

CHAPTER 10-400. NOISE AND EXCESSIVE VIBRATION 55

§ 10-401. Legislative Findings.

- (1) The City Council of the City of Philadelphia finds:
 - (a) that noise and excessive vibration degrade the environment of the City to a degree which:
 - (.1) is harmful and detrimental to the health, welfare and safety of its inhabitants;
 - (.2) interferes with the comfortable enjoyment of life, property and recreation and with the conduct and operation of business and industry; and
 - (.3) causes nuisances;
 - (.4) during the course of various public events important within the cultural and civic framework of the City's annual activities, such as the Mummers Parade, tends to cause discomfort, disruption and annoyance both to the event participants and its observers; 56
 - (b) that no one has any right to create noise or excessive vibration;
 - (c) that effective control and elimination of noise and excessive vibration is essential to the furtherance of the health and welfare of the City's inhabitants and to the conduct of the normal pursuits of life, recreation, commerce and industrial activity.
- (2) It is the intent and purpose of this Chapter:
 - (a) to prevent noise and excessive vibration and to limit, control and eliminate noise and excessive vibration in general from whatever source;
 - (b) to empower the Board of Health to promulgate regulations to effect the above.
- (3) It is the further intent of City Council that:
 - (a) all City of Philadelphia agencies, including the Police Department, shall cooperate in the implementation of this Chapter; 57
 - (b) whenever permitted by law, the provisions of this Chapter shall apply to all governmental jurisdictions and their agencies in the operation of facilities located within the City of Philadelphia;
 - (c) the Department of Public Health of the City of Philadelphia shall cooperate with other governmental jurisdictions in the control and elimination of noise and excessive vibration; and
 - (d) contractors and vendors providing services and products to the City shall comply with the requirements of this Title.

§ 10-402. Definitions. 58

The following definitions shall apply to this Chapter and the Regulations adopted hereunder:

- (1) *Background sound level*. The measured sound level in the area, exclusive of extraneous sounds and the sound contribution of the specific source in question.
- (2) *Board*. The Board of Health.
- (3) *Construction*. Site preparation, excavation, filling or grading or the assembly, erection, repair, alteration or demolition of any structure or part of the right-of-way.
 - (3.1) *Concert venue*. A facility used for musical or similar performances with a seating capacity of more than 1,000. 59
- (4) *Decibel (dB)*. A unit for measuring the volume of sound equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure which is 20 micropascals (20 micronewtons per square meter).
- (5) *Department*. The Department of Public Health, Health Commissioner or any authorized representative thereof.
- (6) *Emergency and Public Works Construction*. Construction necessary to protect health and safety, construction by public utilities, and construction on streets, bridges and sidewalks for public works purposes or such other construction activity specifically designated by the City as emergency construction after consultation with the Health Department.
- (7) *Extraneous sound*. A sound the level of which does not remain generally constant during measurement.
- (8) *Person*. Any individual, natural person, syndicate, association, partnership, firm, corporation, institution, agency, authority, department, bureau or instrumentality of federal, state or local government or other entity recognized by law as a subject of rights and duties.
- (9) *Property Boundary*. In the case of a single-family dwelling, or a property used solely for

non-residential purposes, the legal property line. In the case of a structure containing two-family, multi-family or other non-single-family residential dwellings, the legal property line and any partition between separately occupied units within the property.

(10) *Public Right-of-Way*. Property to which the public has a legal right of access including, but not limited to, public sidewalks and streets and public parks, but not including buildings.

(11) *Regular Construction*. Construction between the hours of 7 a.m. and 8 p.m., Monday through Friday, or between the hours of 8 a.m. and 8 p.m. on weekends and legal, national or state holidays.

(12) *Siren*. A device manually or electrically operated for producing a penetrating warning sound.

(13) *Residential property*. Any portion of any property at which people reside on a permanent basis, including exterior portions of the property and the common areas of a multi-unit residential property. 60

(14) *Sound*. An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium.

(15) *Sound Level Meter*. An instrument used to measure sound pressure levels.

(16) *Unamplified Human Voice*. Human vocal sound that is not amplified by any mechanical or electronic means.

(17) *Vibration*. An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity or acceleration with respect to a given reference point.

§ 10-403. Prohibited Conduct. 61

(1) *Sound Near Protected Facilities*. No person shall create or cause, or permit the creation of, sound that exceeds 3 decibels above background level measured at the property boundary of any hospital, nursing home, house of worship, courthouse, school, library or day care facility. This provision shall apply, notwithstanding the potential applicability of a less restrictive standard in this Chapter.

(2) *Sound From Residential Properties*. No person shall create or cause, or permit the creation of, sound originating from a residential property audible at a distance greater than one hundred feet from the property boundary or that exceeds 3 decibels above background level measured beyond the property boundary except for the following:

(a) the operation of lawn maintenance equipment between the hours of 8 a.m. and 8 p.m., provided the equipment is functioning within manufacturer's specifications and with sound-reducing equipment in use and in proper operating condition;

(b) sound originating from an air conditioning or refrigeration unit or system; sound from such a source shall not exceed:

(i) 5 decibels above background level measured at the property boundary of the nearest occupied residential property;

(ii) 10 decibels above background level measured at the property boundary of the nearest occupied non-residential property;

(c) sound from animals, to which the restrictions of paragraph (6) apply; and

(d) the unamplified human voice.

(3) *Sound From Non-Residential Properties*. No person shall create or cause, or permit the creation of, sound originating from a property used for a non-residential purpose that exceeds:

(a) 5 decibels above background level measured at the property boundary of the nearest occupied residential property; or

(b) 10 decibels above background level measured at the property boundary of the nearest occupied non-residential property.

(4) *Special Assembly Occupancies*. No person shall create or cause, or permit the creation of, sound originating from a special assembly occupancy, as defined under Subcode B (The Building Code) of Title 4 of this Code, audible at a distance greater than one hundred feet from the property boundary of such special assembly occupancy. This subparagraph shall apply regardless whether it is more restrictive than the limitations imposed by paragraph (3) of this Section.

(5) *Sound From Concert Venues and Stadia*. No person shall create or cause, or permit the creation of, sound originating from a concert venue or stadium that contributes to a total sound level, exclusive of extraneous sounds, that exceeds 70 decibels measured at the property boundary of the nearest occupied residential property.

(6) *Animal Sounds*. No person shall cause or permit more than 5 expressions of sound from one or more animals (such as individual barks from one or more dogs) during a five minute period from any property

audible at a distance greater than 50 feet from the property boundary. This shall not apply to zoos, veterinary hospitals or clinics, animal shelters, a circus or other licensed entertainment venue, or a facility used for educational or scientific purposes, such as schools and laboratories.

(7) *Sound Created In The Right-Of-Way.* No person shall create or cause, or permit the creation of, sound in the public right-of-way:

(a) abutting a residential property by amplification from a radio, tape player or similar device between the hours of 9 p.m. and 8 a.m., unless used in connection with an earplug or earphones which will prevent significant emanation of sound from such device; or

(b) that exceeds the levels permissible for sound emanating from property directly abutting such portion of the right-of-way.

(c) The limitations of this paragraph shall not apply to a Demonstration for which a permit has been obtained pursuant to the City's "Regulation Governing Permits For Demonstrations On City Property". The Department of Health may adopt, by regulation, additional limitations applicable to public demonstrations and sound-making activity in the right-of-way.

(8) *Exception for Construction Activity.* The restrictions of paragraphs (1) through (5) and 7(b) do not apply to regular construction and emergency and public works construction, provided that all equipment used in connection with such construction is maintained and operated in compliance with all applicable law.

(9) *Amplified Devices on Public Transportation.* No radio, tape player or other similar amplified device may be used on a public transportation vehicle unless the user of the device utilizes an earplug or earphones that prevent anything other than minimal sound to emanate beyond the user.

(10) *Sirens.*

(a) Sirens shall be operated only during emergency situations. No siren shall exceed 128 decibels more than 10 feet from the source.

(b) No anti-theft or anti-intruder alarm system siren, whether for a home or a vehicle, shall sound, either continuously or intermittently, for a course of more than 15 minutes or for more than 15 minutes in a one hour period. All such sirens shall be equipped with a reset device that causes automatic shutoff 15 minutes after the start of the alarm.

(11) *Excessive Vibration.* No person shall create or cause, or permit the creation of, vibration levels that exceed 0.15 inches per second beyond any property boundary or 30 yards from any moving source.

(12) *Exemptions.* 62 The provisions of this Section shall not apply to the following:

(a) Aircraft;

(b) Airport and railroad operations;

(c) Licensed fireworks displays;

(d) Sounds lasting no more than 5 minutes in any one hour created by bells, chimes, carillons, or the human voice, or by electronic or mechanical devices that reproduce such sounds, while used in connection with a religious institution;

(e) Sounds created by school bells or chimes or by electronic or mechanical devices when used by schools to reproduce such sounds; and

(f) Sounds lasting no more than 5 minutes in any one hour created by a clock or bell tower to mark time through the use of bells or chimes or electronic or mechanical devices that reproduce such sounds.

§ 10-404. Enforcement. 63

(1) The Department of Public Health, the Police Department, and the Department of Licenses and Inspections shall have the power to effect compliance with this Chapter and any Regulations adopted hereunder, by:

(a) issuance of a Code Violation Notice under the provisions of Section 1-112 of this Code; and

(b) initiation, through the Law Department, of appropriate legal proceedings:

(.1) for the imposition of a penalty under this Chapter; or

(.2) in order to prevent, restrain or abate noise or excessive vibration prohibited by this Chapter or Regulations adopted hereunder, or the violation of the provisions of any order made under Section 10-409.

(2) In addition, the Department shall have the authority to issue an order pursuant to Section 10-409 commanding all necessary actions or forebearances, and specifying a maximum period of time for the installation of any equipment or any other measures necessary to achieve compliance.

(3) Continuing violations of this Chapter, any Regulation adopted hereunder, or any order of the Department made hereunder are hereby declared to be a public nuisance per se. Where the Department

determines that a nuisance exists, the Department, in addition to or in lieu of invoking any other sanction or remedial procedure provided, may certify the existence of a nuisance per se, to the Department of Licenses and Inspections, which shall provide notice of the certification to the violator and itself or by contract abate and remove the violation; charge the cost of the abatement or removal to the person responsible therefore; and with the approval of the Law Department, collect the cost by lien or otherwise as may be authorized by law.

(4) The imposition of any penalty under this Chapter shall not prevent the City from instituting any appropriate administrative action or proceeding or any action at law or equity to require compliance with the provisions of this Chapter, regulations adopted hereunder, or administrative orders and determinations made hereunder.

§ 10-405. Additional Powers and Duties of The Department of Public Health. 64

The powers and duties to be exercised by Department of Public Health shall include the following:

(1) The Department shall investigate complaints about noise or excessive vibration, make observations and maintain surveillance of the discharge or escape of noise or excessive vibration. The names and addresses of complainants shall be kept confidential by the Department.

(2) The Department may inspect from time to time any installation, premises, equipment, devices and appurtenances thereto that may, can or do cause noise or excessive vibration, and the Department may take measurements and make analyses of such noise or excessive vibration. Where directed, the owner shall provide assistance in obtaining normal operating conditions during periods of measurement.

(3) The Department shall prescribe standard methods and procedures for the measurement and the analysis of sound and vibration, as may be required or necessary to evaluate performance and compliance with this Chapter and Regulations adopted hereunder.

(4) The Department may require from the owner of any source of sound and/or vibration which may be or is in excess of that permitted by this Chapter or the Regulations adopted hereunder, such information, plans, specifications, analyses, performance data and tests or examinations as will disclose the nature, effects, extent, quantity or degree of sound or vibration which are or may be discharged from such source.

(5) The Department may order the owner, lessee or his agent, of any applicable facility, to conduct at his expense such tests as are necessary in the opinion of the Department to determine whether such facility is in compliance with this Chapter and the Regulations adopted hereunder. Test results shall be submitted to the Department within 10 days after the tests are completed. Such tests shall be conducted by professionally competent personnel and in a manner approved by the Department and subject to witness by the Department.

(6) The Department may require the submission of information on the sources of sound or vibration which may be or is in excess of that permitted by this Chapter or the Regulations adopted hereunder, including the nature, characteristics, intensity and frequency, the period of operation, the effects and the location of such sources.

(7) The Department may classify sources and identify those which tend to create noise or excessive vibration problems. At such designated sources, it may order the installation and operation of testing or measuring equipment or other measures to detect noise or excessive vibration, on a continuous or periodic basis, to determine the intensity and frequency, and to record this information on time charts subject to inspection by the Department. It may require that the installations be equipped to activate alarms, control equipment, and process regulators.

(8) The Department may require the designation of a person, or persons, to be responsible for noise or excessive vibration control operations and the submission of reports and information.

(9) The Department may approve improvement plans and schedules for compliance for the renovation of existing equipment, the installation of new systems of noise or excessive vibration control, or a change in basic processes. The Department may establish special operational requirements necessary to minimize noise or excessive vibration during this period as a condition of approval. Violations of these conditions shall be considered a violation of this Chapter. The existence of such an approved improvement plan will have no bearing on any violations due to conditions not covered by the plan.

(10) The Department shall conduct or contract for the in-service training of its personnel in the observation and measurement of sound and vibration.

(11) The Health Commissioner, or his designee, shall administratively hear objections to orders of the Department where error is alleged. Consideration of such objections shall be limited to adequacy of notice, matters of fact, existence of violation, and reasonableness of the time specified for compliance. The Health

Commissioner may sustain, modify or revoke any order where error is found to exist.

(12) The Health Commissioner, or his designee, may appoint such technical advisory committees as he deems necessary.

§ 10-406. Penalties. 65

(1) The penalty for an initial violation of this Chapter is a fine of not less than one hundred (100) dollars and not more than three hundred (300) dollars.

(2) For a second violation within twelve months of a prior violation, the penalty is a fine of not less than two hundred (200) dollars and not more than four hundred (400) dollars.

(3) For a third violation within twelve months of two prior violations, the penalty is a fine of not less than three hundred (300) dollars and not more than five hundred (500) dollars.

(4) For a fourth, or subsequent, violation within twelve months of three or more violations, the penalty is a fine of not less than five hundred (500) dollars and not more than seven hundred (700) dollars.

(5) A violation of the same requirement shall be considered as a separate violation for each day the violation continues.

§ 10-407. Powers and Duties of the Board of Health. 66

The Board of Health shall have the following powers and duties:

(1) to promulgate regulations, implementing this Chapter, preventing noise and excessive vibration, and limiting, controlling or prohibiting noise and excessive vibration from any sources. Such regulations may include, but are not limited to, the following:

(a) the intensity, frequency, duration and other characteristics of sound and vibration, the circumstances under which sound and vibration are permitted, and the degree of control required for sound and vibration;

(b) noise and excessive vibration and related actions which are prohibited;

(c) the types and kinds of control measures and actions, including specifications and/or performance requirements, which may be required to control or eliminate noise and excessive vibration;

(2) to promulgate regulations to establish objectives for the prevention of community degradation, due to noise and excessive vibration, to establish areas where objectives are applicable, and limiting, prohibiting, or otherwise controlling noise and excessive vibration. Such regulations may include, but are not limited to, the control or prohibition of acts that may cause sounds or vibrations prohibited by or in excess of that permitted by this Chapter or regulations adopted hereunder, including each and every means enumerated in paragraph (1) of this Section;

(3) to classify sources of sound and vibration by character, process, industry, cause, effects, or other reasonable system for the purpose of promulgating regulations requiring the application of measures to control and/or eliminate noise and excessive vibrations.

§ 10-408. Inspection. 67

(1) The Department of Public Health is authorized to make inspections, including the requiring of information and reports, the taking of measurements, and the performance of tests, as necessary, to determine compliance with this Chapter and Regulations adopted under it. For this purpose, the Department is authorized to enter and examine any establishment, institution or private residence at all reasonable times, as provided by law.

Where the City of Philadelphia has jurisdiction, vehicles, ships and airplanes may be inspected by uniformed employees of the City of Philadelphia.

(2) Where the Department of Public Health is satisfied that any other governmental or private agency or industry requires compliance with standards which are at least equivalent to comparable City standards, that their inspection service is effective, that an acceptable level of compliance is maintained and that such compliance is required by inspectors approved by the Department, it may accept the result of such inspections in lieu of making its own inspections.

(3) The Department of Public Health shall continue to exercise any functions and perform any duties in administering and enforcing the provisions of any act of the Commonwealth of Pennsylvania which is not hereby affected and which is or may be vested in or placed upon the Department so long as such acts remain in force.

(4) The Department of Public Health shall cooperate with state and federal inspection agencies and the regional agency, when and if one is empowered to act; that duplication of inspection shall be avoided wherever feasible and consistent with the protection of the public; and that reciprocity between, and augmentation of, existing inspectional services shall be encouraged.

§ 10-409. Orders. 68

(1) Except as otherwise provided, and subject to the provisions of the Charter, whenever the Department of Public Health determines the existence of a violation of this Chapter, or any regulations adopted hereunder, the Department may, in addition to any other remedy available at law or equity, enter an order against the person or persons responsible for the violations requiring such action or forbearance from action as the Department determined necessary to correct the violation.

(2) All such orders shall be in writing and shall be served on the person from which action, forbearance, or compliance is required, except that where the Department of Public Health finds willfulness or a menace to public health requiring immediate corrective action, such orders may be oral in the first instance.

(3) Any person to whom such an order is directed or from whom any action, forbearance or compliance is in any way required shall comply with such order within such period of time as the Department of Public Health may therein prescribe.

(4) While an appeal from an order, as hereunder provided, is pending, compliance with such order shall not be required unless the Department of Public Health finds, and certifies in writing in such order, that immediate compliance is necessary to protect the public health. The pendency of an appeal from any order shall not operate to bar or stay proceedings in any court for the imposition of a penalty under § 10-405(2)(b) to prevent, restrain or abate violation of the provisions of the order where the order contains a certification that immediate compliance is necessary to protect the public health.

(5) Any person who is aggrieved by an order directed to him or requiring any action, forbearance or compliance from him may request and receive a prompt administrative hearing before the Health Commissioner, or any representative specifically designated by him, provided that such request for hearing is made in writing within 5 days from the receipt of such order.

§ 10-410. Powers Reserved to the Department Under Existing Laws. 69

(1) Nothing in this Chapter shall limit in any way whatever the powers conferred upon the Department by the Air Management Code or any other Code of the City.

(2) All ordinances previously adopted, or regulations adopted under previous authority, to control noise or excessive vibration, which are not contrary to this Chapter, shall continue in force until revised, repealed, or new regulations relating to the same subject matter are adopted pursuant to this Chapter.

§ 10-411. Severability. 70

The provisions of this Chapter are severable and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Chapter or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this Chapter would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.

Notes