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### **Albuquerque, New Mexico**

### **ARTICLE 9: NOISE CONTROL** (Amendments as of 5/2001)

Short title

Definitions

Decibel measurement criteria

Sound amplifying equipment

Drums and bells

Schools, hospitals, churches and libraries

Machinery, equipment fans, and air conditioners

Construction of buildings and projects

Vehicle repairs

Motor vehicles

Aircraft engine noise

General noise regulation

Administration

Variations

Temporary permits

Violations; additional remedies; injunctions

Penalty

### § 9-9-1 Short Title.

This article may be cited as the "Noise Control Ordinance."  
(74 Code, § 6-22-1) (Ord. 21-1975)

### § 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.

*A-weighted Sound Pressure Level.* The sound pressure level as measured on an ANSI-S1.4-1971 Type 1 or Type 2 Sound Level Meter using the A-weighting network. Instrument response shall be "fast" for motor vehicle measurements and "slow" for all other measurements.

*Ambient Noise Level.* The sound pressure level of the all encompassing noise associated with a given environment, being usually a composite of sounds from many sources and excluding the specific noise under investigations; the A-weighted sound pressure level exceeded 90 percent of the time and based on a maximum of a one hour period ( $L_{90}$ ).

*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.

*Mayor.* The Mayor or his designated representative.

*Motorcycle.* Every motor vehicle having a seat or saddle for use by the rider and designated to travel with not more than three wheels in contact with the ground, including every motorscooter, motordriven cycle and mini-bike, but excluding a tractor.

*Motor Vehicle.* Every vehicle which is self-propelled, but excluding off-highway construction equipment, or unlicensed construction equipment or equipment operated upon rails.

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

*Person.* A person, firm, association, copartnership, joint venture, corporation, or any entity, public or private in nature.

*Plainly Audible Sound.* Any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal, or comprehensible musical rhythms.

*Reference Pressure.* The reference pressure for all sound level measurements shall be 20 micronewtons per square meter (20  $\mu\text{N}/\text{m}^2$ ). This shall be further defined as 0 dB(A).

*Residential, Office, or Commercial Zone.* Any area of the city defined as residential, office or commercial in the Zoning Code of the city.

*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 standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. "Sound amplifying equipment" shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicles used only for traffic safety purposes.

*Sound-Level Meter.* An instrument including a microphone, an amplifier, an output meter, and weighting networks that is sensitive to pressure fluctuations. The output meter reads sound pressure level when properly calibrated and the instrument is of Type 2 or better as specified in ANSI S1.4-1971. ('74 Code, § 6-22-2) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-3 Decibel Measurement Criteria.**

Any decibel measurement made pursuant to the provisions of this article shall be based on the reference sound pressure and measured with a sound-level meter using the A-weighting network. ('74 Code, § 6-22-3) (Ord. 21-1975)

### **§ 9-9-4 Sound Amplifying Equipment.**

(A) It shall be unlawful for any person within any zone of the city to practice, play, or conduct live band activities using sound amplifying equipment in such a manner that the noise level produced exceeds 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at the property line of any residential property (or if a condominium or apartment house, within any adjoining apartment) or to conduct such activities or operate any such device between 10:00 p.m. (2200 hours) and 7:00 a.m. (0700 hours) so as to be plainly audible within any dwelling unit which is not the source of sound.

(B) Division (A) of this section shall not apply to any person who has applied for and received a temporary permit as described in § 9-9-15.

(C) Radios, televisions, stereos, and other sound amplifying equipment shall be operated in such a manner that the noise level will not exceed 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at the property line of any residential property, or, if a condominium or apartment house, within any adjoining apartment; provided that between 10:00 p.m. (2200 hours) and 7:00 a.m. (0700 hours) such equipment shall not be operated so as to be plainly audible within any dwelling unit which is not the source of the sound. ('74 Code, § 6-22-6) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-5 Drums and Bells.**

It shall be unlawful for any person to use any drum or other percussion or musical instrument for the purpose of attracting attention by the creation of noise if the noise level produced exceeds 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at any residential property line. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise duly authorized to engage in such conduct. ('74 Code, § 6-22-7) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-6 Schools, Hospitals, Churches and Libraries.**

It shall be unlawful for any person to create any unnecessary noise on any street, sidewalk, or public place adjacent to any school, library, or other institution of learning, or church, while the same is in use;

or adjacent to any hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets, sidewalk or public place indicating the presence of a school, hospital, church or library. ('74 Code, § 6-22-8) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-7 Machinery, Equipment Fans, and Air Conditioners.**

(A) It shall be unlawful for any person to operate, cause to operate or permit to operate any stationary machinery, equipment, fan, air-conditioning apparatus, or similar permanently installed mechanical device in any manner so as to create noise which exceeds 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at a residential property line.

(B) Stationary machinery, equipment, fans, and air conditioners, as defined by this section, shall have the following replacement periods:

1. Installed and operating sources, of age ten years or older, shall comply with the provisions of this section within a reasonable time period, upon determination of a violation condition. This time period shall not exceed six months.
2. Installed and operating sources, of age five to ten years, shall comply with the provisions of this section within a reasonable time period, upon determination of a violation condition. This time period shall not exceed two years.
3. Installed and operating sources, of age under five years, shall comply with the provisions of this section within a reasonable time period, upon determination of a violation condition. This time period shall not exceed two years.

(C) Nothing in division (B) of this section shall be interpreted in such a way as to relieve the person responsible for such stationary machinery, equipment, fan, air conditioning apparatus, or similar permanently installed mechanical device, from the responsibility of taking other reasonable actions, other than replacement, directed at reducing noise levels from these sources at a residential property line.

('74 Code, § 6-22-9) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-8 Construction of Buildings and Projects.**

It shall be unlawful for any person within a residential zone, or within a radius of 500 feet therefrom, to operate or cause to be operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto, with sound control devices less effective than those provided on the original equipment, or in violation of any regulations of the United States Environmental Protection Agency; or to operate or cause to be operated any such equipment during the nighttime, except in emergency situations as defined in this article, in such manner that the sound produced exceeds 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at the residential property line.

('74 Code, § 6-22-10) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-9 Vehicle Repairs.**

It shall be unlawful for any person within any residential zone of the city to repair, rebuild, or test any motor vehicle in such a manner that the noise produced by such activity exceeds 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, when measured at the residential property line.

('74 Code, § 6-22-11) (Ord. 21-1975; Am. Ord. 30-1981)

**§ 9-9-10 Motor Vehicles.**

(A) (1) (a) No person shall operate within the speed limits specified in this section in any roadway within the city either a motor vehicle or combination of vehicles of a type subject to registration at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits when measured 50 feet from the center of the vehicle path:

| <b>Noise Limit in Relation to Posted Speed Limit</b>                                                                                      | <b>40 mph or less</b> | <b>Over 40 mph</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------|
| <b>Type of Vehicle</b>                                                                                                                    |                       |                    |
| (a) Any motor vehicle with a manufacturer's GVW rating of 8,000 lbs. or more, and any combination of vehicles towed by such motor vehicle | 86 dB(A)              | 90 dB(A)           |
| (b) Any motorcycle                                                                                                                        | 82 dB(A)              | 86 dB(A)           |
| (c) Any other motor vehicle or combination of motor vehicles                                                                              | 76 dB(A)              | 82 dB(A)           |

(b) This division (1) applies to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this article relating to motor vehicle mufflers for noise control.

(2) No person shall operate a motor vehicle having a manufacturer's gross vehicle rating of less than 6,000 lb., except a motorcycle, which exceeds 95 dB(A), measured 20 in. (508 mm) from the exhaust outlet. The measured exhaust system sound level of a stationary vehicle shall be the highest reading obtained during the test, disregarding unrelated peaks due to extraneous ambient noise. When there is more than one exhaust outlet extending from a single muffler, separated by less than 12 in. (305 mm), measurements shall not be made on the outlet furthest from the side of the vehicle.

(3) No person shall operate a motor vehicle having a manufacturer's gross vehicle weight rating of at least 6,000 lb. which exceeds 93 dB(A), measured 25 ft. (7.6 m) from the side of the vehicle. The sound level meter shall be observed during the full cycle of engine acceleration-deceleration, and the measured sound level reading shall be the highest value obtained during this cycle, excluding unrelated peaks due to extraneous ambient noise. When there is more than one outlet, the sound level for each side of the vehicle shall be measured, and the reported sound level shall be the average of the two highest readings within 1 dB of each other on the loudest side.

(B) (1) No person shall sell or offer for sale a recreational or off-highway motor vehicle, go-cart, or motorcycle, that produces a maximum noise exceeding 88 dB(A) at a distance of 50 feet from the center line of travel.

(2) It shall be unlawful for any person to operate a motor vehicle off a public right-of-way at any time or under any condition of load, acceleration, or deceleration, in such a manner that the noise produced by such operation exceeds 82 dB(A) at any point on occupied property zoned for residential, office or commercial use at a distance of not less than 50 feet from the path of travel. This division shall not apply to commercial enterprises which are lawfully engaged in the repair and maintenance of such motor vehicles.

('74 Code, § 6-22-12) (Ord. 21-1975; Am. Ord. 30-1981)

**§ 9-9-11 Aircraft Engine Noise.**

(A) It shall be unlawful for any person to operate, run up or test or cause to be operated, run up or tested

an aircraft engine which creates a noise level of 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, measured at anyplace within an inhabited residential zone of the city during the nighttime hours.

(B) Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt from the provisions to this section.

(C) The intent of this section is to regulate the noise levels produced in the testing, maintenance and repairing of aircraft engines and aircraft in the nighttime hours to the extent such levels exceed 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher, measured within any inhabited residential zone of the city.

('74 Code, § 6-22-13) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-12 General Noise Regulation.**

Except as otherwise provided in this article, it shall be unlawful for any person to make or continue, cause to be made or continued, or allow to be made or continued, any noise in excess of 50 dB(A), or 10 dB(A) above the ambient noise level, whichever is higher at any residential property line.

('74 Code, § 6-22-14) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-13 Administration.**

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

('74 Code, § 6-22-15) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-14 Variances.**

(A) The Mayor may grant an individual variance from the limitations prescribed in this article whenever it is found, upon presentation of adequate proof, that compliance with any part of this article will result in an arbitrary and unreasonable taking of property, or will impose an undue economic burden upon any lawful business, occupation or activity, and 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 therefor, 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 with the Mayor. The Mayor shall investigate the petition and make a determination as to the disposition thereof within ten working days following receipt of the request by the Mayor.

(D) Any person aggrieved by the disposition of a petition for variance may appeal such disposition by filing a written petition with the Mayor within 30 days of such disposition. The procedures governing such appeals shall be those procedures that have been promulgated by the Mayor as provided herein. ('74 Code, § 6-22-4) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-15 Temporary Permits.**

(A) The Mayor may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. (0700 hours) and 12 a.m. (2400 hours).

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

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

- (1) Distance of proposed activities from a residential zone.
- (2) Number of amplification devices to be used in the proposed activities.
- (3) Anticipated direction of amplification devices.
- (4) Anticipated length of proposed activities.
- (5) Whether the activity will be held within or without a structure.

(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 restrictions appropriate to the proposed site of the activities.

(E) Issued permits will be surrendered to any city police officer upon request when it is determined that the restriction of the permit specifying duration has been violated.

(F) Reapplication for a permit may be denied upon evidence of a complaint(s) by a resident(s) in the locality of the permitted activity or if an applicant has in the past been required to surrender a permit as described in division (E).

(G) This section shall not apply to any person who has been granted a variance as prescribed by § 9-9-14.

(H) 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. The procedures governing such appeals are those procedures promulgated by the Mayor as provided herein. ('74 Code, § 6-22-5) (Ord. 30-1981)

### **§ 9-9-98 Violations; Additional Remedies; Injunctions.**

As an additional remedy (to the penalty set forth in § 9-9-99), the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this article, which operation

or maintenance exceeds the limitations of this article may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

('74 Code, § 6-22-17) (Ord. 21-1975; Am. Ord. 30-1981)

### **§ 9-9-99 Penalty.**

Any person who violates any of the provisions of this article shall be subject to the general penalty provisions of this code set forth in § 1-1-99.

('74 Code, § 6-22-16) (Ord. 21-1975)

### **§ 9-2-3-7 Animals Disturbing the Peace.**

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 keep or maintain an animal in a manner which produces noxious or offensive odors or otherwise endangers the health and welfare of the inhabitants of the city.

('74 Code, § 6-2-6G) (Ord. 40-1987; Am. Ord. 71-1989; Am. Ord. 33-1992)

### **§ 12-2-4 Unreasonable Noise.**

Unreasonable noise consists of creating any unreasonably loud, disturbing or unnecessary noise of such character, intensity or duration as to be detrimental to the repose, life or health of others, including but not limited to, the following specific noises if created in violation of this section:

(A) The sounding of any horn or signaling device for any automobile, motorcycle, truck or other vehicle on any street or public place, except as a danger warning, which creates an unreasonable, loud or harsh sound or which occurs for an unnecessary and unreasonable period of time. This is not to include noise caused by accident or mechanical, electrical or other difficulty or failure.

(B) The playing of any radio, television, phonograph, musical instrument or other sound producing machine in such a manner or with such an unreasonable volume as to disturb the quiet, comfort or repose of persons in any dwelling, motel, hotel, hospital or sanitorium.

(C) The use of any automobile, truck, bus or motorcycle so out of repair or so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(D) The use of any loudspeaker, drum, whistle, bell or other instrument or device for the purpose of attracting attention by the creation of sound to any performance, show, sale, display or merchandise or political candidate, party or platform without first obtaining a written permit from the Mayor or his designated representative. The Mayor or his designated representative shall issue such permit, subject only to such reasonable standards of noise volume and hours of operation as he or his representative may adopt.

(E) The creating of any excessive noise on any street adjacent to any hospital, school institution of learning, church or court which interferes with the workings of such institution or which disrupts or annoys occupants of said buildings.

('74 Code, § 12-1-2-4) (Ord. 96-1973; Am. Ord. 78-1978)

### **§ 12-2-5 Disorderly Conduct.**

Disorderly conduct consists of either:

(A) Engaging in any public place in violent, abusive or indecent conduct which creates a clear and present danger of violence; or

(B) Maliciously making a telephone call with intent to annoy or threaten another, whether or not conversation ensues. Any offense committed by use of telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received; or

(C) Maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house or vehicle occupied by any person; or

(D) Inciting, causing, aiding, abetting or assisting in creating any riot, affray or disturbance at or within any dwelling or building, whether public or private, or at any other public place in the city; or

(E) Using in any public place fighting words which by their very utterance are likely to provoke a violent reaction in an average person to whom such words are addressed; or

(F) Maliciously disturbing, or threatening, or in an insolent manner, intentionally touching or applying force to any person, in the building or grounds of any public, private school, preschool, primary or secondary school or college; or

(G) Urinating or defecating in public view on any public place or on any private property without the consent of the person lawfully in possession of the property.

('74 Code, § 12-1-2-5) (Ord. 96-1973; Am. Ord. 91-1977; Am. Ord. 78-1978)

### **§ 12-2-6 Unlawful Assembly**

Unlawful assembly consists of the gathering together or assemblage of three or more persons for a common purpose which either:

(A) Creates a clear and present danger or an immediate threat of substantial harm to persons and/or property.

1. When an unlawful assembly occurs, as defined in this section, an order to disperse shall be given by a police officer in such manner as can reasonably be expected to give actual notice of said order to persons either directly or indirectly involved in such unlawful assembly.
2. Refusal to obey an order to disperse within such time as is reasonably required for the assemblage to physically disperse after such order is given or willful and open resistance to said order shall constitute a violation of this code; or

(B) Manifests a common intent to do any unlawful act or acts by force or violence against the person and/or property of another. Participation in an unlawful assembly to further such unlawful purpose shall constitute a violation of this code.

('74 Code, § 12-1-2-6) (Ord. 96-1973)

### **§ 1-1-98 Issuing Citations.**

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context

clearly indicates or requires a different meaning.

**Breach of the Peace.** Any violation of any city ordinance which wholly or in part proscribes conduct prohibited by Sections 30-21-1 et seq. NMSA 1978.

**Mayor.** The Mayor or his agent when used in this section.

**Ordinance.** Any ordinance which has been legally passed, adopted, approved, and published under the authority granted to the City Council by the Charter or by state law.

**Ordinance Violation Citation.** The form of citation specified and approved by the Mayor.

**Person.** Any person, individual, firm, partnership, corporation, company, society, association, and every officer, agent, or employee thereof.

**Police Officer.** Every officer of the Albuquerque Police Department, or other person authorized by the Chief of Police or Mayor to make arrests and to issue citations for violations of city ordinances.

(B) *Procedures for Issuance of Ordinance Violation and Citation.*

(1) Procedure for Police Officers.

(a) Whenever a person is arrested by a Police Officer for violating any ordinance of the city not amounting to a breach of the peace, punishable by fine and/or imprisonment, the arresting Police Officer may prepare in triplicate using the Ordinance Violation Citation form provided by the city, written notice to appear in Court, containing the name, address, and telephone number of the person violating such city ordinance, the driver's license number of such violator, if any, the offense or ordinance allegedly violated, and the date and place when and where such person shall have allegedly committed the acts complained of or violated the city ordinance and the time and place when and where such person shall appear in Court.

(b) The arrested person in order to secure release, as provided for in this ordinance, must give his written promise to so appear in Court by signing at least one copy of the Ordinance Violation Citation prepared by the arresting Police Officer. The officer shall deliver a copy of the Ordinance Violation Citation to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from his custody.

(c) Should the alleged violator refuse to give his written promise to appear, the arresting Police Officer shall forthwith take the alleged violator to the City Jail and cause him to be booked in the normal manner.

(2) Procedure for Mayor or His Agents.

(a) Whenever the Mayor or his designated agent has probable cause to believe that a person has violated any ordinance of the city punishable by fine and/or imprisonment, the Mayor or his designated agent may prepare in triplicate using the Ordinance Violation Citation form provided by the city, written notice to appear in Court, containing the name, address, and telephone number of the person violating such city ordinance, the driver's license number of such violator, if any, the offense or ordinance allegedly violated, and the date and place when and where such person shall have allegedly committed the acts complained of or violated the city ordinance and the time and place when and where such person shall appear in Court. The Mayor or his designated agent shall present the same to the person he has probable cause to believe violated the ordinance as alleged in the Ordinance

Violation Citation to secure the alleged violator's written promise to appear in Court by having the alleged violator sign at least one copy of the Ordinance Violation Citation to the person promising to appear.

(b) Should the alleged violator refuse to give his written promise to appear, the Mayor or his designated agent shall cause to be prepared a written complaint against the alleged violator and present the same to a Municipal Judge of the city requesting the Municipal Judge to cause an arrest to be issued for the alleged violator.

(C) *Failure to Obey Citation.*

(1) It shall be unlawful for any person to violate his written promise to appear given to a Police Officer, the Mayor or his designated agent upon the issuance of the Ordinance Violation Citation form regardless of the disposition of the charge for which the citation was originally issued.

(2) A written promise to appear in Court may be complied with by an appearance by counsel.

(D) *Procedure Prescribed Herein Not Exclusive.* The foregoing provisions of this section shall govern all Police Officers in making arrests without a warrant for violation of ordinances of the city, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of any existing city ordinance or violation of state code.

(E) *Penalty.* This section is a penal ordinance subject to the general penalty provisions of this code set forth in § 1-1-99.

('74 Code, §§ 12-4-1 - 12-4-5) (Ord. 98-1970)

### **§ 1-1-99 General Penalty.**

Any person who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding 500 or by imprisonment not exceeding 90 days or both unless a different specific penalty is provided. Each separate violation shall constitute a separate offense and, upon conviction, each day of violation shall constitute a separate offense.

***Statutory reference:***

Penalty for misdemeanor, see Section 3-17-1, NMSA 1978

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## **CITY of ALBUQUERQUE CODE**

### **ARTICLE 9 NOISE CONTROL ORDINANCE**

*AMENDING (as of 5/2001) CHAPTER 9, ARTICLE 9, ROA 1994, 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., ROA 1994, are hereby amended to read as follows

Short title and Declaration of Intent  
Definitions  
Decibel measurement criteria  
Sound amplifying equipment  
Drums and bells  
Schools, hospitals, religious institutions and libraries  
Machinery, equipment, fans and air conditioners  
Construction or demolition of buildings and projects, excavation and grading  
Motor vehicles  
Aircraft related noise  
Refuse collection  
General noise  
Temporary permits  
Variances  
Cross-references  
Administration  
Violations; additional remedies; injunctions  
Review

### **Section 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 and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is therefore declared to be the intent of the City Council (through this ordinance and through other City regulations) to minimize the exposure to the physiological and psychological dangers of excessive noise, and protect, promote and preserve the public health, safety and welfare. It is the express intent of the City Council to control the level of 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.

### **Section 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.

**AMBIENT NOISE LEVEL.** The sound pressure level of the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources and excluding the specific noise under investigation; the A-weighted sound pressure level equaled or exceeded 90 percent of the time (190) and based on a maximum one-hour sample period.

**ANSI.** American National Standards Institute.

**APARTMENT.** This term shall be as used in the Zoning Code (Chapter 14, Article 16, Albuquerque Code of Ordinances).

**APPROVED SOUND-LEVEL METER.** An instrument sensitive to pressure fluctuations and meeting the standards of the ANSI Si .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. Instrument response shall be "fast" for motor

vehicle measurements and "slow" for all other measurements.

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

DEPARTMENT. Albuquerque Environmental Health Department or its subsequent designation.

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.

GVW. Gross Vehicle Weight.

HELIPAD. Facility intended for the takeoff and/or landing of helicopters at a location other than an airport or other general aviation facility.

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

IEC. International Electrotechnical Commission.

MAYOR. The Mayor or his designated representative.

MOTORCYCLE. Every motor vehicle having a seat or saddle for use by the rider and designed to travel with not more than three wheels in contact with the ground, including every motorscooter, motor-driven cycle and moped, but excluding a tractor.

MOTOR VEHICLE. Every vehicle which is self-propelled, but excluding off-highway construction equipment, or unlicensed construction equipment or equipment operated upon rails.

MRGCOGLRMSP. Middle Rio Grande Council of Governments Long Range Major Street Plan, as amended.

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

NOISE-SENSITIVE PROPERTY. Property containing an occupied dwelling unit or units, school, hospital, religious institution, child-care facility, or adult-care facility, except in Special Center Zones.

PERSISTENTLY OR CONTINUOUSLY. A 10-minute period during which animal noise is discerned in each of the ten one-minute intervals therein.

PERSON. A person, firm, association, co-partnership, joint venture, corporation, or any other entity, public or private in nature.

PLAINLY AUDIBLE SOUND. Any sound for which the information content of that sound is distinguished by the listener, such as, but not limited to, understandable spoken speech which need not be wholly discernible, or comprehension of whether a voice is raised or normal, or bass reverberations, or comprehensible musical rhythms.

REFERENCE PRESSURE. The reference pressure for all sound level measurements shall be 20

micropascals (20 uPa). This shall be further defined as OdB(A).

RESIDENTIAL, OFFICE/COMMERCIAL, INDUSTRIAL. These terms shall be as used in the Zoning Code (Chapter 14, Article 16, Albuquerque Code of Ordinances) except in special center zones.

SAE. Society of Automotive Engineers.

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.

### **Section 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 a sound level meter using the A-weighting network. In this ordinance, the terms dB and dBA are synonymous unless otherwise stated.

### **Section 9-9-4 SOUND AMPLIFYING EQUIPMENT.**

- A. No person shall practice, play, or conduct live band activities using sound amplifying equipment or operate a radio, television, stereo or other sound amplifying equipment resulting in sound levels more than 5 dB above the ambient noise level when measured on any receiving noise-sensitive property or, if an apartment, within any dwelling unit or common area accessible to residents of the apartment, or to conduct such activities or operate any such device in the nighttime so as to be plainly audible within any dwelling unit which is not the source of sound. At no time shall such amplified sound be allowed to cause or contribute to an exceedance of the limits set forth for the receiving property as established in Table 1, Section 9-9-12. Vehicular sound amplification equipment is further subject to the requirements of Subsection 9-9-12. Vehicular sound amplification equipment is further subject to the requirements of Subsection 9-9-4 (D). Outdoor sound amplification equipment used for broadcasting to employees or customers is further subject to the requirements of subsection 9-9-4 (F). Direct, two way point-of-service amplified sound speaker equipments if further subject to the requirements of Subsection 9-9-4 (G).
- B. No person shall operate or allow the operation of any portable self-contained music or sound amplification equipment in the daytime on a public space or right-of-way in such a manner as to be plainly audible 25 or more feet from the operator. No person shall operate or allow the operation of such equipment in the nighttime in such a manner that it is plainly audible by any person other than the operator.
- C. Provisions in (A) and (B) above shall not apply to any person who has obtained a temporary amplified sound permit as described in this ordinance.
- D. Vehicular sound amplification equipment. No person operating or occupying a motor vehicle on a street, highway, alley, parking lot, off-street parking area or driveway shall operate or allow the operation of any sound amplification equipment from the vehicle resulting in plainly audible sound 25 or more feet from the vehicle. Commercial vehicles including, but not limited to, ice cream trucks with amplified sound used for commercial advertisement, shall comply with this ordinance within 1 year of the effective date of this ordinance. During the 1-year compliance attainment period, no person operating or occupying a commercial motor vehicle including, but not limited to, ice cream trucks with amplified sound used for commercial advertisement shall cause or allow such amplified sound to result in sound levels more than 5 dB above the ambient noise level on any receiving noise-sensitive property. At no time shall such amplified sound be allowed to cause or contribute to an exceedance of the limits set forth for the receiving property as established in Table 1, Section 9-9-12.
- E. No person shall allow, at an indoor or outdoor facility owned and/or operated by the City of Albuquerque, the exposure of any person to amplified sound over 90 dB.

F.

1. Outdoor sound amplifiers, loudspeaker systems or similar broadcasting devices for the purpose of communicating with employees or customers shall not produce sound levels exceeding 5 dB above the ambient noise level at any property line of a facility using the device. At no time shall such amplified sound be allowed to cause or contribute to an exceedance of the limits set forth for the receiving property as established in Table 1 in this ordinance.
2. Volume controls for such outdoor sound amplifiers, loudspeaker systems or similar broadcasting devices, once calibrated to meet the volume restrictions provided above, must be mechanically limited to prevent their being overridden.
3. Operation of such outdoor sound amplifiers, loudspeaker systems or similar broadcasting devices is limited to daytime hours as defined in this ordinance.
4. If, notwithstanding observance of the above volume restrictions, any outdoor sound amplifier, loudspeaker system or similar broadcasting device is plainly audible at any residence or other noise sensitive property, then use of the outdoor sound amplifier, loudspeaker system or similar broadcasting device at that facility shall thereafter be prohibited as provided herein. If the user of a facility is determined to have violated any requirement in this Section F on two (2) or more occasions in any twenty-four (24) month period, then the user of the- outdoor sound amplifier, loudspeaker system or similar broadcasting device shall thereafter immediately remove such device from use at that facility. A subsequent user of a facility at which use of an outdoor sound amplifier, loudspeaker system or similar broadcasting device has previously been prohibited pursuant to this Section F may not use such a device at that facility unless and until
  - i. the subsequent user establishes to the reasonable satisfaction of the Department that the device can be used in compliance with this Section and
  - ii. the subsequent user is not affiliated by common ownership or control with the user of the facility at the time use of the previous device was prohibited.
5. Any trade association of Albuquerque businesses whose members engage in the same type of business, and at least 50% of whose members generally use such outdoor sound amplifiers, loudspeaker systems or similar broadcasting devices, shall implement and maintain a procedure for receiving and attempting to resolve complaints from the public about the outdoor sound amplifier, loudspeaker system or similar broadcasting device used by any member of that association. The Department may, at its option, refer applicable public complaints against members of such an association to the association pursuant to such procedure.
6. Outdoor sound amplification equipment is exempt from the requirements of this section if required to comply with OSHA or national utility industry safety standards.
7. This subsection shall not apply to organized community sporting events.
8. Sound amplifying equipment in Special Center Zones may not exceed 50 dB or 10 dB above the ambient level, whichever is higher.

G.

1. No person shall, at any time, operate two-way point-of-service amplified sound equipment installed after the effective date of this ordinance in such a manner that, on noise-sensitive property, the sound is plainly audible anywhere on noise-sensitive property; and
2. No person shall, at any time, operate two-way point-of-service, amplified sound equipment in place at the effective date of this ordinance, in such a manner that the sound is plainly audible within a dwelling. Section 9-9-5 DRUMS, BELLS AND OTHER MUSICAL INSTRUMENTS. No person shall use any drum, bell or other musical instrument resulting in sound levels more than 5dB above the ambient noise level when measured on any receiving noise-sensitive property or, if an apartment, within any other dwelling unit or common area accessible to residents of the apartment, or to conduct such activities in the nighttime so as to be plainly audible within any dwelling unit which is not the source of sound. At no time shall such sound be allowed to cause or contribute to an exceedance of the limits set forth for the receiving property as established in Table 1, Section 9-9-12. This section shall not apply to any person who is participating in a school band or duly licensed parade nor does this section apply in the daytime to bells or chimes used by schools or religious institutions. In Special Center Zones, the standard for this section shall be 50 dB or 10 dB above the ambient noise level, whichever is higher.

### **Section 9-9-5 DRUMS, BELLS AND OTHER MUSICAL INSTRUMENTS**

No person shall use any drum, bell or other musical instrument resulting in sound levels more the 5 dB above the ambient noise level on any receiving noise-sensitive property or, if an apartment, within any other dwelling unit or common area accessible to residents of the apartment, or to conduct such activities in the nighttime so as to be plainly audible within any welling unit which is not the source of the sound. At no time shall such sound be allowed to cause or contribute to an exceedance of the limits set forth for the receiving property as established in Table 1, Section 9-9-12. This section shall not apply to any person who is in a school band or duly licensed parade.

### **Section 9-9-6 SCHOOLS, HOSPITALS, RELIGIOUS INSTITUTIONS AND LIBRARIES.**

No person shall create any unnecessary noise on any street, sidewalk, or public place adjacent to any school, library, or other institution of learning, or religious institution, while the same is in use; or adjacent to any hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such street, sidewalk or public place indicating the presence of a school, hospital, religious institution or library.

### **Section 9-9-7 MACHINERY, EQUIPMENT, FANS, AND AIR CONDITIONERS.**

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 Table 1 limits specified in Section 9-9-12.

- A. Except for emergency work as defined in this article- 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 saw 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 700 a.m. and 900 a.m. on a Sunday or holiday. Power mowers at golf courses are exempt from the requirements of this subsection.
- B. 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 18 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 Table 1, Section 9-9-12. 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.
- C. 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.
- D. 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 Table 1, Section 9-9-12, noise limits corresponding to the land use designation of the receiving property at the time of the equipment installation shall govern. If a subsequent land use designation is less restrictive, the limits for that land use shall apply.

**Section 9-9-8 CONSTRUCTION OR DEMOLITION OF BUILDINGS AND PROJECTS, EXCAVATION AND GRADING.**

Except for emergency work as defined in this article, 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

- A. with sound-control devices less effective than those provided on the original equipment; and
- B. without using noise mitigation measures as approved by the Department and the Public Works Department for projects exceeding
  - 1. 80 dB during any calendar day for more than 3 consecutive or non- consecutive calendar days. Noise determination tests shall be for at least 10 minutes, with any 4 tests in consecutive or non-consecutive clock hours above the 80 dB level constituting an exceedance for that day; or
  - 2. 90 dB during any clock hour for more than 4 consecutive or non- consecutive clock hours. Tests shall be for at least 10 minutes, with any single test above the 90 dB level constituting an exceedance for that hour.
  - 3. The location for sound level measurements shall be on any receiving noise-sensitive property other than the project property, provided that each test is taken from the same property, and the provisions in this section shall apply to that specific test location.
  - 4. The mitigation measures specified in this subsection 9-9-8(B) shall be used at all times on Sundays and holidays and between 10:00 p.m. and 6:00 a.m.
- C. No person shall construct a building, including foundation work, on Sundays or holidays or between 1000 p.m. and 600 a.m., without first obtaining a Temporary Noise Construction Permit as described in Section 9-9-13 of this ordinance.

**Section 9-9-9 MOTOR VEHICLES.**

- A. No person shall operate or allow to be operated within the city, at any speed including idle, either a motor vehicle or combination of vehicles of a type subject to registration at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following sound level limits when measured 25 feet from the center of the vehicle path

Sound Level Limit

Type of Vehicle

- 1. Any motor vehicle with a Manufacturer's GVW rating of 10,000 lbs. or more, and any combination of vehicles towed by such motor vehicle on roadways classified as
  - a. minor arterials and collectors in residential areas by the MRGCOGLRMSP: **Daytime 88 dB, Nighttime 80 dB**
  - b. principal arterials and collectors in office/commercial and industrial areas by the MRGCOGLRMSP: **All times 88 dB**
- 2. Any motor vehicle with a GVW rating under 10,000 lbs. except motorcycles: **All Times 80 dB**

The requirements in Subsection 9-9-9(A) apply to the total sound from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this article relating to motor vehicle mufflers for noise control.

- B. Motorcycles. No person shall operate a motorcycle
  - 1. manufactured after 1982 without
    - a. a permanent label entitled "Motorcycle Noise Emission Control Information"; and
    - b. a permanent engraving or label on the muffler or exhaust pipe indicating the following information

- i. for motorcycles manufactured in 1983, 1984 or 1985 "This (manufacturer's name) exhaust system (part number or description number) meets EPA noise emission requirements of 83 dBA for the following motorcycles (list of model specific codes). Installation of this exhaust system on motorcycle models not specified may violate Federal law",
- or
- ii. for motorcycles manufactured after 1985 "This (manufacturer's name) exhaust system (part number or description number) meets EPA noise emission requirements of 80 dBA for the following motorcycles (list of model-specific codes). Installation of this exhaust system on motorcycle models not specified may violate Federal law";

and

2. which exceeds 99 dB, measured in accordance with SAE stationary test method Ji 287 or similar Department-approved method.
- C. No person shall operate a motor vehicle having a manufacturer's gross vehicle rating of less than 6,000 lbs., except a motorcycle, which exceeds 95 dB measured 20 in. (508 mm) from the exhaust outlet. The measured exhaust system sound level of a stationary vehicle shall be the highest reading obtained during the test, disregarding unrelated peaks due to extraneous ambient noise. When there is more than one exhaust outlet, the reported sound level shall be for the loudest outlet. When there is more than one exhaust outlet extending from a single muffler, separated by less than 12 in. (305 mm). measurements shall not be made on the outlet furthest from the side of the vehicle.
  - D. No person shall operate a motor vehicle having a manufacturer's gross vehicle weight rating of at least 6,000 lbs. which exceeds 93 dB, measured 25 ft. (7.6 m) from the side of the vehicle. The sound level meter shall be observed during the full cycle of engine acceleration-deceleration, and the measured sound level reading shall be the highest value obtained during this cycle, excluding unrelated peaks due to extraneous ambient noise. When there is more than one outlet, the sound level for each side of the vehicle shall be measured, and the reported sound level shall be the average of the two highest readings within 1 dB of each other on the louder side.
  - E. Except when necessary to provide a warning signal, no person shall, within any 7-day period, cause or allow the sounding of any security alarm on or in any vehicle owned, leased or otherwise held by that person
    1. on more than 2 occasions; or
    2. during more than 5 consecutive minutes.
  - F. All motor vehicles shall have a ninety-day grace period from the date of publication of this ordinance to comply with the vehicle noise emission regulations herein.

#### **Section 9-9-10 AIRCRAFT-RELATED NOISE.**

- A. No person shall operate or run up, or cause to be operated or run up, for testing, repair or maintenance purposes, an aircraft engine which creates a sound level more than 5 dB above the ambient sound level, when measured on any receiving noise-sensitive property during the nighttime hours.
- B. Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt from the provisions of this section. Noise from helicopter takeoff and landing operations is regulated in Subsection 9-9-10(D).
- C. The intent of this section is to regulate the noise levels produced in the testing, maintenance and repairing of aircraft engines and aircraft in the nighttime hours to the extent such levels exceed 5 dB above the ambient noise level when measured on any receiving noise-sensitive property.
- D. Helicopter Noise. While on the ground with engines running at approved helipads within the city limits, helicopters shall not exceed the following sound levels for the indicated time period as measured on any receiving noise-sensitive property
  - o 65 dB for more than 5 minutes;
  - o 70 dB for more than 90 seconds;
  - o 80 dB for more than 15 seconds;
  - o 90 dB for any length of time. Helicopters shall not take off or land at approved helipads in the city

limits during the nighttime. Sound level/duration limit compliance shall be determined with an approved sound level meter which measures and records at least 16 distinct readings per second. This section 9-9-10 does not apply to helicopters used for

1. law enforcement;
2. emergency medical transport;
3. emergency search and rescue; or
4. public utility restoration.

#### **Section 9-9-11 REFUSE COLLECTION.**

No person shall collect refuse with a refuse collection vehicle except during the following hours

- A. Noise-sensitive property or property adjacent to noise-sensitive property or separated by an alleyway from noise-sensitive property:
  - o Monday through Friday 700 a.m. to 800 p.m.
  - o Saturday, Sunday, holiday: 700 a.m. to 1000 p.m.
- B. Areas not specified in (A)
  - o Monday through Friday: 600 a.m. to 1000 p.m.
  - o Saturday, Sunday, holiday: 700 a.m. to 1200 p.m.

#### **Section 9-9-12 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 resulting in an exceedance of the following limits as measured on any other property receiving the sound
  - o Residential: Daytime 55, Nighttime 50
  - o Office/Commercial: Daytime 65, Nighttime 60
  - o Industrial: Daytime 75, Nighttime 70

**Sound projecting from property of one land use category onto property of another land use category having a lower sound-level limit shall not exceed the limits for the property of the land use category onto which it is projected.**

- B. 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 Animal Control Ordinance.

#### **Section 9-9-13 TEMPORARY PERMITS - AMPLIFIED SOUND/CONSTRUCTION NOISE.**

- A. The Mayor may grant a temporary permit which allows noncompliance 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 Amplified Sound Permits
    - 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; and
    - e. Whether the activity will be held within or without a structure.

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; and
  - e. Health and safety benefits to be realized as a result of the completed project.
- 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.
- E. Issued permits will be surrendered to any city police officer or any Department representative authorized to enforce this article upon request when it is determined that any requirement contained in the permit has been violated.
- F. A subsequent permit application may be denied upon substantiated complaint(s) by a resident(s) in the locality of the permitted activity or if an applicant has in the past been required to surrender a permit as described in division (E).
- G. This section shall not apply to any person who has been granted a variance as prescribed by Section 9-9-14.
- H. 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.

### **Section 9-9-14 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 that is "recognized" by the city in accordance with the Neighborhood Association Recognition Ordinance if the site of the variance is within the neighborhood association's boundaries or within 100 feet of the neighborhood 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.

### **Section 9-9-15 CROSS-REFERENCES.**

The following sources of noise are specifically governed within the indicated Article of the Albuquerque Code of Ordinances

- A. animal noise Animal Control Ordinance (Chapter 9, Article 2);
- B. alarm system noise (structure/facility) Alarm Systems Ordinance (Chapter 9, Article 3);
- C. vehicular horn noise Traffic Code (Chapter 8, Article 6);
- D. vehicular engine muffler noise Traffic Code (Chapter 8, Article 6); and
- E. "unreasonable noise" Criminal Code (Chapter 12, Article 2).

### **Section 9-9-16 ADMINISTRATION.**

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

### **Section 9-9-17 VIOLATIONS; ADDITIONAL REMEDIES; INJUNCTIONS.**

As an additional remedy to the penalty set forth in Section 9-9-99, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this article, which operation or maintenance exceeds the limitations of this article, may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

### **Section 9-9-18 REVIEW.**

This ordinance shall be reviewed by the City Council within five years of its effective date.

**Section 9-9-99 PENALTY.** Any person who violates any provision of this article shall be subject to the following penalties for offenses during any 36-consecutive-month period

- A. fine of \$100 for the first offense;
- B. fine of \$250 for the second offense;
- C. fine of \$500 for the third and subsequent offenses.

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

**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. 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 in full.

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