any applicable weighting network used to measure sound pressure levels.

*Zone.* Any reference to property being in a particular "zone" shall mean the zoning district category of the property, as per chapter 40.1 of this Code.

(c) *Per se offenses.* The following activities are deemed to comprise creating excessive sound in violation of this section, without any requirement of scientific measurement of sound levels:

- (1) A person blowing a car horn when it is not reasonably necessary to do so for legitimate safety or emergency purposes.
- (2) A person operating a sound system in a motor vehicle at a sound level that, when heard in another vehicle with the windows closed, interferes with normal conversation, interferes with normal use or enjoyment of a car radio, interferes with use of a communication system (such as a cell phone, car telephone, citizens band radio, or police radio), or creates physically perceptible vibrations.
- (3) A person allowing an animal to make sound that unreasonably and repeatedly disturbs another person in his or her residence after being requested to stop.
- (4) A person operating a motor vehicle that generates loud exhaust sound without having a muffler that meets all applicable motor code requirements.
- (5) Sound that unreasonably interferes with the functioning of a court of law, religious activities at an established place of worship, a medical facility, or the conduct of government activities in a governmental building.

(d) *Offenses requiring scientific measurement of sound levels.* The following sound levels shall be deemed to be excessive sound in violation of this section, when measured outside the real property line of the sound source. The zone shall be determined by where the sound is measured, not where it is generated.

- (1) *Residential zones; night.* In a residential zone between 10:00 p.m. and 6:00 a.m., sound meeting or exceeding 55 dBA.
- (2) *Residential zones; day.* In a residential zone between 6:00 a.m. and 10:00 p.m., sound meeting or exceeding 65 dBA.

- (3) *Commercial zones.* In a commercial zone, sound meeting or exceeding 75 dBA.
- (e) *Scientific measurement procedures.*
- (1) The decibel level of any noise regulated by the preceding subsection may be measured by the use of a sound level meter. Such measurements shall be accepted as prima facie evidence of the level of noise at issue in any court or legal proceeding to enforce the provisions of this section.
  - (2) The accuracy of the sound level meter may be tested by a calibrator. Any sworn report of the results of any test of the calibrator for the accuracy of a sound level meter shall be admissible in court in any criminal or civil proceeding, as evidence of the facts therein stated.
  - (3) An individual operating a sound level meter pursuant to the provisions of this section shall issue a certificate to indicate:
    - (i) That the sound level meter used to take the decibel level reading was operated in accordance with the manufacturer's specifications;
    - (ii) That the city has on file a sworn report which states that the sound level meter has been tested within the past 12 months and has been found to be accurate;
    - (iii) The name of the accused;
    - (iv) The location of the noise;
    - (v) The date and time that the reading was made;
    - (vi) The zone in which the reading was made; and
    - (vii) The decibel level reading.
  - (4) Such certificate, when attested by the operator taking the decibel level reading, shall be admissible in court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading. A copy of the certificate shall be delivered to the accused upon request.
- (f) *Exceptions.* This section shall not apply to:
- (1) The operation of construction devices used in construction activities between 7:00 a.m. and 8:00 p.m.
  - (2) The operation of lawn care maintenance equipment such as power mowers, chain saws, and string trimmers, and vehicles for the removal of debris, garbage or refuse with properly working mufflers between 7:00 a.m. and 8:00 p.m.
  - (3) The repair, maintenance or construction of federal, state, regional, or local governmental facilities.
  - (4) Emergency work to repair equipment or facilities.
  - (5) The operation of railroad and railway equipment and vehicles.
  - (6) Sound generated by any emergency governmental function, including but not limited to emergency vehicles.
  - (7) Recreational activities or events on publicly owned property, where authorized by the city manager or his designee.
  - (8) Sound generated by boats or ships in navigable waterways, or by aircraft.
  - (9) Duly permitted or authorized demolition activities.
  - (10) Churches engaged in religious activities.
  - (11) Burglar alarms or vehicle alarms, except that this exemption shall not apply if the owner of the property or vehicle fails to terminate the sounding of the alarm within a reasonable period of time.
  - (12) Other activities specifically authorized in advance in writing by the chief of police or his designee.
- (g) *Penalties.* Except as otherwise provided in this section, the penalty for a violation of this section shall be as set for a Class IV misdemeanor. For any person who is convicted of a second or subsequent offense of this section within 12 months of a prior conviction, the penalty shall be as set forth for a Class III misdemeanor.
- (h)

*Other remedies.* This section shall not be deemed to limit the ability of any person to bring a common law civil proceeding to abate any excessive sound that is alleged to comprise a public or private nuisance. In addition, the City of Portsmouth and any person shall be entitled to seek equitable relief to enjoin a violation of this section. The prohibitions and penalties set forth in this section shall be deemed cumulative to any other prohibitions penalties that may be set forth elsewhere.

(Code 1973, §§ 21-96, 21-97; Code 1988, § 24-255; Ord. No. 1989-84, § 1, 9-26-1989; Ord. No. 1994-48, § 1, 6-14-1994; Ord. No. 2009-89, §§ 1, 2, 9-8-2009)

**Cross reference—** Penalty for class 4 misdemeanor, § 1-11; restrictions on blowing of locomotive whistles, § 29-3.