

**Borough of Highlands
County of Monmouth**

Ordinance O-14-32

**An Ordinance Replacing Section 3-2, "Noise," of the
Revised General Ordinances of the Borough of Highlands**

Whereas, the Borough finds that it is necessary to amend its Borough Code pertaining to noise in order to improve the quality of life within the Borough; and

Whereas, the Borough wishes to replace Section 3-2, in its entirety, with the following.

Now, therefore, be it ORDAINED by the governing body of the Borough of Highlands as follows.

SECTION ONE. Section 3-2, "Noise," of the Revised General Ordinances of the Borough of Highlands shall be repealed and replaced in its entirety with the following:

3-2.1. Declaration of findings and policy; scope.

- (a) Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and
- (b) A substantial body of science and technology exists by which excessive sound may be substantially abated; and
- (c) The people have a right to, and should be ensured of, an environment free from excessive sound; and
- (d) It is the policy of the Borough to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life; and
- (e) This article shall apply to the control of sound originating from sources within the Borough.

3-2.2. Definitions.

The following words and terms, when used in this article, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this article 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 an 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.

Dustin Glass 11/5/14 12:20 PM

Comment: Borough does not have NCO or NCI. I would think that the County NCO, assuming one exists, would be responsible for doing the investigation. However, the NCO Borough may/may not be within his/her jurisdiction and he/she may not be authorized to issue a summons. Not sure that the ordinance, "as is", gives the Borough the power to enforce the Ordinance because it is not clear who the NCO is or would be.

3-2.3 Applicability.

- (a) This article applies to sound from the following property categories
 - (1) Industrial facilities;
 - (2) Commercial facilities;
 - (3) Public service facilities;
 - (4) Community service facilities;
 - (5) Residential properties;
 - (6) Multi-use properties;
 - (7) Public and private right-of-ways;
 - (8) Public spaces; and
 - (9) Multi-dwelling unit buildings.
- (b) This article applies to sound received at the following property categories:
 - (1) Commercial facilities;
 - (2) Public service facilities;
 - (3) Community service facilities (e.g. non-profits, religious facilities);
 - (4) Residential properties;
 - (5) Multi-use properties; and
 - (6) 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 ten seconds.

3-2.4. Exemptions.

- (a) Except as provided in sections 3-2.9 and 3-2.10, the provisions of this article shall not apply to the exceptions listed at 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 except as provided for in section 3-2.9
- (d) The provisions of section 3-2.10 (motor vehicles) shall not apply during special events such as parades or car shows where unique show cars are exhibited.

3-2.5. Enforcement officers.

- (a) Noise control officers shall have the authority anywhere within the jurisdictional limits of the Borough to investigate suspected violations of any section of this article and pursue enforcement activities.
- (b) Noise control investigators shall have the authority anywhere within the jurisdictional limits of the Borough to investigate suspected violations of any section of this article 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.

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Comment: Relates back to the prior NCO and NCI comments

3-2.6. 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 subsection (b) of this section 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.

3-2.7. 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 3-2.3(a) 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 I II 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 3-2.6(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 one hour shall not equal or exceed 80 decibels. Impulsive sound which repeats four or more times in any one 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 multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility
TIME	7a.m. – 10 p.m.	10 p.m. – 7 p.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 multi-use property		Commercial facility or non-residential portion of a multi-use property
TIME	7a.m. – 10 p.m.	10 p.m. – 7 p.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 OUTDOORS		Residential property, or residential portion of a multi-use property INDOORS		Commercial facility, public service facility, nonresidential portion of a multi-use property, or community service facility OUTDOORS	Commercial facility or non-residential portion of a multi-use property INDOORS
I						
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.	10p.m.-7a.m.	24 hours	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
8000	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 two dB in the bands containing the principal source frequencies, discontinue the measurement.

3-2.8. 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 3-2.6(b). 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

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

3-2.9. Restricted uses and activities.

The following standards shall apply to the activities or sources of sound set forth below:

- (1) Excluding emergency work, power tools, home maintenance tools, landscaping and/or yard maintenance equipment used by a residential property owner or tenant shall not be operated between the hours of 8:00 p.m. and 8:00 a.m., unless such activities can meet the applicable limits set forth in Tables I, II or III. At all other times the limits set forth in Tables I, II or III do not apply. All

motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device.

- (2) Excluding emergency work, power tools, landscaping and/or yard maintenance equipment used by nonresidential operators (e.g. commercial operators, public employees) shall not be operated on a residential, commercial, industrial or public (e.g. golf course, parks, athletic fields) property between the hours of 6:00 p.m. and 8:00 a.m. on weekdays, or between the hours of 6:00 p.m. and 9:00 a.m. on weekends or federal holidays, unless such activities can meet the limits set forth in Tables I, II or III. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device.
- (3) All construction and demolition activity, excluding emergency work, shall not be performed between the hours of 6:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 6:00 p.m. and 9:00 a.m. on weekends and federal holidays, unless such activities can meet the limits set forth in Tables I, II or III. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in construction and demolition activity shall be operated with a muffler and/or sound reduction device.
- (4) Using or operating any loudspeaker, public address system, or similar device is prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following day, unless such activities can meet the limits set forth in Tables I, II or III.
- (5) All interior and exterior alarm systems of a building or motor vehicle must be activated in such a manner that the alarm system terminates its operation within five minutes for continuous airborne sound and 15 minutes for intermittent sound after it has been activated. At all other times, the limits set forth in Tables I, II or III do not apply.
- (6) Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, liquids, garbage cans, refuse or similar objects; the pneumatic or pumped loading or unloading of bulk materials in liquid, gaseous, powder, or pellet form; or the compacting of refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, is prohibited between the hours of 11:00 p.m. and 6:30 a.m. the following day when the latter is a weekday and between the hours of 10:00 p.m. and 8:00 a.m. the following day when the latter is a legal holiday or a weekend day except by permit, unless such activities can meet the limits set forth in Tables I, II or III.
- (7) It shall be unlawful for any property owner or tenant to allow any domesticated or caged animal to create a sound across a real property line which unreasonably disturbs or interferes with the peace, comfort, and repose of any resident, or to refuse or intentionally fail to cease the unreasonable noise when ordered to do so by a noise control officer or noise control investigator. Prima facie evidence of a violation of this section shall include but not be limited to:
 - a. Vocalizing (howling, yelping, barking, squawking, etc.) for five minutes without interruption, defined as an average of four or more vocalizations per minute in that period; or
 - b. Vocalizing for 20 minutes intermittently. defined as an average of two vocalizations or more per minute in that period. It is an affirmative defense under this subsection that the dog or other animal was intentionally provoked to bark or make any other noise.

Dustin Glass 11/5/14 12:27 PM

Comment: Garbage Pick-up usually occurs prior to 6:30 a.m. May have to issue the garbage company a permit.

3-2.10. Motor vehicles.

Violations of each paragraph of this section shall be considered purposeful and therefore non-minor violations.

- (1) No person shall remove or render inoperative, or cause to be removed or rendered inoperative or less effective than originally equipped, other than for the purposes of maintenance, repair, or replacement, of any device or element of design incorporated in any motor vehicle for the purpose of noise control. No person shall operate a motor vehicle or motorcycle which has been so modified. A vehicle not meeting these requirements shall be deemed in violation of this article if it is operated stationary or in motion in any public space or public right-of-way.
- (2) No motorcycle shall be operated stationary or in motion unless it has a muffler that complies with and is labeled in accordance with the Federal Noise Regulations under 40 CFR Part 205.
- (3) Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction from the operator between the hours of 10:00 p.m. and 8:00 a.m.
- (4) Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m.

3-2.11. Enforcement.

- (a) Violation of any provision of this article 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 article shall be subject to a civil penalty for each offense of not more than \$3,000.00. 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 article, 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 article 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 3-2.2), 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. 13:10-125 et seq., wherein the responsible party's/violator's voluntary action can prevent a formal enforcement action with penalties issued by the Borough. It shall be noted that the NOV does not

Dustin Glass 11/5/14 12:43 PM

Comment: NOPA - Borough does not have any reference to a Notice of Penalty Assessment

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 up to \$3,000.00 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 the municipal court 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 lead to compliance;
 - (3) The conduct of the violator; and
 - (4) The compliance history of the violator.
- (j) No provision of this article 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 article or from other law.

3-2.12. Reserved.

SECTION THREE. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

SECTION FOUR. REPEALER. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION FIVE. EFFECTIVE DATE. This Ordinance shall take effect after final passage as provided by law.