

Just the Facts About ...

Noise Ordinance Compliance

Just as litter degrades the landscape of the community, noise degrades its soundscape. The United States Census Bureau's "Surveys of Neighborhood Problems," conducted over the past three decades, identified noise as consistently among the top four issues of concern. Fortunately, Montgomery County has had an effective Noise Control Ordinance since 1975 (Chapter 31B, Montgomery County Code). In 1996, the ordinance was comprehensively revised to make it more pro-active, user-friendly, and better structured to deal with current and future realities. The goal of the ordinance is to reduce overall noise levels in the County; therefore, there must be universal and consistent compliance with its provisions.

The term compliance is often equated with enforcement, but punitive sanctions are usually imposed only after all other available means are exhausted.

With the ordinance standards as a guideline, planners, engi-

neers, and architects can design projects that meet the appropriate sound level limits.

Problems may be avoided through careful planning, design, equipment selection, and installation. Almost all manufactured products have noise performance specifications. Sources that operate on a 24-hour basis, such as HVAC systems, exhaust fans, and stand-by generators, are required to meet the more restrictive nighttime standard.

Many potential noise violations are avoided during site plan review and various permit reviews. The objective ordi-

nance provisions also allow businesses and private citizens to plan and conduct their activities in compliance with the ordinance, thereby exhibiting consideration for their neighbors. This is especially relevant to amplified sound and the use of various noise-making devices.

The ordinance sets maximum allowable sound level limits as measured at the nearest receiving property line. A receiving property is defined as any property where people live or work. The levels are measured using meters that meet calibration and accuracy stan-



dards. Sound level meters are compact, versatile, easy to use, and relatively inexpensive. The standards are expressed as A-weighted decibels (dBA) for daytime and nighttime hours, with the nighttime hours (9 p.m. to 7 a.m., Monday through Friday; and 9 p.m. to 9 a.m. weekends and holidays) being the most restrictive, and differ between residential and non-residential zones. However, since all mixed-use zones, including the Central Business Districts, are considered residential zones, and the measurements are made on the receiving property line, the more restrictive residential standards of 65 dBA, daytime, and 55 dBA, nighttime almost always apply.

The above standards are intended to be outdoor property line measurements and do not apply indoors. DEP does not apply the ordinance levels



to the non-amplified human voice. Between the hours of 7 a.m. and 5 p.m., Monday through Friday, there are specific standards for construction activities that make allowances for inherent increases in noise from these relatively short-term activities. Also, specific to the construction noise standards is a provision for the Department to issue "Stop Work Orders" for repeated violations at the same site.

When proper planning and design is ignored or insufficient, or when persons act in their own self-interest at the expense of the community, other compliance tools must be employed. The ordinance specifies that a person must not cause or permit noise exceeding

the ordinance levels. A person is defined as "an individual, group of individuals, corporation, firm, partnership or voluntary association; or a department, bureau, agency, or instrument of the County or any municipality, or any other government to the extent

allowed by law." We are pre-empted by Federal and State law from applying the ordinance to Federal and State projects or facilities, aircraft, railroads, and motor vehicles on public roadways. However, we can apply the ordinance to certain accessory sources associated with motor vehicles. The "cause or permit" clause means that the person making the noise and the person who allows it to occur may be held liable for the same offense.

An enforcement officer is defined as "an employee or agent of the Department of Environmental Protection designated by the Director; a police officer; or a person designated by a municipality to enforce this Chapter." Noise originating from an animal source is delegated to the Division of Animal Control and Humane Treatment in the Police Department, who may use the ordinance provisions or their own administrative procedures.



To investigate a complaint or conduct an assessment of a source, the enforcement officer stands on or near the nearest receiving property line, calibrating and operating the sound level meter according to the manufacturer's instructions. In cases where the level



is marginally over the limits but constant, or if the officer believes there is sufficient annoyance, the Noise Program should be contacted for more precise measurements and analysis. The officer also has some discretion in determining a violation, insofar as, regardless of the levels, the "nature and extent" of the violation must be ultimately demonstrated in court. For instance, if there was a momentary excursion over the limit over a period of time, that would probably not be sufficient. But, if the excursion is repetitive, it may well be sufficient. In the vast majority of investigations, the violation, if one

exists, is readily apparent. In addition to the maximum level observed (Lmax), there are several other metrics that are useful to corroborate a violation, including the equivalent sound level (Leq), a form of averaging over time, and percentage metrics, which describe the percentage of time certain levels were exceeded over a specific measurement period. While these metrics can be calculated manually, many current instruments have the capability to perform and store these functions. Once again, DEP's Noise Program can assist with these measurements.

Noise events may occur at random, on occasions when an officer with a sound level meter is not available, or occur within multi-family or "party-wall" dwellings, such as townhouses. For those occasions, the ordinance has a provision establishing a "noise disturbance" violation. The sound level limits are objective standards. In contrast, the "noise disturbance" is more subjective, and dependant upon the observations and testimony of an officer and/or witnesses. An actionable "noise disturbance" must produce

sound that is "unpleasant, annoying, offensive, loud or obnoxious," "unusual for the time of day or location where it is produced or heard;" and "unreasonably interferes with proper use and enjoyment of property or the lawful conduct of business." Many everyday events are often deemed obnoxious or annoying to someone, but the key elements of a noise disturbance are that it is unusual for the place or time of day and that it unreasonably interferes with the proper use and enjoyment of the property of others.

Since many noise disturbances are not witnessed by an enforcement officer, the ordinance has a unique provision allowing citizens to file a two-party complaint. When signed by two or more witnesses to a noise disturbance, this complaint allows an enforcement officer to initiate enforcement. To facilitate this process, the Department has developed an affidavit, with



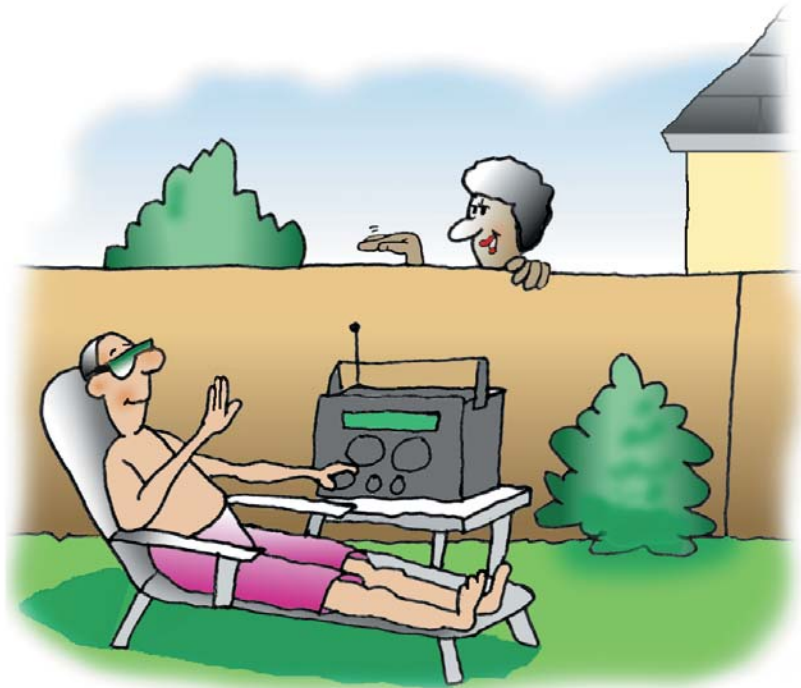
instructions, that summarizes all of the facts necessary to initiate enforcement action; it is available on the Noise Control web page as "Citizen's Two-Party Noise Complaint." To make a prosecutable case, the complainants should be from two or more distinct households and must be willing to testify in court.

Once a violation of the standards, or probable cause to sustain a "noise disturbance" is determined, there are several options available. The majority of the cases are resolved by a "Notice of Violation and Corrective Order" (NOV), stating the nature and extent of the offense, the possible consequences, and requisite corrective action. If the violation is abated and does not reoccur, the NOV is simply filed and destroyed after one year. If the violation continues or reoccurs within that one year, the NOV demonstrates "willful and deliberate" violation. As some abatement measures may require replacement or retrofit of equipment or construction of barriers or enclosures, the ordinance allows the Department to seek a "Plan for Compliance," a binding, negotiated agreement presenting a progressive schedule for achieving compliance within a reasonable period of time, as determined by DEP.

In situations where NOV's are disregarded or the violation is blatant and egregious, or for construction-related noise, citations may be issued. While there is the option of charging a criminal misdemeanor, it is used sparingly. Rather, a ticket for a Class A violation is issued to the violator(s) using the Uniform Municipal Infraction/Civil Citation form. A Class A violation carries a maximum civil penalty of \$500 for the first offense and \$750 for subsequent offenses. In addition to the citation, an "Abatement Order," issued by the district court, is almost always sought to deter further violations. Violation of an abate-

ment order carries further monetary sanctions imposed by the court. In lieu of standing trial, a violator may pay the fine or negotiate a settlement with the County Attorney's office and agree to an abatement order sanctioned by the court.

Please refer questions, or requests for consultative assistance regarding implementation of the ordinance, to Tom Ogle, Noise Program Manager, at 240.777.7755, email: tom.ogle@montgomerycountymd.gov, or to any of the Environmental Protection Specialists in the Compliance Program at 240.777.7770.



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We've got answers!