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NOISE CODE

DEP

NEW YORK CITY
DEPARTMENT OF ENVIROMENTAL PROTECTION

MARCH 1998

Amendments integrated by the Noise Pollution Clearinghouse:

NOISE CODE

DEP

NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARCH 1998

ii

Title 24
ENVIRONMENTAL PROTECTION AND UTILITIES

CHAPTER 2
NOISE CONTROL
SUBCHAPTER I SHORT TITLE, POLICY AND DEFINITIONS

SUBCHAPTER I
SHORT TITLE, POLICY AND DEFINITIONS

24-201 Short title.

This chapter shall be known and may be cited as the New York city noise control code.

24-202 Declaration of policy.

It is hereby declared to be the public policy of the city to reduce the ambient noise level in the city, so as to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the city, prevent injury to human, plant and animal life and property, foster the convenience and comfort of its inhabitants, and facilitate the enjoyment of the natural attractions of the city. It is the public policy of the city that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive and unreasonable noises within the city affects and is a menace to public health, comfort, convenience, safety, welfare and the prosperity of the people of the city. For the purpose of controlling and reducing such noises, it is hereby declared to be the policy of the city to set the unreasonable noise standards and decibel levels contained herein and to consolidate certain of its noise control legislation into this code. The necessity for legislation by enactment of the provisions of this chapter is hereby declared as matter of legislative determination.

This code shall be liberally construed so as to effectuate the purposes described in this section.

Nothing herein shall be construed to abridge the emergency powers of the board of health or the right of the department of health to engage in any of its necessary or proper activities. Nothing herein shall abridge the powers and responsibilities of the police department to enforce the provisions of this code.

24-203 General definitions.

When used in the New York city noise control code:

- (a) **"A" level** means the total sound level of all noise as measured with a sound level meter using the "A" weighting network. The unit of measurement is the dB(A).
- (b) **Activity** means any act or combination of acts which actually results in the production of sound.
- (c) **Air compressor** means a device which draws in air or gas, compresses it, and delivers it at a higher pressure.
- (d) **Aircraft** means any device that is used or intended to be used for flight in the air but does not include any such device used only in the service of a government or political subdivision thereof unless such device is engaged in carrying persons or property for commercial purposes. Aircraft includes but is not limited to:
 - 1. subsonic transport aircraft

1

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- 2. subsonic turbojet-powered aircraft;
 - 3. aircraft capable of flying at supersonic speeds;
 - 4. rotocraft;
 - 5. vertical take-off and landing aircraft (VIOL aircraft);
 - 6. short take-off and landing aircraft (STOL aircraft); and
 - 7. aircraft capable of landing or taking off on water.

- (e) **Air horn** means a device intended to produce a sound signal by means of compressed air or gas or exhaust gas.
- (f) **Airport** means an area of land or water that is used or intended to be used for the landing and take off of aircraft, and includes its buildings and facilities, if any.
- (g) **Ambient** noise means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.
- (h) **Apparatus** means any mechanism which prevents, controls, detects, measures or records the production of sound.
- (i) **Authorized** emergency vehicle means every ambulance and every vehicle operated by a police department, fire department, fire patrol, chief or assistant chief of a fire department, county or deputy county fire coordinator, county or assistant county fire marshal, sheriff, or by a chief, assistant chief or deputy chief of a police department, a regular paid deputy sheriff or a motor vehicle of the New York city housing authority when engaged in the performance of duty as a peace officer, or by an authorized public utility company when on emergency calls, every state-owned vehicle operated by a law enforcement officer of the conservation department when engaged in performance of duty in enforcement of the environmental conservation law, and every vehicle operated by a bridge authority or bridge and tunnel authority when on emergency calls.
- (j) **Board** means the environmental control board of the city of New York.
- (k) **Building** means a building as defined in article two of subchapter two of chapter one of title twenty seven of the code.
- (l) **Building aperture** means any designed opening in a building to which a person may reasonably have access including but not limited to any door, gate, window skylight or hatch.
- (m) **Burglar alarm** means any sound signal device designed and intended to produce a sound signal upon unauthorized entrance by a person into a building or motor vehicle.
- (n) **"C" level** means the total sound level of all noise as measured with a sound level meter using the "C" weighting network. The unit of measurement is the dB(C).
- (o) **Certificate** means an operating or temporary operating certificate.

- (p) **Charter** means the charter of the city of New York including all of its amendments.
- (q) **Circulation device** means any device which circulates a gas or fluid, including but not limited to any air conditioner, pump, cooling tower, fan or blower.
- (r) **Claxon** means any manually, mechanically, or electrically powered device, other than an emergency signal device, including but not limited to a motor vehicle horn, which is intended to, and when operated actually does, emit a sound signal.
- (s) **This code** means the New York city noise control code.
- (t) **Commissioner** means commissioner of environmental protection.
- (u) **Construction** means any or all activity, except tunneling, necessary or incidental to the erection, demolition, assembling altering installing or equipping of buildings, public or private highways, roads, premises, parks, utility lines including such lines in already-constructed tunnels, or other property, including land clearing grading, excavating and filling.
- (v) **Construction device** means any device designed and intended for use in construction including, but not limited to any air compressor, pile driver, manual tool, bulldozer, pneumatic hammer, steam shovel, derrick, crane, steam or electric hoist.

- (w) **Construction material** means any material, regardless of composition, designed and customarily used in construction including but not limited to any rails, pillars, columns, beams, bricks, flooring, wall, ceiling or roofing material, gravel, sand, cement or asphalt.
- (x) **Container** means any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper or any other material including but not limited to any barrel, basket, box, crate, tub, bottle, can or refuse container.
- (y) **Decibel**. The decibel is one-tenth of a bel. Thus, the decibel is a unit of level when the base of the logarithm is the tenth root of ten, and the quantities concerned are proportional to power.
- (z) **Device** means any mechanism which is intended to or which actually produces sound when operated or handled.
- (aa) **Department** means the department of environmental protection.
- (bb) **Dwelling** means any building occupied in whole or in part as the temporary or permanent residence of one or more natural persons.
- (cc) **Dynamic insertion loss** means the difference between two sound pressure levels which are measured at the same point in space before and after a muffler is inserted between the measurement point and the sound source under operating conditions.
- (dd) **Emergency** means a public calamity or an exposure of any person or property to imminent danger.
- (ee) **Emergency signal device** means any gong, siren whistle, or siren or any air horn or any similar device the use of which on authorized emergency vehicles is permitted by subdivision twenty-six of section three hundred seventy-five of the vehicle and traffic law.
- (ff) **Exhaust source** means a system which removes and transports air or gas from a device.
- (gg) **Internal combustion engine** means a device for the production of energy by means of the combustion under pressure of fossil fuel. (hh) **Lawn care device** means any device powered mechanically, by electricity, by gasoline, by diesel fuel or by any other fuel, which is intended to be used or is actually used for the mowing of grass, the cutting or chipping of trees, tree roots or tree branches, or the clearing of leaves or other vegetation from lawns, sidewalks, public streets or public highways and shall include, but not be limited to, such devices as lawn mowers and lawn mower attachments, lawn edgers, leaf blowers, leaf vacuums, mulchers and chippers.
- Motor vehicle** means any device which is propelled by an engine in or upon which a person or material may be transported on the ground and which is intended to be operated upon a public highway.
- (jj) **Muffler** means an apparatus generally consisting of but not limited to a series of chambers or baffles for the purpose of transmitting gases while reducing sound levels.

(kk) **Noise** means an erratic, intermittent, or statistically random oscillation.

(ll) **Owner** means and includes the owner of the freehold of the premises or lesser estate therein, or mortgagee thereof, a lessee or agent of any of the above persons, a lessee of a device or his or her agent, a tenant, operator, or any other person who has regular control of a device or an apparatus.

(mm) **Paving breaker** means any powered construction device intended to cut or trench pavement, subbase macadam, gravel, concrete or hard ground.

(nn) **Person** means any individual, partnership, company, corporation, association, firm, organization, governmental agency, administration or department, or any other group of individuals, or any officer or employee thereof.

(oo) **Power tool** means any device powered mechanically, by electricity, by gasoline, by diesel fuel or by any other fuel, which is intended to be used or is actually used for, but shall not be limited to, the performance of such functions as cutting, nailing, stapling, sawing, vacuuming or drilling.

(pp) **Railroad** means a railroad, other than a rapid transit railroad or street railroad, operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities used, operated or owned by or in connection therewith.

(qq) **Rapid transit railroad** means a rapid transit railroad used for local service in the transportation of passengers as a common carrier for hire together with the appurtenances, facilities and equipment thereof.

(rr) **Refuse compacting vehicle** means a motor vehicle designed to compact and transport refuse.

(ss) **Sound** means an oscillation in pressure, stress, particle displacement, particle velocity, etc, in a medium with internal forces (e.g. elastic, viscous), or the superposition of such propagated oscillation which evokes an auditory sensation.

(tt) **Sound level meter** means any instrument including a microphone, amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specific manner and which complies with standards established by the American National Standards Institute specifications for

sound level meters SI.4.1971, as amended.

(uu) **Sound pressure level** (decibels) means a sound that is twenty times the logarithm to the base ten of the ratio of the pressure of the sound to the reference pressure, 2×10^{-4} microbars.

(vv) **Sound reproduction device** means a device intended primarily for the production or reproduction of sound, including but not limited to any musical instrument, radio receiver, television receiver, tape recorder, phonograph or sound amplifying system.

(xx) **Sound signal** means any sound produced by a sound signal device designed to transmit information.

(yy) **Sound source** means any activity or device as herein defined.

(zz) **This code** means the noise control code.

(aaa) **Tunnel** means an underground passage which is intended for use as a railway, aqueduct, road, sewer or major utility artery.

(bbb) **Tunneling** means any activity necessary or incidental to the construction of any tunnel including the sinking of shafts to tunnel or to an intermediate level and the surface activities required to sink the shafts and construct the tunnel.

(ccc) **Unreasonable noise** means any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities or injures or endangers the health or safety of a reasonable person of normal sensitivities or which causes injury to plant or animal life, or damage to property or business.

(ddd) **Zone** means any zone as defined in the zoning resolution of the city of New York except that zone shall not mean any ambient noise quality zone under subchapter five or subchapter six of this chapter of this code or any noise sensitive zone under subchapter four of this chapter of this code.

SUBCHAPTER 2 GENERAL PROVISIONS

24-204 General powers of the commissioner.

Subject to the provisions of this code, the commissioner may take such action as may be necessary to abate a sound source which causes or may cause, by itself or in combination with any other sound source or sources, an unreasonable noise. The commissioner may exercise or delegate any of the functions, powers and duties vested in him or her or in the department by this code.

24-205 Investigations and studies by the commissioner.

The commissioner may make or cause to be made any investigation or study which in his or her opinion is desirable for the purpose of enforcing this code or controlling or abating an unreasonable noise. For such purposes, the commissioner may make tests, conduct hearings, compel the attendance of witnesses, and take their testimony under oath and may compel the production of books, papers and other things reasonably necessary to the matter under consideration.

24-206 Testing by order of the commissioner.

(a) If the commissioner has reasonable cause to believe that any device is in violation of this code, the commissioner may order the owner of the device to conduct such tests as are necessary in the opinion of the commissioner to determine whether the device or its operation is in violation of this code and to submit the test results to the commissioner within ten days after the tests are completed.

(b) Such tests shall be conducted in a manner approved by the commissioner. If any part of the test is conducted at a place other than the site where the device is located, that part of the test shall be certified by a laboratory acceptable to the commissioner. The commissioner may require that the entire test results shall be reviewed and certified by a professional engineer.

4

(c) The owner shall notify the commissioner of the time and place of a test at least seven days before the commencement of such test. Reasonable facilities shall be made available for the commissioner to witness the test.

(d) If in the opinion of the commissioner, tests by the department are necessary, the commissioner may order the owner to provide such access to the device as the commissioner may reasonably request, to provide a power source suitable to the points of testing, and to provide allied facilities, exclusive of sound level meter. These provisions shall be made at the expense of the owner of the device. The owner shall be furnished with copies of the analytical results of the data collected.

24-207 Inspection.

(a) The department may inspect at any reasonable time and in a reasonable manner any device which creates or may create unreasonable noise including but not limited to the premises where the device is used.

(b) The department may inspect at any reasonable time and in a reasonable manner any record relating to a use of a device which creates or may create unreasonable noise.

(c) No person shall refuse entry or access into the public areas of a multiple dwelling or a place or business to an authorized employee of the department who presents appropriate credentials, nor shall any person refuse entry or access into any other portion of a premise to an authorized employee of the department who presents appropriate credentials and a search warrant.

24-208 Registrations.

(a) The commissioner may require the written registration of air compressors, paving breakers, refuse compacting vehicles and rapid transit railroads, including but not limited to its rolling stock, track and track beds, passenger stations, tunnels, elevated structures, yards, depots and garages. A period of sixty days shall be allowed for the filing of such registration. However, in cases of emergency, the commissioner may designate a shorter period of time.

(b) Registration shall be made on forms furnished by the department. The forms may require information concerning the device covered by the registration, the sound level caused by the device or any additional information required by the commissioner for the purpose of enforcing this code. The registrant shall maintain the registration in current status by notifying the department of any change in any item of information furnished in compliance with this subdivision within a reasonable time not exceeding thirty days after the change is made.

(c) Registration shall be made by the owner of the device. If a registrant is a partnership or group other than a corporation, the registration shall be made by one individual who is a member of the group. If the registrant is a corporation, the registration shall be made by an officer of the corporation.

24-209 Interfering with or obstructing department personnel.

No person shall interfere with or obstruct the commissioner or any department employee in carrying out any duty for the commissioner or the board.

24-210 False and misleading statements; unlawful reproduction or alteration of documents.

(a) No person shall knowingly make a false or misleading statement or submit a false or misleading document to the department as to any matter within the jurisdiction of the department.

(b) No person shall make, reproduce or alter or cause to be made, reproduced or altered a tunneling permit, certificate or other document issued by the commissioner or required by this code if the purpose of such reproduction or alteration is to evade or violate any provision of this code or any other law.

24-211 Display of permits, certificates and other notices; removal or mutilation prohibited.

Any tunneling permit or certificate required by this code shall be displayed in the vicinity of the device on the premises designated on the tunneling permit or certificate or in the vicinity of the place where the device will be operated or supervised.

24-212 Enforcement of a code by other than compulsory means.

Nothing in this code shall prevent the commissioner from making efforts to obtain voluntary compliance by way of warning, notice or educational means. However, such noncompulsory methods need not be used before proceeding by way of compulsory enforcement.

24-213 Service of papers.

(a) Service of any written notice, order or decision required by this code shall be made on the owner

as follows:

- (1) Either by mailing the notice, order or decision directed to the owner of the device at the address listed in his or her application, tunneling permit or operating certificate or at the address where the device is located; or
- (2) By leaving the notice, order or decision with the owner of the device, or if the owner is not an individual, with a member of the partnership or group concerned or with an officer or managing agent of the corporation.

(b) service of any written notice, order or decision required by this code shall be made on a person:

- (1) Either by mailing the notice, order or decision directed to the person at his or her principal place of business, or
- (2) By leaving the notice, order or decision with the person, or if the person is not an individual, with a member of the partnership or group concerned, or with an officer or managing agent of the corporation.

(c) Service of any written notice required by this code shall be made on the department, commissioner or board as follows:

- (1) Either by mailing the notice to the commissioner; or
- (2) By leaving the notice at the department or with an employee of the department designated for this purpose.

24-214 Inconsistent provisions.

Insofar as the provisions of this code are inconsistent with any provision of any other title of the code, or any rule or regulation of any governmental agency of the city of New York, the provisions of this code shall be controlling.

24-216 Noise abatement contract compliance.

(a) (1) Contract. As used in this section, the term "contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds authorized by the capital budget of the city of New York in return for work, labor services, supplies, equipment, materials, or any combination of the foregoing; however, the term "contract" shall not include:

- (i) contracts for financial or other assistance made with a government;

6

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- (ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, or consisting thereof;
 - (iii) employment by the city of officers and employees of the city.

(2) Contracting agency. As used in this section, the term "contracting agency" means any board, bureau, department, commission or other agency of the government of the city of New York, or any official thereof, who or which is authorized to and does, on behalf of the city, provide for, enter into, award or administer contracts or any other public agency which enters into, awards or administers contracts pursuant to which funds authorized by the capital budget of the city of New York are expended.

(b) Contract provisions. No contract shall be awarded or entered into by a contracting agency, unless such contract contains provisions requiring that:

(1) Devices and activities which will be operated, conducted, constructed or manufactured pursuant to the contract and which are subject to the provisions of the code will be operated, conducted, constructed or manufactured without causing a violation of the code; and

(2) Such devices and activities incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities.

(c) Regulations. The commissioner may from time to time promulgate regulations setting forth such specifications for the operation, conducting, construction or manufacture of devices and activities pursuant to city contracts as he or she deems necessary to comply with the provisions of this section.

(d) No person shall cause or permit the operation of a device or conducting of an activity in such a way as to violate any provision of a contract required by this section or any regulation promulgated pursuant to this section.

(e) No regulations promulgated pursuant to this section shall alter terms, conditions and specifications of a contract for which bids have been opened, at the time of issuance of such regulation.

24-217 Exemptions.

The provisions of this code shall not apply to the operation or use of any organ, bell, chimes or other similar instrument by any church, synagogue, mosque or school.

SUBCHAPTER 3
PROHIBITED NOISE
GENERAL PROHIBITION

24-218 General prohibitions.

No person shall make, continue or cause or permit to be made or continued any unreasonable noise, except that this section shall not apply to any sound from any source where the decibel level of such sound is within the limits prescribed by another section of this title and where there is compliance with all other applicable requirements of law with respect to such sound.

SUBCHAPTER 4
PROHIBITED NOISE
UNREASONABLE NOISE STANDARD

24-220 Sound reproduction devices.

(a) Except as provided in section 10.108 of the code, no person shall operate or use or cause to be

operated or used any sound reproduction device in such a manner as to create any unreasonable noise.

(b) No person shall operate or use or cause to be operated or used any sound reproduction device for commercial or business advertising purposes or for the purpose of attracting attention to any performance, show or sale or display of merchandise, in connection with any commercial or business enterprise including those engaged in the sale of radios, television sets, phonographs, tape recorders, phonograph records or tapes, in front or outside of any building, place or premises, or in or through any aperture to such building, place or premises, abutting on or adjacent to a public street, park or place, or in or upon any vehicle operated, standing or being in or on any public street, park or place, where the sound therefrom may be heard upon any public street, park or place, or from any stand, platform or other structure, or from any airplane or other device used for flying, flying over the city, or on a boat or on the waters within the jurisdiction of the city, or anywhere on the public streets, parks or places. Nothing in this section is intended to prohibit incidental sounds emanating from a sporting or entertainment or a public event for which a permit under section 10-108 of the code has been issued.

(c) No person shall operate or use any radio, phonograph, or tape recorder in or on any rapid transit railroad, omnibus or ferry in such a manner that the sound emanating from such sound reproduction device is audible to another person.

24-221 Sound signal devices.

No person shall operate or use or cause to be operated or used any sound signal device so as to create an unreasonable noise, except that:

(a) No person shall operate or use or cause to be operated or used any claxon installed on a motor vehicle, except as a sound signal of imminent danger, provided that such operation or use shall be considered in any proceeding before the board pursuant to any applicable section of subchapter eight of this chapter of this code, except section 24-269 prima facie evidence of a violation of this subdivision, and that a notice of violation shall in every instance be issued against a person operating, using or causing to be operated or used a claxon installed on a motor vehicle.

(b) No person shall operate or use or cause to be operated or used an air horn installed on any motor vehicle other than as provided in section 24-223 of this code.

(c) No person shall operate or use or cause to be operated or used any steam whistle attached to any stationary boiler, except to give notice of the time to start and stop work or as a sound signal of imminent danger.

(d) No owner of a building or of a motor vehicle shall have in operation an audible burglar alarm thereon unless such burglar alarm shall be capable of and shall automatically terminate its operation within fifteen minutes of its being activated in the case of a building, and ten minutes of its being activated in the case of a motor vehicle; notwithstanding this provision, any member of the police department of the city of New York shall have the right to take such steps as may be necessary to disconnect any such alarm installed on a motor vehicle at any time during the period of its activation. Any motor vehicle on which a burglar alarm has been installed shall, when parked on a public highway or parking lot open to the public, prominently display the number and telephone number of the owner's local police precinct where information shall be on file to permit communication with the owner of such motor vehicle.

(e) No person shall operate or use or cause to be operated or used any sound signal device attached to a motor vehicle, wagon or manually propelled cart from which food or any other items are sold, which emits a sound signal more frequently than once every ten minutes in any one city block and with a duration of more than ten seconds for any single emission.

24-222 Animals.

No person shall permit an animal, including a bird, under his or her control to cause unreasonable noise.

24-223 Emergency signal devices.

No person shall operate or use or cause to be operated or used any emergency signal device, except on an authorized emergency vehicle when such vehicle is in the immediate act of responding to an emergency; provided that such device shall not be operated so as to create any unreasonable noise nor for a period of time longer than is strictly necessary to respond to such emergency.

24-224 Construction activities.

(a) Except as otherwise provided in this section, no person shall engage in or permit any person to be engaged in construction activities in any zone other than on weekdays between the hours of seven a. m. and six p.m. A person may, however, engage in construction activities on one or two family dwellings, convents or rectories, which are classified in occupancy group, J-3 as defined by section 27-266 of the administrative code, on Saturdays and Sundays between the hours of ten a.m. and four p.m. Such activities, however, must be located a distance of three hundred or more feet from a house of worship.

(b) Subject to the provisions of section 24-257 of this code, an agency of the city of New York authorized under the code to issue permits or licenses authorizing construction activities may, in the case of urgent necessity in the interest of public safety, issue a variance from the provisions of subdivision (a) of this section with respect to any such construction activity. Such variance may be granted for an initial period of up to three days, and may be renewed for periods of three days or less while such urgent necessity continues. Any such agency shall be authorized to promulgate regulations imposing an application fee in an amount not to exceed one hundred fifty dollars for each initial application for such variance and a fee not to exceed one hundred fifty dollars for each application for a renewal thereof. Any such agency shall also be authorized to impose a fee in an amount not to exceed one hundred dollars for each day for which such variance is granted or renewed. Such variance shall be clearly marked on such license or permit and shall be prominently posted at the site of such construction activities by the permittee or licensee. A copy of such marked license or permit shall be promptly forwarded to the board. In the case of an emergency, construction activities directly connected with the abatement of such emergency may be undertaken without a variance as herein provided for a period of not to exceed twelve hours from the commencement of such construction, during which time application for a variance hereunder shall be made.

24-225 Construction devices.

Except as provided in subchapter five of this chapter of this code, no person shall operate or use or cause to be operated or used a construction device in such a way as to create an unreasonable noise.

24-226 Containers and construction material.

No person shall handle or transport or cause to be handled or transported in any public place, any container or any construction material in such a way as to create an unreasonable noise.

24-227 Exhausts.

Except as otherwise provided in this code, no person shall cause or permit discharge into the open air of the exhaust of any device, including but not limited to any steam engine, diesel engine, internal combustion engine or turbine engine, so as to create an unreasonable noise.

24-227.1 Lawn care devices.

(a) No person shall operate or use or cause to be operated or used any lawn care device: (i) before eight a.m. and after seven p.m. or sunset, whichever occurs later; or (ii) at any time in such a way as to create an unreasonable noise.

(b) The provisions contained in paragraph (i) of subdivision a of this section shall not apply to an employee of the department of parks and recreation who operates or uses or causes to be operated or used any lawn care device between the hours of seven a.m. and eight a.m. in any location more than three hundred feet from any building that is lawfully occupied for residential use. The distance of three hundred feet shall be measured in a straight line from the point on the exterior wall of such building nearest to any point in the location at which such lawn care device is operated or used or caused to be operated or used.

24-227.2 Power tools.

No person shall operate or use or cause to be operated or used any power tool in such a way as to create an unreasonable noise; provided, however, that when a person actually operates or uses a snow blower, or causes a snow blower to be operated or used, for the purpose of complying with subdivision a of section 16-123 of this code, such person shall not be in violation of this section.

24-228 Schools, hospitals, courts.

No person shall cause or permit the creation of any unreasonable noise through the use of any device on any street adjacent to any school or court while the same is in session, or adjacent to any hospital.

24-229 Noise sensitive zones.

(a) Whenever the protection of the public health and comfort so requires, the commissioner and the board of health may by joint order designate any geographical area of the city of New York as a noise sensitive zone. Such designation shall be accompanied by a joint administrative order setting forth a description of the subject geographical area, the reasons for its determination as a noise sensitive zone, and shall list those activities which if undertaken in such zone would constitute unreasonable noise. Such order shall be published in the City Record at least five days but not more than ten days prior to its effective date, and shall be effective for a period of not more than sixty days, renewable for additional periods of sixty days.

(b) Any person suffering undue hardship by reason of the operation of an order promulgated pursuant to subdivision (a) hereof may request a hearing on written notice to the commissioner. Such person shall be afforded a hearing within ten days of receipt of such notice. The commissioner shall issue a final decision thereon within three days of the conclusion of a hearing held pursuant to this subdivision.

(c) No person shall engage in or permit any person to be engaged in any activity so as to violate the provisions of any order issued pursuant to subdivision (a) hereof.

24-230 Regulations.

The commissioner shall have the power to promulgate such regulations as may be necessary to carry out the purposes of this chapter.

SUBCHAPTER 5
PROHIBITED NOISE
SOUND LEVEL STANDARD

24-232 Motor vehicles.

(a) No person shall operate or permit to be operated any motor vehicle at any time or under any condition whatsoever, including but not limited to grade, load, idling, velocity, acceleration or deceleration, in such manner as to exceed the sound levels set out in either column I or column II of table I below, measured as follows: the sound levels listed in column I shall be measured by a sound level meter placed at a distance of

Table 1	<u>Column I</u>	Speed limit of 35 mph or less	Speed limit of more than 35 mph
1. Any motor vehicle with a manufacturer's gross vehicle rating of eight thousand pounds or more and any combination of vehicles towed by such motor vehicle		86 dB(a)	90 dB(a)
2. Any motorcycle other than a motordriven cycle before January 1, 1978 after January 1, 1978		82 dB(a) 78 dB(a)	86 dB(a) 82 dB(a)
3. Any other motor vehicle and any combination of vehicles towed by such motor vehicle before January 1, 1978 after January 1, 1978		76 dB(a) 70 dB(a)	82 dB(a) 79 dB(a)

Table 1	<u>Column II</u>	Speed limit of 35 mph or less	Speed limit of more than 35 mph
1. Any motor vehicle with a manufacturer's gross vehicle rating of eight thousand pounds or more and any combination of vehicles towed by such motor vehicle		92 dB(a)	96 dB(a)
2. Any motorcycle other than a motordriven cycle before January 1, 1978 after January 1, 1978		88 dB(a) 84 dB(a)	92 dB(a) 88 dB(a)

3. Any other motor vehicle and any combination of vehicles towed by such motor vehicle
before January 1, 1978
after January 1, 1978

82 dB(a)
76 dB(a)

88 dB(a)
85 dB(a)

fifty feet plus or minus two feet from the center of the lane of the public highway in which the motor vehicle is idling or is traveling within the speed limits specified in this section; the sound levels listed in column II shall be measured by a sound level meter placed at a distance of twenty-five feet plus or minus two feet from the center of the lane of the public highway in which the motor vehicle is idling or is traveling within the speed limits specified in this section.

(b)Where a motor vehicle is operated in a place other than a public highway, the sound levels in column I shall be measured by a sound level meter placed at a distance of fifty feet plus or minus two feet from the center line of the rear face of such vehicle where such vehicle is idling or is traveling within the speed limits specified in this section; the sound levels listed in column II shall be measured by a sound level meter placed at a distance of twenty five feet plus or minus two feet from the center line of the rear face of such vehicle when such vehicle is idling or is traveling within the speed limits specified in this section.

24-233 Aircraft

On or before September first, nineteen hundred seventy-three, the commissioner shall define and submit to the city council for enactment into this code allowable sound levels and ambient noise quality criteria and standards for areas affected by noise generated by airports and aircraft using airports in the city of New York. Such sound levels and such ambient noise quality criteria and standards shall be developed in accordance with a comprehensive methodology for controlling and abating airport noise, including but not limited to the following methods:

1. Encouraging use of the airport by aircraft classes with lower sound level characteristics and discouraging use by higher sound level aircraft classes;
2. Encouraging approach and departure flight paths and procedures to minimize the noise in residential areas;
3. Planning runway utilization schedules to take into account adjacent residential areas, noise characteristics of aircraft and noise sensitive time periods;
4. Reduction of the flight frequency, particularly in the most sensitive time periods and by the noisier aircraft;
5. Employing shielding for advantage, using natural terrain, buildings, etc; and
6. Development of a compatible land use within the noise impact boundary.

Preference shall be given to actions which reduce the impact of airport noise on existing communities. Land use conversion involving existing residential communities shall be considered the least desirable action for a compliance with allowable sound levels and ambient noise quality criteria and standards adopted pursuant to this section.

Allowable sound levels and ambient noise quality criteria and standards defined and submitted pursuant to this section shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health, welfare and comfort of any noise, or combination of

noises, generated by airports and aircraft using airports in the city of New York and shall be based on the latest economically feasible and available technology for the abatement of noise generated by airports in the city of New York.

24-234 Rapid transit railroad.

(a) On or before September first nineteen hundred seventy-three, the commissioner shall define and submit to the city council for enactment into this code allowable sound levels and acoustical performance standards for the design and operation of new and existing rapid transit railroads, including but not limited to allowable sound levels and acoustical performance standards for rolling stock, track and track beds, passenger stations, tunnels, elevated structures, yards, depots and garages.

Allowable sound levels and acoustical performance standards shall be based on the latest economically feasible and available technology for noise abatement in rapid transit railroads and on the latest scientific knowledge useful for indicating the kind and extent of all effects on public health, welfare, safety and comfort which can be expected from noises or combinations of noises generated by rapid transit railroads.

(b) No person shall operate or permit to be operated a rapid transit railroad, including but not limited to its rolling stock, track and track beds, passenger stations, tunnels, elevated structures, yards, depots and garages so as to cause a violation of allowable sound levels or acoustical performance standards adopted by the city council pursuant to this section.

24-235 Railroads.

(a) On or before September first nineteen hundred seventy-three, the commissioner shall define and submit to the city council for enactment into this code allowable sound levels and acoustical performance standards for the operation of new and existing railroads, including allowable sound levels and acoustical performance standards for rolling stock, bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, yards and terminal facilities.

Allowable sound levels and acoustical performance standards except as otherwise provided in this section, shall be based on the latest economically feasible and available technology for noise abatement in railroads and on the latest scientific knowledge useful for indicating the kind and extent of all effects on public health, welfare, safety and comfort which can be expected from noises or combinations of noises generated by railroads.

(b) No person shall operate or permit to be operated a railroad, including but not limited to its rolling stock, bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, yards and terminal facilities, so as to cause a violation of allowable sound levels or acoustical performance standards adopted by the city council pursuant to this section.

24-236 Air compressors.

(a) On or after September thirty-first, nineteen hundred seventy-two, no person shall operate or cause to be operated an air compressor manufactured prior to December thirty-first, nineteen hundred seventy-two unless a muffler certified by the manufacturer of such muffler to provide a dynamic insertion loss of 20 dB(C) of the sound release from the exhaust source of such air compressor is installed on such

exhaust source.

(b) No person shall, after the effective dates set out in table II, operate or permit to be operated an air compressor manufactured prior to December thirty-first, nineteen hundred seventy-two in such a manner as to cause the maximum sound level of such air compressor, when measured at a distance of one meter from the nearest major surface of such air compressor, to exceed the applicable allowable sound level set out therein.

Table II

Effective date	Allowable sound level
December 31, 1972	90 dB(A)
June 30, 1974	85 dB(A)

(c) No person shall sell, offer for sale for use within the city of New York, or operate or permit to be operated an air compressor manufactured on or after the effective dates set out in table III which when operated produces a maximum sound level, when measured at a distance of one meter from the nearest major surface of such air compressor, exceeding the applicable allowable sound level set out therein.

Table III

Effective date	Allowable Sound Level
December 31, 1972	85 dB(A)
June 30, 1974	80 dB(A) for sizes 350 cfm or less 85 dB(A) for sizes greater than 350 cfm
December 31, 1981	80 dB(A) for sizes greater than 350 cfm

(d) Except for work actually being done on a sidewalk or crosswalk, no person shall operate or permit operated an air compressor so as to generate noise levels in excess of 75 dB(A) at nearby sidewalks, pedestrian crossings or dwellings, on and after January first, nineteen hundred seventy-nine but this limitation shall not apply where more than one lane of traffic would be necessary to implement same.

24-237 Circulation devices.

No person shall operate or permit to be operated a circulation device in such a manner as to create a level in excess of 45 dB(A) when measured inside the dwelling unit affected in a line with the window nearest the exterior face of such circulation device. The measurement shall be taken with the window fully open at a point three feet from the open portion of the window.

24-238 Refuse compacting vehicles.

(a) No person shall sell, offer for sale, operate or permit to be operated a refuse compacting vehicle manufactured after the effective dates set out in table IIIA, which when compacting produces a maximum sound level, when measured by a sound level meter set for slow response at a distance of ten feet from center line of the face of the compacting unit, exceeding the applicable sound level set out therein.

Table IIIA

Effective Date	Allowable Sound Level
December 31, 1974	75 db(A)
December 31, 1974	70 db(A)

(b) The commissioner may grant to any person a variance for the sale, purchase and operation of refuse compacting vehicles which when compacting produce a sound level exceeding the limitation set forth in this section whenever it is found, upon presentation of adequate proof, that compliance therewith would impose an unreasonable hardship. In the granting of such variance, the commissioner may impose such conditions as the policies of this code may require.

(c) A variance granted pursuant to subdivision (b) of this section shall be valid for the initial purchase of the refuse compacting equipment which is the subject of the variance request and shall be valid for the operation of such equipment by the original purchaser for a period not to exceed the useful life of the equipment covered by such variance. If, in the opinion of the commissioner, application of a reasonable retrofit program will permit refuse compacting vehicles purchased under a variance granted pursuant to subdivision (b) of this section to achieve substantial compliance with noise standards of this code, the commissioner may require the owner of equipment operating under such a variance to initiate such a retrofit program in order to obtain such substantial compliance.

(d) Any person seeking a variance shall do so by filing a petition in a form acceptable to the commissioner. The commissioner shall promptly give written notice of such petition to any person in the city of New York who has in writing requested notice of such variance petitions and shall promptly publish notice of such petition in the City Record. If the commissioner, in his or her discretion, concludes that a hearing would be advisable, or if any person files a written objection to the granting of such variance within twenty-one days from the publication of the notice in the City Record, then a public hearing shall be held unless the variance is revised to meet such objection.

(e) The power of the commissioner to grant a variance pursuant to this section shall terminate September first nineteen hundred seventy-three.

24-239 Motor vehicle claxons.

No person shall sell, offer for sale, operate or permit to be operated a claxon installed on any motor vehicle of a model year nineteen hundred seventy-four and thereafter which, when operated, creates a sound level beyond the parameter of eighty-eight plus or minus 10 dB(A) when measured at a distance of fifty feet from the center of the forward face of such motor vehicle; but this section shall not preclude the sale or use of a city-country horn in accordance with allowable sound levels promulgated by

the commissioner.

24-240 Emergency signal devices.

After June thirtieth, nineteen hundred seventy-three, no person shall operate or permit to be operated an emergency signal device installed on an authorized emergency vehicle which when operated creates a sound level in excess of 90 dB(A) when measured at a distance of fifty feet from the center of the forward face of such vehicle.

24-241 Paving breakers.

(a) On or after September thirty-first, nineteen hundred seventy-two, no person shall operate or cause to be operated a paving breaker, other than one operated electrically or hydraulically, manufactured prior to December thirty-first, nineteen hundred seventy-three, unless a pneumatic discharge muffler certified by the manufacturer of such muffler to provide a dynamic insertion loss of 5 dB(A) of the sound released from the air discharge of such paving breaker is installed on such air discharge.

(b) No person shall sell, offer for sale for use within the city of New York, operate or permit to be operated a paving breaker manufactured on or after the effective dates set out in table IV which when operated produces a maximum sound level, when measured at a distance of one meter from a face of such paving breaker, exceeding the applicable allowable sound level set out therein.

Table IV	
Effective date	Allowable Sound Level
December 31, 1973	103 dB(A)
December 31, 1978	100 dB(A)
December 31, 1981	95 dB(A)

24-241.1 Commercial music.

No person shall make or cause or permit to be made or caused any music originating from or in connection with the operation of any commercial establishment or enterprise when the level of sound of such music, as measured inside any residential unit is in excess of either;

(a) 45 dB(A) as measured with a sound level meter; or

(b) 45 dB in any one-third octave band having a center frequency between 63 hertz and 500 (ANSI bands numbers 18 through 27, Inclusive), in accordance with American National Standards standard S1.6-1984.

24-242 Regulations.

The commissioner shall promulgate such regulations as he or she may deem necessary with regard to standards and procedures to be followed in the measurement of sound pressure levels governed by the provisions of this subchapter, provided that such standards and procedures are substantially in with any similar standards and procedures promulgated by the American national standards institute, international standards organization, society of automotive engineers, compressed air and gas institute, American refrigeration institute or any generally recognized professional standard-

setting organization.

SUBCHAPTER 6
AMBIENT NOISE QUALITY ZONES, CRITERIA AND STANDARDS

24-243 Ambient noise quality zones, criteria and standards.

(a) **Ambient noise quality zones.** Ambient noise quality zones are herein defined for the entire geographical area of the city of New York on the basis of those conditions which affect ambient noise levels, including but not limited to the following:

- (1) The use and activities permitted by the zoning regulations in such zones;
- (2) The intensity of sound levels produced by activities and devices in such zones;
- (3) The time at which such sound levels occur;
- (4) The duration of such sound levels;
- (5) The proximity of such activities and devices to buildings and to dwellings;
- (6) Whether the sound levels produced by such devices and activities are recurrent, intermittent, constant; and
- (7) The density of habitation of such zones.

Ambient noise quality zones are hereby formulated on the basis of present existing land-use zones, as follows:

- (1) **Ambient noise quality zone N-1:** Ambient noise quality zone N-1 shall consist of those low density residential areas RL presently designated as land-use zones R-1, R-2, and R-3.
- (2) **Ambient noise quality zone N-2:** Ambient noise quality zone N-2 shall consist of those high density residential areas RH presently designated as land-use zones R-4, R-5, R-6, R-7, R-8, R-9, and R-10.
- (3) **Ambient noise quality zone N-3:** Ambient noise quality zone N-3 shall consist of all commercial and industrial areas presently designated as land-use zones C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, M-1, M-2, and M-3.
- (4) **Other ambient noise quality zones:** Should other land-use zones be established, including special zoning districts, the commissioner shall recommend to the city council the appropriate ambient noise quality zones, criteria and standards.

(b) **Ambient noise quality criteria and standards.** Ambient noise quality criteria and standards are established and tabulated below for each of the three ambient noise quality zones that have been defined in subdivision (a) above. Not included in the standard are contributions to the sound level from natural sounds such as birds and thunder and sound sources outside the boundaries of the noise source such as public highways, vehicular traffic and overflying aircraft.

Ambient noise quality zone	Day-time standards (7am - 10pm)	Night-time standards (10pm - 7am)
Noise quality zone N-1 (Low density residential RL; land-use zones R-1 to R-3)	Leq=60 dB(A) measured for any one hour	Leq=50 dB(A) measured for any one hour
Noise quality zone N-2 (High density residential RH; land-use zones R-4 to R-10)	Leq=65 dB(A) measured for any one hour	Leq=55 dB(A) measured for any one hour
Noise quality zone N-3 (All Commercial and manufacturing land-use zones)	Leq=70 dB(A) measured for any one hour	Leq=70 dB(A) measured for any one hour

(1) These criteria and standards as set forth in this section shall apply to all stationary activities and to all mobile activities whenever they may be stationary, with the following exceptions.

- (i) Construction activities conforming with section 24-224 of the code.
- (ii) Devices, vehicles, equipment and other noise producing items or circumstances for which provisions are set forth elsewhere in the code.
- (iii) Mechanical equipment conforming with section 27-770 of the code.
- (iv) Premises conforming with noise control performance standards as specified in the zoning resolution of the city of New York and set forth on a certificate of occupancy as issued by the department of buildings.
- (v) Any other premise occupied in conformance with a certificate of occupancy as issued by the department of buildings prior to November eighteenth, nineteen hundred seventy-nine, provided, however, that in no event shall the noise levels exceed those allowable in a N-3 ambient noise quality zone or their present noise level whichever is less.

(2) All new activities not exempt by paragraph one of subdivision b of this section shall fall under the jurisdiction of this section of the noise control code upon November eighteenth, nineteen hundred seventy-nine.

(3) Three years from October nineteenth, nineteen hundred eighty-two, all activities not exempt by paragraph one of subdivision b of this section shall meet these specified noise criteria.

(4) Activities not exempt by paragraph one of this subdivision in a given noise quality zone shall not cause the sound levels in any lower noise quality zone to exceed the appropriate standards of section 24-243 of the code for the lower noise zone.

(5) All noise measurements shall be made at the property line of the impacted site. When instrumentation cannot be placed at the property line, the measurement shall be made as close thereto as is reasonable. However, noise measurements shall not be made at a distance less than twenty-five feet from the edge of a noise source.

(6) Where residential noise quality zones (N-1 and N-2) presently exhibit noise levels lower than 55 dB(A) no new activity in any zone with the exception of new housing or new low occupancy commercial uses shall be permitted to increase the daytime hourly Leq above 55 dB(A) or the nighttime hourly Leq above 45 dB(A), when measured at or referred to an impacted residential property line.

(7) All new limited-access highways hereinafter constructed or substantially reconstructed highways built in the city of New York must be designed to provide that the hourly equivalent noise levels at the property line of the nearest residence does not exceed 67 dB(A).

(8) Commercial district noise standards shall apply to legally occupied mixed buildings used partly for residential use and partly for commercial or manufacturing use between the hours of seven a.m. to ten p.m. No one shall conduct or permit to be conducted activities associated with these commercial establishments that cause the Leq noise levels, measured for any thirty minutes in the sleeping areas of nearby residences, to exceed 45 dB(A) between ten p.m. and the following seven a.m.

(9) The ambient noise quality criteria and standards cited above are not presently adjusted for particular noise sources having pure tones or impulsive noise characteristics, such as jet engine whine and pile drivers, respectively. Such characteristics shall be considered in the development of allowable sound levels for sources, as part of section 24-244 of this code.

(10) Allowable sound levels to be promulgated under section 24.244 of this code shall be based on the latest economically feasible and available technology for the abatement of noise produced by devices and activities within a referent ambient noise quality zone.

(11) After the effective date of enactment of these regulations, the commissioner shall submit a supplementary report to the city council every two years that will (i) update the description of existing noise levels in New York City, (ii) evaluate the continued validity of maintaining the noise zone as shown in subdivision (a) above, (iii) evaluate the practicality and the economic impact of reducing existing noise levels, based on applying the latest available noise abatement technology, and (iv) make specific recommendations for modifications that will update and improve ambient noise quality criteria and standards.

(12) The criteria and standards in this section shall not apply to noise emissions from safety or emergency equipment required to protect or to service electric, gas, water, sewer, steam or telephone systems when these devices are functioning in their emergency mode. Conditions for the use to test or exercise this equipment shall be subject to the approval of the commissioner. Should such devices operate so as to cause repetitive complaints the commissioner may after public hearing require compliance with this section.

(c) Variances procedure.

(1) The commissioner may grant individual variances beyond the limitations prescribed in these criteria and standards whenever it is found, upon presentation of adequate proof, the compliance with any of the provisions of these criteria and standards or with any regulation or order of the commissioner in respect thereto, would impose unreasonable hardships or if the same is necessary in the interest of public welfare. In granting a variance the commissioner may impose such conditions as he or she may determine are necessary or desirable to carry out the policies of these criteria and standards. The text of such shall be published in the City Record together with a statement of the facts and reasons.

(2) Any variance granted pursuant to this section shall be granted for such period of time as specified by the commissioner in such variance and upon the condition that the person who receives such variance shall comply with all conditions thereof and shall make such periodic progress reports as the commissioner shall specify. The duration of the variance may be limited by the commissioner as follows:

(i) For short duration emergency conditions a variance for a period of up to one week shall be granted for all situations recognized by the commissioner as an emergency. However, full justification for such variance must be submitted within one week.

(ii) For temporary conditions, or to conduct noise impact assessment tests in accordance with a plan submitted to and approved by the department, a variance for a period of up to six months be granted.

(iii) Any person seeking a variance shall do so by filing a petition in a form acceptable to the commissioner, and shall also submit an assessment of the noise impact to be caused by the activity for which the variance is requested.

24-244 Allowable sound levels.

(a) On or after November eighteenth, nineteen hundred seventy-nine, the commissioner may by regulation promulgate allowable sound levels with respect to any device or activity, provided that such allowable sound levels shall not be inconsistent with the ambient noise criteria and standards enacted under section 24-243 of this subchapter, with the allowable sound levels set out in subchapter five of this chapter of this code, and with the provisions of chapter one of title twenty-seven of the code.

(b) No person shall engage in or cause any other person to engage in an activity, or operate or permit the operation of a device so as to cause a sound level in excess of the appropriate allowable sound level promulgated by the commissioner pursuant to this section.

SUBCHAPTER 7
CERTIFICATES AND TUNNELING PERMITS

24-245 Operating certificates and renewal of operating certificates; tunneling permits; when required.

(a) The commissioner shall at his or her discretion promulgate regulations pursuant to section eleven hundred five of the city charter directing the placement of air compressors, paving breakers, refuse compacting vehicles and rapid transit railroads, including but not limited to their rolling stock, track and track beds, passenger stations, tunnels, elevated structures, yards, depots and garages, onto an operating certificate list, setting out the reasons for such placement and setting out the period of time from issuance or renewal during which such operating certificate shall be valid, unless sooner revoked or cancelled.

(b) No person shall cause or permit the use or operation of any device placed on the operating certificate list pursuant to subdivision (a) of this section except for the purpose of testing such device without first obtaining an operating certificate from the commissioner. The placement of such a device not bearing an operating certificate at a location of its customary operation shall be considered a violation of this section in any proceeding pursuant to any applicable section of subchapter eight of this chapter of this code except section 24-269.

(c) No person shall engage in or permit any person to engage in tunneling without first obtaining a tunneling permit from the commissioner. A separate permit shall be obtained for each shaft of a tunnel.

(d) Prior to advertising for bids for contracts involving tunneling, the agency of the city of New York proposing to so advertise shall request the commissioner in writing for a statement of the requirements or standards that will govern the proposed tunneling activities pursuant to section 24-248 of this subchapter. The aforesaid requirement shall be furnished by the commissioner to the contracting agency in writing within thirty days after receipt of the request and shall be included by the contracting agency in the contract specifications for the proposed tunneling. The conditions under which the permit shall be granted to the contractor shall be consistent with the statement furnished by the commissioner to the contracting agency for inclusion in the contract specifications.

(e) Notwithstanding the existence of a valid tunneling permit, no person shall, except in the case of urgent necessity in the interest of public safety, conduct or permit to be conducted blasting operations at any time other than on week days and other than between the hours of seven a.m. and seven p.m. unless a special permit is obtained from the fire department pursuant to subdivision d of section 27-4039.

24-246 General requirements for applications for operating certificates and for tunneling permits, and removal of operating certificates.

(a) Application for an operating certificate or for the removal of an operating certificate shall be made by the owner of the device on forms furnished by the department.

(b) Application for a tunneling permit shall be made on forms furnished by the department by or in behalf of the owner or lessee of the tunnel; and if made by a person other than the owner, the application accompanied by a signed statement of the applicant declaring that he or she is authorized by the owner to make the application. The permittee shall in all cases be the applicant.

(c) Each application hereunder shall be signed by the applicant. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the operation or use of the concerned or for tunneling in accordance with the requirements of this code. If the applicant is a partnership or group other than a corporation, the application shall be made by one individual who is a member of the group. If the applicant is a corporation, the application shall be made by an officer of the corporation.

(d) Application for the removal of an operating certificate shall be postmarked or date-stamped by the department upon personal delivery no later than thirty days prior to the expiration of the certificate.

24-247 Information required for applications or operating certificates and for tunneling permits.

(a) Each application for an operating certificate shall contain such information as the commissioner may require in order to determine whether a device covered by the application is or will operate in compliance with the provisions of this code including but not limited to:

- (1) The model number and operating characteristics of the device covered by the application;
- (2) A report certified by an approved testing laboratory as to the sound level generated by the device when operated under normal conditions or a manufacturer's warranty as to sound level provided that the device is regularly tested in accordance with procedures established by the American national standards institute or other appropriate professional and standard-setting organization listed in section 24-242; and
- (3) The proposed means, if any, for the prevention or control of unreasonable noise.

(b) Each application for a tunneling permit shall contain such information as the commissioner may require to determine whether tunneling activities and the devices operated therein will be undertaken in compliance with the provisions of this code, including but not limited to:

- (1) The types and operating characteristics of the devices employed in such tunneling;
- (2) A detailed description of proposed tunneling; and
- (3) The proposed means for the prevention of unreasonable noise.

(c) Information concerning secret processes which may be required, ascertained or discovered by the department shall not be disposed by any department employee except that the information may be disposed by the commissioner if the department is subpoenaed for the information or if in the course of a departmental court proceeding or department or board hearing the information is relevant to the proceeding or hearing.

24-248 Standards for granting operating and tunneling permits.

(a) No operating certificate shall be granted unless the applicant shows to the satisfaction of the commissioner that:

- (1) The device will be operated without causing a violation of the provisions of this code; and
- (2) The device incorporates advances in the art of noise control developed for the kind and level of

20

noise emitted by the applicant's device.

(b) No tunneling permit shall be granted unless the applicant shows to the satisfaction of the commissioner that:

- (1) The devices employed in such tunneling, including construction devices, storage bins and hoppers, will be operated or used without causing a violation of the provisions of this code;
- (2) The motor vehicles employed in such tunneling will be routed at such times of day and such routes as not to cause unreasonable noise; and
- (3) All advances in the art of noise control, including appropriate closures around devices, and sound deadening linings on storage bins and hoppers, developed for the kind and level of noise emitted by applicant's activities or devices have been incorporated into such tunneling activities and devices.

(c) The commissioner may from time to time issue regulations for the guidance of applicants indicating the technical specifications which he or she deems will comply with the performance standards of this section.

24-249 Testing before granting or renewing of operating certificates; testing before granting of tunneling permit.

(a) Before a tunneling permit is granted or before an operating certificate is granted or renewed, the commissioner may require the applicant to conduct such tests as are necessary in the opinion of the commissioner to determine the sound level emitted from a device or an activity or to determine whether the device or its operation or an activity is contributing to, or is in violation of this code. The test shall be made at the expense of the applicant.

(b) Such a test shall be conducted, reviewed and certified as provided by subdivision (b) of section 24-206 of this code. The applicant shall notify the department of the time and place of a test as provided by subdivision (c) of section 24-206 of this code. Reasonable facilities shall be made available for the department to witness the test.

If in the opinion of the commissioner tests by the department are necessary, the facilities for such tests, exclusive of sound level meters, shall be furnished by and at the expense of the owner or lessee or his or her agent as provided by subdivision (d) of section 24-206 of this code.

24-250 Action on applications for certificates or tunneling permits.

(a) The commissioner shall act within a reasonable time not to exceed sixty days on an application for a tunneling permit, for an operating certificate, or for a renewal of an operating certificate, and shall notify the applicant in writing of his or her approval or disapproval of the application.

(b) If an application is disapproved, the commissioner shall set forth his or her objections in the notice of disapproval or notice of violation.

(c) Within sixty days after service on the applicant of the notice of disapproval, exclusive of the day of service, the applicant may request the commissioner to reconsider the application by answering in writing the commissioner's objection to the application.

(d) The commissioner shall consider the applicant's answer to his or her objections, and shall notify the applicant in writing within a reasonable time, not to exceed sixty days, of his or her approval or denial of the application. Failure to answer or request an extension of time within sixty days after service of the notice of disapproval or a notice of violation shall be deemed a denial of the application.

(e) The commissioner may grant a temporary operating certificate or tunneling permit for a period not to

exceed sixty days upon receipt of an application for the granting or renewal of an operating may at his or her discretion, renew a temporary operating certificate or tunneling permit for an additional period not to exceed sixty days.

24-251 Conditions of certificates or tunneling permits to be observed.

The holder of a certificate or of a tunneling permit shall comply with the conditions and terms contained in his or her certificate or tunneling permit as well as all applicable provisions of this code.

21-252 Suspension or revocation of certificates or tunneling permits.

(a) The commissioner shall suspend or revoke a tunneling permit or certificate when ordered to do so by the board pursuant to subchapter eight of this chapter of this code.

(b) Suspension or revocation of a certificate or tunneling permit shall become final five days after service notice, exclusive of the day of service, on the holder of the certificate or tunneling permit.

24-253 Surrender of certificates or tunneling permit.

A certificate or tunneling permit which has been cancelled or revoked pursuant to this code shall be surrendered forthwith to the commissioner.

24-254 Transfer of certificates.

Any purported or attempted transfer of a certificate automatically revokes the certificate, except that upon a conveyance of the premises in which the device is located a certificate may be transferred to a person other than the person named in the certificate.

24-255 Operating certificate or tunneling permit fees.

(a) A person applying for an operating certificate, or a renewal of an operating certificate shall pay a fee of thirty dollars.

(b) A person applying for a tunneling permit shall pay a fee of two hundred and fifty dollars.

24-256 Department publication fees.

The department may charge for a copy of its publications a fee in an amount not to exceed the unit the preparation and distribution of the publication.

SUBCHAPTER 8 ENFORCEMENT

24-257 Powers of the board.

(a) The board, in addition to other duties assigned to it by law, shall have the power to conduct hearings pursuant to this subchapter and, by the issuance of a subpoena, compel the attendance of witnesses and the production of any books, papers or other things relating to the matter under investigation.

(b) The board may, upon notice pursuant to section 24-259 of this code, and after a hearing pursuant to section 24-263 of this code, or in default thereof pursuant to section 24-264 of this code:

(1) Order the commissioner to revoke or suspend a certificate or tunneling permit issued pursuant to this code for any device or activity where such device or activity causes, or is maintained or operated so to cause a violation of any provision of this code or order or regulation promulgated by the commissioner or the board;

22

CODE	SECTION	DESCRIPTION	TABLE V				COMPLIANCE	DAYS
			FIRST VIOLATION		Maximum Stip			
			Minimum	Maximum	Stip	Stip		
NO1	24-207.1(c)	Refused entry into public area(s) of premises		\$350	\$875	Y	Provide access to all public areas of premises.	Forthwith
NO2	24-208	Operating equipment without a valid registration.		350	875	Y	Obtain valid registration for equipment.	60
NO3	24-209	Interfering w/or obstructing DEP personnel.		350	875	Y	Cease interference/ or obstruction.	Forthwith
NO4	24-210	False/misleading statements: unlawful repro/alteration of documents.		350	875	Y	Submit accurate data or corrected statement.	Forthwith
NO5	24-211	Failure to post tunneling certificate, permit or notice.		350	875	Y	Post or display tunneling permit, certificate or notice.	Forthwith

NO6	24-216(d)	Cause or permit a device to operate in violation of a noise contract provision.		1050		2625	N	Operate according to contract provisions.	Forthwith
NO7	24-218	Causing or permitting unreasonable noise.		350		875	Y	Cease prohibited noise.	Forthwith
NO8	24-220(a)	Unreasonable noise from any sound reproduction device.		140		350	Y	Cease prohibited noise.	Forthwith
NO9	24-220(b)	Noise from sound reproduction device for commercial purposes.		700		1750	Y	Cease prohibited noise.	Forthwith
N10	24-220(c)	Noise from radio, phonograph or tape recorder on subway, bus or ferry.		70		175	Y	Cease prohibited noise.	Forthwith
N11	24-220(d)	Reserved.		875		3500	N		
N12	24-221(a)	Unreasonable noise from motor vehicle claxon.		350		875	Y	Cease prohibited noise.	Forthwith
N13	24-221(b)	Unreasonable noise from an air horn.		280		700	Y	Cease prohibited noise.	Forthwith
N14	24-221(c)	Unreasonable noise from a steam whistle.		280		700	Y	Cease prohibited noise.	Forthwith
N15	24-221(d)	Improper audible burglar alarm/no automatic termination.		280		700	Y	Discontinue use of improper alarm.	Forthwith
N16	24-221(e)	Audible status indicator on motor vehicle not permitted.		280		700	Y	Discontinue use of audible status indicator.	Forthwith
N17	24-221(g)	Vehicle owner failure to display owners local precinct #.		100		250	Y	Display owners local precinct #, and file nessary information.	Forthwith
N18	24-221(j)	Improper sound signal device-food vendor.		280		700	Y	Cease prohibited activity.	Forthwith
N19	24-222	Permitting animal or bird to cause unreasonable noise.		70		175	Y	Cease prohibited noise.	Forthwith

N20	24-223	Unauthorized use of emergency signal device.		350	875	Y	Cease prohibited activity.	Forthwith
N21	24-224	Construction activities at impermissible times/days.		1400	3500	Y	Cease prohibited activity.	Forthwith
N22	24-225	Unreasonable noise from construction equipment.		560	1400	Y	Cease prohibited activity and noise.	Forthwith
N23	24-226	Unreasonable noise from handling of container or construction material.		560	1400	Y	Cease prohibited activity and noise.	Forthwith
N24	24-227	Unreasonable noise from engine exhaust.		560	1400	Y	Cease prohibited activity and noise.	Forthwith
N25	24-227.1 (i)	Operating lawn care devices before or after permissible hours.		100	875	Y	Cease use of lawn care devices at other than permissible hours.	Forthwith
N26	24-227.1 (ii)	Unreasonable noise from lawn care devices.		100	875	Y	Cease prohibited noise.	Forthwith
N27	24-227.2	Unreasonable noise from power tools.		220	875	Y	Cease prohibited noise.	Forthwith
N28	24-228	Creating unreasonable noise next to school, court or hospital.		350	875	Y	Cease prohibited noise.	Forthwith
N29	24-229	Activity causing unreasonable noise in designated sensitive zone.		560	1400	Y	Cease prohibited activity and noise.	Forthwith
N30	24-232	Excess noise from motor vehicles (8,000 lbs. or more) or motorcycles.		560	1400	Y	Reduce noise comply with code.	Forthwith
N31	24-232	Excess noise from motor vehicles (less than 8,000 lbs.)		210	525	Y	Reduce noise comply with code.	Forthwith
N32	24-234	Excess noise from subway.		1050	2625	N	Reduce noise so as to comply with code.	Forthwith
N33	24-235	Excess noise from railroad.		350	875	Y	Reduce noise so as to comply with code.	Forthwith
N34	24-236	Excess noise from air compressor.		560	1400	Y	Reduce noise so as to comply with code.	Forthwith
N35	24-237	Excess noise from circulation device (50,000 BTU or more).		560	1400	Y	Reduce noise so as to comply with code.	Forthwith
N36	24-237	Excess noise from circulation device (less than 50,000 BTU).		210	525	Y	Reduce noise so as to comply with code.	Forthwith
N37	24-238	Sell/operate motor vehicle producing excessive noise.		560	1400	Y	Cease prohibited activity cited.	Forthwith
N38	24-239	Sell/operate motor vehicle claxon producing excessive noise.		210	525	Y	Cease prohibited activity cited.	Forthwith

N39	24-240	Operate emergency vehicle signal device producing excessive noise.		560	1400	Y	Reduce noise so as to comply with code.	Forthwith
N40	24-241	Sell/operate paving breaker producing excessive noise; operate without muffler.		560	1400	Y	Make necessary repairs and operate so as to comply with code.	Forthwith
N41	24-241.1(a)	Music from commercial establishment, exceeds 45dB, per meter reading.		3200	8000	Y	Reduce noise so as to comply with code.	Forthwith
N42	24-241.1(b)	Music from commercial establishment, exceeds 45dB, per standards.		3200	8000	Y	Reduce noise so as to comply with code.	Forthwith
N43	24-243	Activity causing sound level in excess of ambient noise quality zone criteria.		1050	2625	Y	Cease activity or reduce noise so as to comply with code.	Forthwith
N44	24-244	Activity or device causing noise in excess of allowable sound level.		700	1750	Y	Cease activity or reduce noise so as to comply with code.	Forthwith
N45	24-245	Failure to have operating certificate or tunneling permit.		1050	2625	Y	Cease operating until permit or certificate is obtained.	Forthwith
N46	24-257(b)(d)	Breaking of Board Ordered Seal		1600	4000	Y	Cease tampering with seal.	Forthwith

CODE	SECTION	DESCRIPTION	SECOND VIOLATION		COMPLIANCE	DAYS		
			Minimum	Maximum Stip				
N51	24-207.1(c)	Refused entry into public area(s) of premises		\$700	\$1750	Y	Provide access to all public areas of premises.	Forthwith
N52	24-208	Operating equipment without a valid registration.		700	1750	Y	Obtain valid registration for equipment.	60
N53	24-209	Interfering w/or obstructing DEP personnel.		700	1750	Y	Cease interference/ or obstruction.	Forthwith
N54	24-210	False/misleading statements: unlawful repro/alteration of documents.		700	1750	Y	Submit accurate data or corrected statement.	Forthwith
N55	24-211	Failure to post tunneling certificate, permit or notice.		700	1750	Y	Post or display tunneling permit, certificate or notice.	Forthwith
N56	24-216(d)	Cause or permit a device to operate in violation of a noise contract provision.		2100	5250	N	Operate according to contract provisions.	Forthwith
N57	24-218	Causing or permitting unreasonable noise.		700	1750	Y	Cease prohibited noise.	Forthwith
N58	24-220(a)	Unreasonable noise from any sound reproduction device.		280	700	Y	Cease prohibited noise.	Forthwith

N59	24-220(b)	Noise from sound reproduction device for commercial purposes.		1400	3500	Y	Cease prohibited noise.	Forthwith
N60	24-220(c)	Noise from radio, phonograph or tape recorder on subway, bus or ferry.		140	350	Y	Cease prohibited noise.	Forthwith
N61	24-220(d)	Reserved.		875	3500	N		
N62	24-221(a)	Unreasonable noise from motor vehicle claxon.		700	1750	Y	Cease prohibited noise.	Forthwith
N63	24-221(b)	Unreasonable noise from an air horn.		560	1400	Y	Cease prohibited noise.	Forthwith
N64	24-221(c)	Unreasonable noise from a steam whistle.		560	1400	Y	Cease prohibited noise.	Forthwith
N65	24-221(d)	Improper audible burglar alarm/no automatic termination.		569	1400	Y	Discontinue use of improper alarm.	Forthwith
N66	24-221(e)	Audible status indicator on motor vehicle not permitted.		560	1400	Y	Discontinue use of audible status indicator.	Forthwith
N67	24-221(g)	Vehicle owner failure to display owners local precinct #.		200	500	Y	Display owners local precinct #, and file nessary information.	Forthwith
N68	24-221(j)	Improper sound signal device-food vendor.		560	1400	Y	Cease prohibited activity.	Forthwith
N69	24-222	Permitting animal or bird to cause unreasonable noise.		140	350	Y	Cease prohibited noise.	Forthwith
N70	24-223	Unauthorized use of emergency signal device.		700	1750	Y	Cease prohibited activity.	Forthwith
N71	24-224	Construction activities at impermissible times/days.		2800	3500	Y	Cease prohibited activity.	Forthwith
N72	24-225	Unreasonable noise from construction equipment.		1120	2800	Y	Cease prohibited activity and noise.	Forthwith
N73	24-226	Unreasonable noise from handling of container or construction material.		1120	2800	Y	Cease prohibited activity and noise.	Forthwith

N74	24-227	Unreasonable noise from engine exhaust.		1120		2800	Y	Cease prohibited activity and noise.	Forthwith
N75	24-227.1(i)	Operating lawn care devices before or after permissible hours.		240		1750	Y	Cease use of lawn care devices at other than permissible hours.	Forthwith
N76	24-227.1(ii)	Unreasonable noise from lawn care devices.		240		1750	Y	Cease prohibited noise.	Forthwith
N77	24-227.2	Unreasonable noise from power tools.		528		1750	Y	Cease prohibited noise.	Forthwith
N78	24-228	Creating unreasonable noise next to school, court or hospital.		700		1750	Y	Cease prohibited noise.	Forthwith
N79	24-229	Activity causing unreasonable noise in designated sensitive zone.		1120		2800	Y	Cease prohibited activity and noise.	Forthwith
N80	24-232	Excess noise from motor vehicles (8,000 lbs. or more) or motorcycles.		1120		2800	Y	Reduce noise comply with code.	Forthwith
N81	24-232	Excess noise from motor vehicles (less than 8,000 lbs.)		420		1050	Y	Reduce noise comply with code.	Forthwith
N82	24-234	Excess noise from subway.		2100		5250	N	Reduce noise so as to comply with code.	Forthwith
N83	24-235	Excess noise from railroad.		700		1750	Y	Reduce noise so as to comply with code.	Forthwith
N84	24-236	Excess noise from air compressor.		1120		2800	Y	Reduce noise so as to comply with code.	Forthwith
N85	24-237	Excess noise from circulation device (50,000 BTU or more).		1120		2800	Y	Reduce noise so as to comply with code.	Forthwith
N86	24-237	Excess noise from circulation device (less than 50,000 BTU).		420		1050	Y	Reduce noise so as to comply with code.	Forthwith
N87	24-238	Sell/operate motor vehicle producing excessive noise.		1120		2800	Y	Cease prohibited activity cited.	Forthwith
N88	24-239	Sell/operate motor vehicle claxon producing excessive noise.		420		1050	Y	Cease prohibited activity cited.	Forthwith
N89	24-240	Operate emergency vehicle signal device producing excessive noise.		1120		2800	Y	Reduce noise so as to comply with code.	Forthwith
N90	24-241	Sell/operate paving breaker producing excessive noise; operate without muffler.		1120		2800	Y	Make necessary repairs and operate so as to comply with code.	Forthwith
N91	24-241.1(a)	Music from commercial establishment, exceeds 45dB, per meter reading.		6400		16000	Y	Reduce noise so as to comply with code.	Forthwith
N92	24-241.1(b)	Music from commercial establishment, exceeds 45dB, per standards.		6400		16000	Y	Reduce noise so as to comply with code.	Forthwith
N93	24-243	Activity causing sound level in excess of ambient noise quality zone criteria.		2100		5250	Y	Cease activity or reduce noise so as to comply with code.	Forthwith

N94	24-244	Activity or device causing noise in excess of allowable sound level.		1400		3500	Y	Cease activity or reduce noise so as to comply with code.	Forthwith
N95	24-245	Failure to have operating certificate or tunneling permit.		2100		5250	Y	Cease operating until permit or certificate is obtained.	Forthwith
N96	24-257(b)(d)	Breaking of Board Ordered Seal		1600		4000	Y	Cease tampering with seal.	Forthwith

CODE	SECTION	DESCRIPTION	THIRD VIOLATION		COMPLIANCE		DAYS		
			Minimum	Maximum	Stip				
N101	24-207.1(c)	Refused entry into public area(s) of premises		\$1050		\$2625	Y	Provide access to all public areas of premises.	Forthwith
N102	24-208	Operating equipment without a valid registration.		1050		2625	Y	Obtain valid registration for equipment.	60
N103	24-209	Interfering w/or obstructing DEP personnel.		1050		2625	Y	Cease interference/ or obstruction.	Forthwith
N104	24-210	False/misleading statements: unlawful repro/alteration of documents.		1050		2625	Y	Submit accurate data or corrected statement.	Forthwith
N105	24-211	Failure to post tunneling certificate, permit or notice.		1050		2625	Y	Post or display tunneling permit, certificate or notice.	Forthwith
N106	24-216(d)	Cause or permit a device to operate in violation of a noise contract provision.		3150		7875	N	Operate according to contract provisions.	Forthwith
N107	24-218	Causing or permitting unreasonable noise.		1050		2625	Y	Cease prohibited noise.	Forthwith
N108	24-220(a)	Unreasonable noise from any sound reproduction device.		420		1050	Y	Cease prohibited noise.	Forthwith
N109	24-220(b)	Noise from sound reproduction device for commercial purposes.		2100		5250	Y	Cease prohibited noise.	Forthwith
N110	24-220(c)	Noise from radio, phonograph or tape recorder on subway, bus or ferry.		210		525	Y	Cease prohibited noise.	Forthwith

N111	24-220(d)	Reserved.	875	3500	N		
N112	24-221(a)	Unreasonable noise from motor vehicle claxon.	1050	2625	Y	Cease prohibited noise.	Forthwith
N113	24-221(b)	Unreasonable noise from an air horn.	840	2100	Y	Cease prohibited noise.	Forthwith
N114	24-221(c)	Unreasonable noise from a steam whistle.	840	2100	Y	Cease prohibited noise.	Forthwith
N115	24-221(d)	Improper audible burglar alarm/no automatic termination.	840	2100	Y	Discontinue use of improper alarm.	Forthwith
N116	24-221(e)	Audible status indicator on motor vehicle not permitted.	840	2100	Y	Discontinue use of audible status indicator.	Forthwith
N117	24-221(g)	Vehicle owner failure to display owners local precinct #.	300	750	Y	Display owners local precinct #, and file nessary information.	Forthwith
N118	24-221(j)	Improper sound signal device-food vendor.	840	2100	Y	Cease prohibited activity.	Forthwith
N119	24-222	Permitting animal or bird to cause unreasonable noise.	210	525	Y	Cease prohibited noise.	Forthwith
N120	24-223	Unauthorized use of emergency signal device.	1050	2625	Y	Cease prohibited activity.	Forthwith
N121	24-224	Construction activities at impermissible times/days.	4200	10500	Y	Cease prohibited activity.	Forthwith
N122	24-225	Unreasonable noise from construction equipment.	1680	4200	Y	Cease prohibited activity and noise.	Forthwith
N123	24-226	Unreasonable noise from handling of container or construction material.	1680	4200	Y	Cease prohibited activity and noise.	Forthwith
N124	24-227	Unreasonable noise from engine exhaust.	1680	4200	Y	Cease prohibited activity and noise.	Forthwith
N125	24-227.1(i)	Operating lawn care devices before or after permissible hours.	480	2625	Y	Cease use of lawn care devices at other than permissible hours.	Forthwith
N126	24-227.1(ii)	Unreasonable noise from lawn care devices.	480	2625	Y	Cease prohibited noise.	Forthwith

N127	24-227.2	Unreasonable noise from power tools.	785	2625	Y	Cease prohibited noise.	Forthwith
N128	24-228	Creating unreasonable noise next to school, court or hospital.	1050	2625	Y	Cease prohibited noise.	Forthwith
N129	24-229	Activity causing unreasonable noise in designated sensitive zone.	1680	4200	Y	Cease prohibited activity and noise.	Forthwith
N130	24-232	Excess noise from motor vehicles (8,000 lbs. or more) or motorcycles.	1680	4200	Y	Reduce noise comply with code.	Forthwith
N131	24-232	Excess noise from motor vehicles (less than 8,000 lbs.)	630	1575	Y	Reduce noise comply with code.	Forthwith
N132	24-234	Excess noise from subway.	3150	7875	N	Reduce noise so as to comply with code.	Forthwith
N133	24-235	Excess noise from railroad.	1050	2625	Y	Reduce noise so as to comply with code.	Forthwith
N134	24-236	Excess noise from air compressor.	1680	4200	Y	Reduce noise so as to comply with code.	Forthwith
N135	24-237	Excess noise from circulation device (50,000 BTU or more).	1680	4200	Y	Reduce noise so as to comply with code.	Forthwith
N136	24-237	Excess noise from circulation device (less than 50,000 BTU).	630	1575	Y	Reduce noise so as to comply with code.	Forthwith
N137	24-238	Sell/operate motor vehicle producing excessive noise.	1680	4200	Y	Cease prohibited activity cited.	Forthwith
N138	24-239	Sell/operate motor vehicle claxon producing excessive noise.	630	1575	Y	Cease prohibited activity cited.	Forthwith
N139	24-240	Operate emergency vehicle signal device producing excessive noise.	1680	4200	Y	Reduce noise so as to comply with code.	Forthwith
N140	24-241	Sell/operate paving breaker producing excessive noise; operate without muffler.	1680	4200	Y	Make necessary repairs and operate so as to comply with code.	Forthwith
N141	24-241.1(a)	Music from commercial establishment, exceeds 45dB, per meter reading.	9600	24000	Y	Reduce noise so as to comply with code.	Forthwith
N142	24-241.1(b)	Music from commercial establishment, exceeds 45dB, per standards.	9600	24000	Y	Reduce noise so as to comply with code.	Forthwith
N143	24-243	Activity causing sound level in excess of ambient noise quality zone criteria.	3150	7875	Y	Cease activity or reduce noise so as to comply with code.	Forthwith
N144	24-244	Activity or device causing noise in excess of allowable sound level.	2100	5250	Y	Cease activity or reduce noise so as to comply with code.	Forthwith
N145	24-245	Failure to have operating certificate or tunneling permit.	3150	7875	Y	Cease operating until permit or certificate is obtained.	Forthwith
N146	24-257(b)(d)	Breaking of Board Ordered Seal	1600	4000	Y	Cease tampering with seal.	Forthwith

>(2) Order the owner of any device which causes or is maintained or operated so as to cause a violation of any provision of this code or any order or regulation promulgated by the commissioner or board, to install any apparatus which can reasonably be expected to correct the violation, or to repair, properly maintain, replace or alter such device in a manner which can reasonably be expected to correct the violation;

(3) Seal any device which causes or is maintained or operated so as to cause a violation of any provision of this code or order or regulation promulgated by the commissioner or the board, except as provided in subdivision (c) of this section;

(4) Order any person to cease and desist from any activity which causes or is conducted so as to cause a violation promulgated by the commissioner or the board, except as provided in subdivision (c) of this section;

(5) Impose a civil penalty in each instance in an amount as set out in table V against any person who violates a provision of this code, or of any order, rule or regulation promulgated by the commissioner or the board.

Each day during which such violation continues shall constitute a separate violation. The board may in whole or in part, such a civil penalty if, at the conclusion of the hearing or at the time of the board determination under Section 24-266 of this code the respondent is no longer in violation of a provision this code, or of any order, rule or regulation promulgated by the commissioner or the board;

(6) Impose a civil penalty of not more than two hundred fifty dollars on any owner of a device each day such equipment is sealed pursuant to this section;

(7) Impose a civil penalty of not less than one thousand dollars nor more than four thousand dollars on any person who willfully breaks, or causes or permits the breaking of a seal placed on a device pursuant to this section.

(8) Impose an additional civil penalty in the amount of twenty-five percent of that which would otherwise be imposed for each twelve decibels by which the sound or noise level measured exceeds the maximum sound level as contained in subchapters five and six of this chapter.

(9) Impose an additional civil penalty in the amount of ten percent of the penalty originally imposed, for late payment of penalty for each month, or part thereof, that the penalty payment is in arrears. In no event shall the total additional civil penalty exceed the maximum set forth in the table of civil penalties, or as modified pursuant to paragraph eight of this subdivision or paragraph ten of this subdivision, or both.

(10) Order any person to be classified as a persistent violator if such person is found to be in violation of this code and has also on one or more prior occasions within the preceding five years been found to be in violation of this code, where such repeated violations evidence substantial disregard if a person is classified as a persistent violator, the board shall in each instance double the amount of the penalty which it would otherwise impose pursuant to paragraph five of this subdivision. Such double penalties shall be imposed for violations which the board finds a person committed pursuant to the same proceeding at which it classified such person as a persistent violator and for all violations committed within two years immediately following such classification, after which such classification shall however, if at the end of such two year period such person is still in violation of this code because of a failure to take or complete a corrective action as required by the board, such classification shall continue until such time as such person is no longer in violation of this code because of such failure, at which such classification shall cease. Thereafter, the board may again classify such person as a persistent on the same basis it used originally.

(c) The board may, upon notice pursuant to section 24-259 of this code:

(1) order any person to cease and desist from the operation of any listed device without a certificate as required by section 24-245 of this code and the board may also seal such device;

(2) order any person to cease and desist from tunneling without a tunneling permit as required by section 24-245 of this code and the board may also seal any device used in such tunneling;

(3) order any person not in possession of a variance issued pursuant to subdivision (b) of section 24-224 of this code to cease and desist from construction activities other than during the permissible hours specified in subdivision (a) of section 24-224 of this code and the board may also seal any device used in such construction activities;

(4) order any person to cease and desist from the operation of a device without registration required by section 24-208 of this code and the board may also seal such device.

(d) The board may order the commissioner to install any apparatus or to repair or alter any device or apparatus which causes or is maintained or operated so as to cause a violation of an order issued pursuant to paragraph two of subdivision (b) of this section, where such repairing or alteration can reasonably be expected to correct such a violation. Any work required under such an order may be executed by the commissioner through the officers, agents or contractors of the department. The department shall be reimbursed promptly for all costs and expenses of such work by the owner of the device to which the order relates and in respect to which such expenses were incurred. Such expenses may be recovered in a civil action brought in the name of commissioner.

(e) If an order of the board issued pursuant to subdivisions (b) and (c) of this section provides for a period of time during which a person subject to the order is permitted to correct a violation, the board may require the respondent to post a performance bond or other security with the department in a form and amount sufficient to assure the correction of such violation within the prescribed time. In the event of a failure to meet the schedule prescribed by the board, the sum named in the bond or other security shall be forfeited and shall be paid to the commissioner.

(f)

(1) The board may order any person to cease and desist from an activity which it reasonably believes causes unreasonable noise which creates imminent peril to the public health and well being, or to cease and desist from an activity which it reasonably believes constitutes a willful or continued violation of any provision of this code or order or regulation, promulgated by the commissioner or board. Such order shall be effective upon service thereof. Any party affected by such an order may request a hearing on written notice, and he or she shall be afforded a hearing, within twenty-four hours after service of such request, pursuant to Section 24-263 of this code. If such an accelerated hearing is not requested, then a hearing shall be afforded within ten days of the issuance of the order. The board shall issue its final decision and order thereon within three days from the conclusion of a hearing held pursuant to this subdivision.

(2) The board may rescind in whole or in part a variance issued by an agency of the city of New York pursuant to subdivision (b) of section 24-224 of this code. Such order shall be effective upon service thereof upon such agency and upon the person to whom such variance was issued.

24-258 The board.

(a) The board shall be convened by the chairperson or in the chairperson's absence the assistant commissioner of air resources, or at the request of any three members thereof.

(b) If a member of the board has presided over the initial hearing, he or she shall not be disqualified from reviewing the hearing.

(c) Five members of the board, at least two of who shall not be city officials, shall constitute a quorum.

24-259 Notice of violation.

(a) Notice, required by this chapter, shall be given by issuance of a notice of violation.

25

(b) Whenever the commissioner has reasonable cause to believe that a violation of any provision of this code or any order or regulation promulgated by the commissioner or the board may exist, he or she may cause to have a notice of violation issued and served on:

- (1) The person in violation; or
- (2) An owner with an equity interest in the device in violation, if any; or
- (3) If an owner with an equity interest in the device in violation cannot be located with due diligence, any other owner of said device.

(c) A notice of violation shall:

- (1) Specify the section or sections of this code, order or regulation that such person or device is in violation of; and
- (2) Indicate the amount of the civil penalty that such person is subject to; and
- (3) Contain a brief statement of the nature of the violation; and
- (4) Require a written response that conforms to section 24-260 of this code; and
- (5) Require such person or owner of a device, unless a hearing is not required by section 24-257 of this code, to answer the allegations in the notice of violation at a time and place designated either in or with the notice of violation or in a subsequent notice to such person or owner.

24-260 Written response.

(a) A written response in a form prescribed by the board shall be served upon the department and filed with the board within five days of receipt of the notice of violation.

(b) If the allegation in the notice of violation is one for which a hearing is not required by section 24-257 of this code, and is contested, then the respondent must either:

- (1) Include a copy of any tunneling permit or certificate that the respondent asserts was issued by the department; or
- (2) Deny that such tunneling permit or certificate is required by law.

(c) If any of the allegations in the notice of violation are those for which a hearing is required by section 24-257 of this code and are contested, the written response shall contain a concise statement of the facts constituting each ground of defense.

(d) If allegations in the notice of violation are admitted the written response of the respondent shall consist of:

- (1) A statement that he or she admits all of the material allegations to be true; and
- (2) A statement of any attempts subsequent to service of the notice of violation to comply with this code

or with the order or regulation.

(e) Failure of the respondent to serve a written response within the time provided shall be deemed to constitute a waiver of his or her right to appear and contest the allegations in the notice.

24-261 Citizen's complaint.

(a) Any person other than personnel of the department and employees of the city of New York authorized by law to serve summonses for violations of the code may serve upon the department a complaint in a form prescribed by the commissioner alleging that a person has violated a provision of this code set forth in table VI below, or an order or regulation promulgated under such provision together with evidence of such violation.

Table VI

Violation related to section or subdivision and order or regulated thereunder

24-208

24-216

24-220 (b)

24-232, except that the provisions of this section 24-261 shall apply only to violations by persons operating motor vehicles listed in subdivisions one and two of column I, and subdivisions one and two of column II of table I. 24-234 24-236 24-237, except that the provisions of this section 24-261 shall apply only to a violation by a person operating a circulation device with a rated capacity in excess of fifty thousand British thermal units per hour or its equivalent.

24-238

24-240

24-241

24-244

24-245

(b) A person who has served a complaint pursuant to subdivision (a) of this section may serve upon the person allegedly in violation and the board a notice of violation in a form prescribed by the board, if within thirty days from service of such complaint:

- (1) The department has failed to serve a notice of violation, pursuant to section 24-259 of this code, for the violation alleged in a complaint pursuant to subdivision (a) of this section; or
- (2) The department fails to serve a written notice upon the complainant of its determination that his or her complaint is frivolous or duplicitous.

(c) A person commencing a proceeding before the board pursuant to this section, shall prosecute such proceeding at his or her own expense. The department may intervene in such a proceeding at any time.

(d) In any proceeding brought by the department after receiving a complaint pursuant to subdivision (a) of this section, the board shall award the complainant, out of the proceeds collected, fair and reasonable compensation, which shall not exceed twenty-five percent of proceeds collected, for disclosure of information or evidence not in possession of the department, which leads to the imposition of the

civil penalty.

(e) In any proceeding brought by a complainant, the board shall award out of the proceeds collected, fifty percent of any civil penalty as fair and reasonable compensation to such person.

24-262 Settlement of proceedings.

The board may settle any proceeding by stipulation and may exercise any or all of its powers under section 24-257 of this code thereby, at any time prior to the issuance of a decision pursuant to section 24-266 of the code.

24-263 Hearings.

(a) The chairperson of the board shall designate a hearing officer or at least one member of the board to preside over hearings held pursuant to this subchapter. In any hearing in which a quorum of the board is present, such members shall be deemed to be sitting as the board.

(b) All such hearings shall be open to the public.

(c) At the request of any party to such a hearing, the board shall by the issuance of a subpoena compel the attendance of such witnesses and shall require the production of any such books, papers, or other things relating to the matter under investigation if such a request reasonably relates to such hearing.

(d) Any party to a hearing may be represented by counsel, may make oral and written argument and cross examine witnesses. All testimony taken before the board or the designated hearing officer shall be under oath and shall be recorded. The record shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproduction.

24-264 Default; vacating a default order.

(a) A respondent shall be in default when the respondent has:

- (1) Failed to serve a written response pursuant to section 24-260 of this code; or
- (2) Failed to appear at the designated time and place as required by the notice of violation or subsequent notice pursuant to section 24-259 or 24-261 of this code; or
- (3) Neglected to proceed in a manner ordered by the board.

(b) Within sixty days of a decision and order of the board issued pursuant to paragraph two of subdivision (c) of section 24-266 of this subchapter, the respondent may request the board to grant a stay of such order of the board and schedule a hearing. If the respondent has shown good cause and a meritorious defense, the board may grant such a request and hold a hearing pursuant to section 24-263 of this code. At the conclusion of the hearing, the board may adopt, amend or rescind its decision and order.

24-265 Hearing officer's decision.

(a) At the conclusion of the hearing, the hearing officer or member of the board conducting the hearing shall prepare a decision stating findings of fact and conclusions, as well as reasons for his or

her determination on all material issues, and making recommendations as to action which should be taken in the matter.

(b) The hearing officer or member of the board conducting the hearing shall file his or her decision with the board and send copies by mail to the parties. Any party may file exceptions with the board within twenty days after service of such decision. If no exceptions have been filed within the described time, the recommendations of the hearing officer or member of the board conducting the hearing shall automatically become the decision of the board and shall constitute its findings, conclusions and order.

(c) At the conclusion of a hearing conducted by the board, the board shall issue its decision and order. We decision of the board shall conform to the requirements of subdivisions (b) and (c) of section 24-266 of this code.

24-266 Board decision and order.

(a) If any party files exceptions to the decision of the hearing officer or member of the board conducting a hearing within the prescribed time the board shall review the record and issue its decision and order in which it may adopt, modify or reject the findings, conclusions and recommendations of the hearing officer or member of the board who conducted the hearing.

(b) The decision of the board shall contain findings of fact, condusions of law and reasons for the decision cn all material issues raised, and an order either dismissing the allegations of the notice of violation or sustaining them in whole or in part.

(c) The board may exercise one or more of its powers pursuant to section 24-257 of this code, as it deems appropriate if:

28

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- (1) The allegations in the notice of violation are sustained in whole or in part;
 - (2) The respondent is in default under section 24-264 of this code.

(d) The decision and order of the board shall be its final determination. A judicial proceeding must be commenced within two months after the service of such decision and order.

24-267 Compliance with board decisions; orders and civil penalties.

(a) If the respondent fails or refuses to comply with the board's order or the board otherwise deems it necessary, the corporation counsel for the city of New York, acting in the name of the city, may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any order of the board.

(b) A civil penalty imposed by the board pursuant to section 24-257 of this code may be collected in an action brought in the name of the city of New York.

24-268 Procedural rules.

The board shall have authority from time to time to make, amend and rescind such procedural rules as may be necessary to carry out the provisions of this subchapter.

24-269 Criminal penalties.

(a) Any person who shall knowingly make a false statement or who shall knowingly falsify or allow to be falsified any certification, registration, form, signed statement, application or report required under the provisions of this code or regulation promulgated by the commissioner or the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not to exceed five months, or both.

(b) Any person, other than a corporation, who violates any order of the commissioner or the board or any provision of section 24-245 of this code or who illegally breaks a seal on equipment, upon conviction shall be punished for each offense by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not more than thirty days or by both.

Any corporation which violates any order of the commissioner or the board or any provision of section 24-245 of this code, or which illegally causes a seal to be broken, upon conviction shall be punished for each offense by a fine of not less than one hundred dollars nor more than two thousand dollars.

Every day during which such violation occurs constitutes a separate offense.

(c) Any person, other than a corporation, convicted of willful failure to pay a civil penalty imposed by the board pursuant to section 24-257 of this code shall be punished by a fine of double the amount of the civil penalty imposed by the board, or by imprisonment for not more than sixty days, or by both.

Any corporation convicted of a willful failure to pay a civil penalty imposed by the board pursuant to section 24-257 of this code shall be punished by a fine of double the amount of the civil penalty imposed by the board, but not more than two thousand dollars.

(d) The failure of any person or corporation against whom an action has been brought to collect a civil penalty pursuant to subdivision (b) of section 24-267 of this code, who has been found liable by a court for such civil penalty and who does not pay such penalty after the judgment of such becomes final, shall be deemed guilty of a willful failure to pay a civil penalty.

(e) Any person convicted of violating any of the provisions of this code or any regulation of the board not otherwise provided for by this section shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for the first offense, or by imprisonment for twenty days, or both; and by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for not more than thirty days, or both, for a second offense; and by a fine of not less than four more than five thousand dollars, or by imprisonment for not more than four months or both for a third at subsequent offense.

(f) Twenty-five percent of any fine that is imposed pursuant to this section may be paid to the person or persons giving information which shall lead to conviction.

