



Legislation Text

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CITY of ALBUQUERQUE
TWENTY-SECOND COUNCIL

COUNCIL BILL NO. C/S O-16-24 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

C/S Amending Article 9, Chapter 9, "The Noise Control Ordinance" (Benton)

AMENDING ARTICLE 9, CHAPTER 9, "THE NOISE CONTROL ORDINANCE".

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Sections 9-9-1 et seq., R.O.A. 1994, is amended to read:

§ 9-9-1 SHORT TITLE AND DECLARATION OF INTENT

(A) This article may be cited as the "Noise Control Ordinance."

(B) A substantial body of scientific research has shown that exposure to excessive sound is a serious hazard to the public health, welfare, safety and quality of life. It is the express intent of the City Council to control the level of excessive sound as noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep and repose and an environment free from unnecessary and excessive sound.

§ 9-9-2 DEFINITIONS

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROVED SOUND-LEVEL METER. An instrument sensitive to pressure fluctuations and meeting the American National Standards Institute (ANSI) S1.4-1983 Type 1 or Type 2 or those of IEC Publication 651 or those of the latest respective revisions thereof.

A-WEIGHTED SOUND PRESSURE LEVEL. The sound pressure level as measured on an

approved sound-level meter using the A-weighting network. The unit of measurement is dB(A). Sounds measured with the "A" weighting network approximate the response of human hearing when measuring sounds of low to moderate intensity.

C-WEIGHTED SOUND PRESSURE LEVEL. The sound pressure level as measured on an approved sound-level meter using the C-weighting network. The unit of measurement is dB(C). The "C" weighting network is more sensitive to low frequencies than is the "A" weighting network.

DAYTIME. From 7:00 a.m. (0700 hours) to 10:00 p.m. (2200 hours).

DOWNTOWN ARTS AND ENTERTAINMENT FOCUS AREA. The area designated as the Downtown Arts and Entertainment Focus Area in the Downtown 2025 Sector Development Plan.

EXCESSIVE SOUND. Any sound that exceeds the applicable sound level limits set forth in § 9-9-4 of this Ordinance.

EMERGENCY WORK. Work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities or work required to protect persons or property from an imminent exposure to danger.

EPA. U.S. Environmental Protection Agency.

HOLIDAYS. Those days established by the federal government as official holidays.

MAYOR. The Mayor or his designated representative.

MECHANICAL VENTILATION. A forced-air system with supply fan and ductwork; the air which is supplied may or may not be heated or cooled. This may include, but is not limited to: air conditioning, furnace, or swamp cooler.

NIGHTTIME. From 10:00 p.m. (2200 hours) to 7:00 a.m. (0700 hours).

NOISE. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans, including excessive sound as defined and regulated by this ordinance.

NOISE-SENSITIVE PROPERTY. Property containing an occupied: dwelling unit or units, school, hospital, religious institution, child-care facility, or adult-care facility or other facility similar in nature.

PERSISTENTLY OR CONTINUOUSLY. A 10 minute period during which any sound is discerned and that sound exceeds the applicable sound limits in each of the ten one-minute intervals of such period. In the case of animal noise, it means a 10-minute period during which animal noise is discerned in each of the ten one-minute intervals therein.

PERSON. A person, firm, association, copartnership, joint venture, corporation, or any other

entity, public or private in nature.

PUBLIC PREMISES. All real property, including appurtenances thereon, owned or controlled by any governmental entity and includes, without limitation, rights-of-way, streets, highways, sidewalks, alleys, parks, and waterways.

RECEPTOR PREMISES. The premises (residential, commercial, downtown arts and entertainment focus area, industrial/manufacturing, or public) as listed in Table 1 receiving noise emitted from the source premises after crossing one (1) or more property lines.

REFERENCE PRESSURE. The reference pressure for all sound level measurements shall be 20 micropascals (20 μ Pa). This shall be further defined as 0 dB(A).

RESIDENTIAL, OFFICE/COMMERCIAL, INDUSTRIAL/MANUFACTURING. These terms shall be as used in the Zoning Code (Chapter 14, Article 16, Part 2: Zoning Districts), and when used to describe a Receptor or Source Premises, the terms refer to the particular zoning classification of the Receptor or Source Premises and not the actual use of such premises.

SOUND. Sound is anything perceptible by human beings through the sense of hearing. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

SOUND LEVEL. A logarithmic measure called the decibel. It may make use of various frequency weighting networks, such as A or C-weighted, as specified by ANSI. When sound level is used without further description, A-weighting of sound level may be assumed.

SOUND AMPLIFYING EQUIPMENT. Any machine or device for the sound amplification of the human voice, music, or any other sound. "Sound amplifying equipment" shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any motor vehicles used only for traffic safety purposes.

SOURCE PREMISES. The premises (residential, commercial, downtown arts and entertainment focus area, industrial/manufacturing, or public) as listed in Table 1 that is emitting noise that is crossing one (1) or more property lines and impacting the receptor premises.

STRUCTURE. For the purposes of the Noise Control Ordinance, structure shall mean the outer shell of a building, typically consisting of exterior walls covered by a roof.

§ 9-9-3 DECIBEL MEASUREMENT CRITERIA

Unless otherwise indicated, any decibel (dB) measurement made pursuant to the provisions of this article shall be based on the reference sound pressure and measured with an approved sound-level meter. Reference sound pressure will be measured as LAeq for A-Weighted and

LCeq for C-Weighted.

(A) Except as provided in subsection (C) below, Residential, Commercial, Downtown Arts and Entertainment Focus Area, and Industrial/Manufacturing properties are to be measured from inside the Structure located on the Receptor Premises. Any indoor noise measurements for compliance purposes should be taken in a location which could be reasonably assumed to affect one or more persons. For Residential Receptor Premises, inside noise level measurements are performed in sleeping or living areas with windows opened to approximately twenty-five percent of their maximum in residences without mechanical ventilation and with windows closed for residences with mechanical ventilation.

(B) Public Premises are to be measured at a reasonable distance from walls or similar large reflecting surfaces and with the Approved Sound-Level Meter protected from the effects of wind and other extraneous sounds by the use of screens when appropriate.

(C) In the case where the Receptor Premises is located in a Residential Zoning District and the Source Premises is located in a Commercial or Industrial/Manufacturing Zoning District, measurements shall be measured outside within twenty-five (25) feet from any side of the residential structure which is nearest to the Source Premises.

§ 9-9-4 GENERAL NOISE.

(A) Except as otherwise provided in this article, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the following sound level limits using an Approved Sound-Level Meter measuring decibels on the A-Weighted scale.

Table 1(A-Weighted measurements in decibels (dB))

	Receptor Premises					
<i>Numbers indicate decibel (dB) levels</i>	Residential		Commercial and Downtown Arts and Entertainment Focus		Industrial/Manufacturing and Public Premises	
Source Premises	Daytime	Nighttime	Daytime	Nighttime	Daytime	Nighttime
Residential	55	50	65	60	75	70
Commercial and Downtown Arts and Entertainment Focus Area	55 (indoor) 60 (outdoor)	50 (indoor) 55 (outdoor)	65	60	75	70
Industrial/Manufacturing and Public Premises	55 (indoor) 60 (outdoor)	50 (indoor) 55 (outdoor)	65	60	75	70

(B) Except as otherwise provided in this article, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the following sound level limits using an Approved Sound-Level Meter measuring decibels on the C-Weighted scale.

Table 2 (C-Weighted measurements in decibels (dB))

	Receptor Premises					
<i>Numbers indicate decibel (dB) levels</i>	Residential		Commercial and Downtown Arts and Entertainment Focus		Industrial/Manufacturing and Public Premises	
Source Premises	Daytime	Nighttime	Daytime	Nighttime	Daytime	Nighttime
Residential	60	55	70	65	80	75
Commercial and Downtown Arts and Entertainment Focus Area	60 (indoor) 65 (outdoor)	55 (indoor) 60 (outdoor)	70	65	80	75
Industrial/Manufacturing and Public Premises	60 (indoor) 65 (outdoor)	55 (indoor) 60 (outdoor)	70	65	80	75

(C) No person shall allow an animal in his possession or control to persistently or continuously bark, howl or make noise common to its species, or otherwise to disturb the peace and quiet of the inhabitants of the city, or otherwise endanger the health and welfare of the inhabitants of the city. This provision shall not apply to public zoos and approved and properly zoned animal shelters as defined in the Humane and Ethical Animal Rules and Treatment Ordinance.

(D) Except for work authorized by a governmental body or agency, no person shall, on or within 500 feet of any Noise-Sensitive Property, operate or cause to be operated any equipment used in construction, repair, alteration, excavation, grading or demolition work on buildings, structures, streets, alleys or appurtenances thereto:

(1) with sound-control devices less effective than those provided on the original equipment; and without using noise mitigation measures

(2) on Sundays or holidays or between 10:00 p.m. and 6:00 a.m., without first obtaining a Temporary Construction Noise Permit as described in § 9-9-5 of this ordinance.

§ 9-9-5 TEMPORARY PERMITS FOR AMPLIFIED SOUND OR CONSTRUCTION NOISE.

(A) The Mayor may grant a temporary permit which allows non-compliance with the

limitations prescribed in this article for the purpose of amplified sound or construction noise activities of short duration.

(B) Permits shall be granted upon application, at no cost to applicant, provided an initial evaluation indicates that the permit will not result in a condition injurious to health or safety.

(C) The following factors shall be considered in the initial evaluation to determine whether granting the permit will result in a condition injurious to health or safety:

(1) Temporary Permits for use of sound amplifying equipment:

- (a) Distance of proposed activities from noise-sensitive property;
- (b) Number of amplification devices to be used in the proposed activities;
- (c) Anticipated direction of amplification devices;
- (d) Anticipated length of proposed activities;
- (e) Whether the activity will be held within or without a structure; and
- (f) Other circumstances or conditions that may be impacted or

aggravated by the proposed activities.

(2) Temporary Construction Noise Permits:

- (a) Distance from noise-sensitive property;
- (b) Type of activity and equipment;
- (c) Estimated noise level and duration;
- (d) Noise mitigation measures to be used;
- (e) Health and safety benefits to be realized as a result of the completed project; and
- (f) Other circumstances or conditions that may be impacted or aggravated by the proposed activities.

(D) Upon a determination that the granting of a permit will not result in a condition injurious to health or safety, the permit shall be issued specifying place, duration, and any requirements appropriate to the proposed activity site, which may include maximum sound level limits.

(E) Unless other dates and times are explicitly addressed in the permit, permitted noise shall not continue past 10:00pm on Sunday, Monday, Tuesday, Wednesday, and Thursday. On Friday and Saturday, permitted noise shall not continue past 12:00am.

(F) Issued permits become void and shall be surrendered to any city police officer or any representative of the Mayor authorized to enforce this article upon request when it is determined that any requirement contained in the permit has been violated. Upon revocation of the permit, permitted activities must either immediately cease or must be in compliance with the limitations prescribed in this article.

(G) A subsequent permit application by the same applicant or another applicant may be denied upon substantiated complaint(s) by resident(s) in the locality of the previously permitted activity or if an applicant has in the past been required to surrender a permit as described in division (F).

(H) This section shall not apply to any person who has been granted a variance as prescribed by § 9-9-6.

(I) Any person aggrieved by the disposition of an application for a temporary permit may appeal such disposition by filing a written petition with the Mayor within 30 days of the disposition.

§ 9-9-6 VARIANCES.

(A) The Mayor may grant an individual variance from the limitations prescribed in this article whenever it is found, after a public hearing before a Hearing Officer and upon presentation of adequate proof, that compliance with any part of this article will impose an undue economic burden upon any lawful business, occupation or activity, and that the granting of the variance will not result in a condition injurious to health or safety.

(B) Any variance, or renewal thereof, shall be granted within the requirements of division (A) of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the grounds that compliance with the particular requirement or requirements will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Mayor, is requisite for taking of the necessary measures. A variance granted on the ground specified in this division shall contain a timetable for taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(2) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in division (1) of this division (B), it shall be

for not more than one year.

(C) Any person seeking a variance shall file a petition for variance and a \$50 filing fee with the Mayor. The Mayor shall submit the petition to the Hearing Officer to conduct a public hearing after notice has been provided in accordance with this section and to make the final decision regarding the granting of the variance. The Hearing Officer shall conduct the hearing and accept documentary and testimonial evidence in accordance with accepted administrative hearing procedures.

(D) Written notice of the public hearing shall be mailed by the Hearing Officer at least 10 days prior to the hearing to:

- (1) the petitioner;
- (2) the petitioner's agent;
- (3) the owners as shown by the records of the County Assessor of lots comprising the site of the variance and lots within 100 feet, excluding public right-of-way, of the site of the variance;
- (4) any neighborhood association or homeowner association that has notified the City Office of Neighborhood Coordination of two persons' addresses where it wishes notice to be sent if the site of the variance is within the neighborhood or homeowner association's boundaries or within 100 feet of the neighborhood or homeowner association's boundaries, excluding public right-of-way.
- (5) any other person or entity that has filed with the Mayor a request to receive a notice of the variance proceeding.

(E) The notice of hearing shall set forth the name and address of the petitioner, the location of the site of the variance, that the petitioner has requested a variance from this ordinance, the nature of the requested variance, and that part of the ordinance that would be waived if approved.

(F) Following the hearing, the Hearing Officer shall render a written final decision including findings of fact and conclusions of law. The Hearing Officer shall mail the decision to all parties of record. The exclusive remedy for any parties to the administrative proceedings described in this paragraph shall be a petition for writ of certiorari to the State District Court. The petition for review shall be limited to the record made at the public hearing described herein.

§ 9-9-7 MACHINERY, EQUIPMENT FANS, AND AIR CONDITIONERS

(A) Except for emergency work as defined in this article, no person shall operate or allow the operation of any stationary machinery, equipment, fan, air-conditioning apparatus, or similar permanently installed mechanical device in any manner so as to create noise which results in exceedance of the sound level limits specified in § 9-9-4.

(B) No person shall operate or allow to be operated outdoors, any power equipment, including, but not limited to, sweepers, power mowers, leaf blowers, rototillers, power saws or other power equipment used to sweep parking areas or other surfaces or perform gardening, property repair or other functions, within 500 feet of any noise-sensitive property:

(1) during the nighttime; or

(2) between the hours of 7:00 a.m. and 9:00 a.m. on a Sunday or holiday. Power mowers at golf courses are exempt from the requirements of this subsection.

(C) No person shall install or allow the installation of any mechanical equipment, such as, but not limited to, air conditioning or freezer compressors, evaporative coolers, exhaust fans or other noise-producing machines, on commercial property with such equipment on a side adjacent to noise-sensitive property or a side separated from noise-sensitive property only by an alley. Roof locations may be used when the mechanical equipment is installed and maintained so as to not result in an exceedance of the sound-level limits in § 9-9-4. Mechanical equipment legally installed or for which official final approval for installation was received before the effective date of this ordinance is specifically exempt from this location requirement.

(D) No person shall place or allow the placement of any garage door used for entry or exit of vehicles from an automotive repair facility on a side of any building adjacent to noise-sensitive property or a side separated from noise-sensitive property only by an alley. Garage doors legally installed or for which an official final approval for installation was received before the effective date of this ordinance are specifically exempt from this location requirement.

(E) Public Utilities. Public utility generation, transmission or distribution sites, facilities or substations shall be deemed compliant with this section if operated so as not to exceed the noise limits of any applicable City of Albuquerque/Bernalillo County Facility Plan: Electric Service Transmission and Subtransmission Facilities. In the absence of applicable Facility Plan noise limits, the sound level limits corresponding to the zoning

district designation of the receiving property at the time of the equipment installation as set forth in §9-9-4 shall govern. If a subsequent zoning district designation is less restrictive, the limits for that zoning district shall apply.

§9-9-8 EXCEPTIONS AND EXCLUSIONS

Aircraft and airports. The limits set forth in this Article do not apply to sounds or vibrations generated by any aircraft or generated in connection with the operation of any airport or approved helipad used in support of law enforcement, public utility restoration, emergency medical transport or search and rescue.

Earthshaking vibrations. The limits set forth in this Article do not apply to vibrations caused by construction, demolition or repair work.

Emergency or civic construction, demolition, or repair work. The limits set forth in this Article do not apply to sounds generated in construction, demolition or repair work of an emergency nature or in work on public improvements authorized by a governmental body or agency.

Entertainment events. The limits set forth in this Article shall not apply to those reasonable sounds emanating from authorized school bands, school athletic, and school entertainment events. Furthermore, the limits set forth in this Article shall not apply to those reasonable sounds emanating from occasional outdoor or indoor gatherings, public dances, shows, and band performances conducted during the Daytime.

Human voices. The limits set forth in this Article do not apply to noise created by unamplified human voices.

Fireworks displays. The limits set forth in this Article do not apply to any public or private legally permitted fireworks displays.

Mass transit. The limits set forth in this Article do not apply to sounds or vibrations generated in the operation of any mass transit system.

Parades and Protests. The limits set forth in this Article do not apply to legally permitted parades or to protests.

Mosquito control. Equipment for the use of mosquito control and prevention by the City of Albuquerque or other governmental agency.

Pre-existing mechanical equipment. The limits set forth in this Article do not apply to legally installed mechanical equipment for which official final approval for installation was received before the effective date of this ordinance.

Refuse Collection. The limits set forth in this Article do not apply to municipal refuse collection activities taking place during the Daytime.

Stadiums. The limits set forth in this Article do not apply to sounds generated at any stadium.

Total Preemption. The limits set forth in this Article do not apply to sounds otherwise governed by Federal, State, or Municipal laws or regulations.

§ 9-9-9 ADMINISTRATION.

The Mayor shall be responsible for the administration of this article. Rules, policies, regulations, and test and compliance procedures to carry out the intent and purpose of this article shall be promulgated by the Mayor.

§ 9-9-10 NOISE MITIGATION PLANS

In addition to the other powers set forth in this Article, the Mayor may request an acoustical review of a proposed facility as part of the building permit review process. Such acoustical review shall be performed by an acoustical/sound professional and may require the submission and acceptance of a noise mitigation plan to ensure that the facility's noise activities fall within the dB limitations specified in this Article prior to building permit approval. Failure to comply with a noise mitigation plan will result in enforcement actions as provided in this Article.

§ 9-9-11 MAKING VIOLATIONS OF THE NOISE ORDINANCE CIVIL VIOLATIONS; PROVIDING A HEARING; ADDITIONAL REMEDIES; INJUNCTIONS.

(A) Each act in violation of this Article shall constitute a public nuisance and a separate civil violation. Civil violations of this Article shall subject the owner of the offending property to the following penalties for offenses during any 36-consecutive-month period:

- (1) a civil fine of \$250 for the first offense;
- (2) a civil fine of \$500 for the second offense;
- (3) a civil fine of \$1,000 for the third and subsequent offenses

Each calendar day during which the civil violation occurs shall constitute a separate and distinct offense.

(B) Upon determination by the Mayor that a violation of this Article has occurred, the Mayor will cause to be sent a Notice of Violation, which notice will be mailed postage pre-paid return-receipt-requested to the lawfully registered owner of the property as determined by the records of the Bernalillo County Clerk. The notice shall contain the

following information:

- (1) The address where the violation occurred;
- (2) The approximate time the violation occurred;
- (3) A brief narrative of the circumstances surrounding the violation;
- (4) A statement regarding whether this is the first, second, or third or subsequent offense within a consecutive 36-month period;
- (5) A name and phone number or title of municipal employee from whom the owner can obtain further information;
- (6) The address where payment for the violation may be made;
- (7) A statement that the owner has the right to contest the validity of the civil violation by requesting a hearing in writing within ten days of the date of mailing of the Notice of Violation; and
- (8) A copy of this Article.

(C) Any person who is issued a Notice of Violation may request that a hearing be scheduled by the city hearing officer by submitting a timely hearing request and paying a \$50 hearing fee to the Independent Office of Hearings. The hearing shall be conducted by a City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The City Hearing Officer shall determine whether a violation of this article occurred. The Hearing Officer shall mail a written notice of decision to the owner within five working days of the hearing. If the Hearing Officer finds that there was no violation of this Article, then the Hearing Officer shall (i) refund hearing fee and (ii) issue and date a Certificate of Compliance. If the Hearing Officer determines that a violation of this Article did occur, then the Hearing Officer shall impose a fine as above prescribed.

(D) Failure to pay a fine imposed by this Article-whether the fine is uncontested or unsuccessfully contested-shall subject the property owner to the penalty provisions set forth in § 9-9-11 of this code of ordinances. Each failure is considered a separate offense.

(E) As an additional remedy to the civil fines set forth in this section, the Mayor may seek a restraining order or injunction issued by a court of competent jurisdiction to prohibit ongoing violations of any provision of this Article.

§ 9-9-12 ORDINANCE NOT TO EFFECT PROVISIONS OF OTHER CITY ORDINANCES

The enactment of this Ordinance shall not be construed to supersede or effect the following provisions of the Albuquerque Code of Ordinances:

- (A) Section 9-2-4-7 “animal noise”;
- (B) Chapter 9, Article 3 “alarm systems”;
- (C) Section 8-6-14 “use of horn”;
- (D) Section 8-6-13 “muffler required”; and
- (E) Section 12-2-4 “unreasonable noise”.

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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