

LOCAL REGULATION OF NOISE

Planning Day - Androscoggin Valley Council of Governments

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I. What is “Noise”?

Industrial sounds? Traffic sounds? Sirens? Music? Speech? Fireworks? Parades? Barking dogs? Objectionable sounds? Objectionable to whom? Need to know what seeking to regulate.

II. Sources of Authority to Regulate Noise

A. Police Power – inherent authority of state and local governments to protect public health, safety and welfare. Ordinances of general applicability – apply to existing and new/expanded uses or activities.

B. Zoning – authority under zoning enabling statute and home rule to regulate land uses and activities prospectively through permitting and regulation – applies to new and expanded uses and activities.

III. Police Power Ordinances

A. Applicability

1. Can be general, to affect any noise generated by any person or activity – not just land uses and activities.
2. Can adopt noise restrictions – hours of operation, or sound pressure levels at lot lines for all commercial or industrial uses, or certain types of uses (*e.g.*, gravel pits, rock crushing).
3. Can prohibit certain activities that generate noise or loud or annoying sounds

B. Examples:

1. Camden “Public Noise and Conduct Ordinance.” Prohibits:

- a. “Unreasonable, Loud and Raucous Noise” – “Yelling, shouting, hooting, whistling, singing or the production of any other noise, in a loud and raucous manner, between the hours of 11:00 PM and 7:00 AM” within a specified area “so as to unreasonably annoy or disturb the quiet, comfort, or repose of any persons located more than 50 feet from the source of that noise shall be prohibited.”
 - b. “Unreasonably Loud Sound Production.” Similar prohibition on loud radios, musical instruments or other sound equipment.
 - c. “Unreasonable Sounds from Horns or Signaling Devices.”
 - d. “Unacceptable Noise Levels.” Sound levels exceeding 65dBA at the property line and persisting for 5 minutes between 11:00 PM and 7:00 AM.
2. York “Noise Ordinance.” Sets limits (10 dB in business districts, 5 dB in other districts) on additional sound level increase in daytime hours, and absolute (maximum permissible) sound level limits for daytime and nighttime. Also prohibits “loud, disturbing and/or unnecessary noises” – in particular:
- a. “Using, operating or playing any type of audio device in a loud and unreasonable manner that casts sound upon the public streets” for the purpose of advertising or attracting attention.
 - b. “Loud and unreasonable shouting and crying of peddlers , hawkers, and vendors that disturb the peace and quiet of the neighborhood,” and
 - c. Emptying of money from outdoor vending machines within 200’ of a residence between 10 pm and 6 am.
3. City of Portland, South Portland. Set sound level limits, generally daytime and nighttime limits, for each zoning district (Portland exempts residential districts). Portland also has sound level standards to attach to entertainment licenses.
4. Sanford. Prohibits:
- a. “Loud, boisterous , unnecessary, or unusual noises which shall annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of others” including:
 - 1) Operation of loud radio, receivers, loudspeakers, musical instruments, audible at least 75 feet from the property line,
 - 2) Loud sounds at nighttime audible at least 75 feet from the property line,

3) Automobile, motorcycle or other vehicle sounds, such as engine revving, and tire squealing, and loud motor vehicle sound systems

b. "Owning, possessing or harboring any animal or bird which, frequently or for continued duration, makes sounds which create noise disturbance across a residential real property boundary." Also regulates barking dogs.

IV. Zoning Ordinances. Examples:

A. "Unified Development Review Ordinance for the Town of Newry, Maine." Section XIII (GENERAL PERFORMANCE STANDARDS) Z ("Noise") includes eight pages of standards that apply to new or expanded development subject to regulation under UDRO (primarily subdivision and site plan). Standard is "The proposed development shall not raise noise levels to the extent that abutting or nearby residents are adversely affected." Provision sets out daytime and nighttime limits.

B. Saco Zoning Ordinance

§ 230-801 Noise.

A. Maximum permissible sound-pressure levels.

(1) Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, heat frequency, shrillness or volume (please refer to table below). The maximum permissible sound-pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this chapter shall be as established by the time period and type of land use listed below. Sound from any source controlled by this chapter shall not exceed the following limits at the lot line of the "receiving" property.

Sound-Pressure Level Limits Measured in dB(A)

District	Day	Night
Industrial districts	65 dBA	60 dBA
Commercial districts	60 dBA	50 dBA
Residential and conservation districts	55 dBA	45 dBA

(2) Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.

(3) The levels specified may be exceeded by 10 dBA for a single period, no longer than 15 minutes, in any one day.

(4) Noise shall be measured with a sound-level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961) "American Standard Specification for General Purpose Sound Level Meters." The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, "American Standard Method for the Physical Measurements of Sounds."

(5) No person shall engage in, cause, or permit any person to be engaged in loud construction activities on a site abutting any residential use between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day.

B. Exempt activities. (List omitted)

C. Nonconformance of existing industrial sources. Existing industrial noise sources that are in operation at the time of enactment of this chapter shall be provided a permanent 10 dB(A) noise level allowance over noise levels otherwise required herein.

D. Enforcement. It shall be the duty of the City Police Department to enforce this section.

V. Common Elements of Both Types of Ordinances:

A. Types of Sounds.

1. Tonal sounds – narrow frequency range – hum or whine
2. Repetitive sounds – short duration noises at regular intervals
3. Impulse Sounds – less than one second duration

B. How measured.

1. Intensity of sound measured in decibels (dBs) – a logarithmic scale (eg. 60 dB is ten times louder than 50dB) of sound pressure levels. The smallest audible sound (near total silence) is 0 dB. A sound 10 times more powerful is 10 dB. A sound 100 times more powerful than near total silence is 20 dB. A sound 1,000 times more powerful than near total silence is 30 dB. Here are some common sounds and their decibel ratings:

- Near total silence - 0 dB
- Rustling leaves - 10 dB
- Whisper - 15 dB
- Quiet house interior or rural nighttime – 20 dB

- Quiet office interior or watch ticking – 30 dB
 - Quiet suburban area or dishwasher in next room – 50 dB
 - Normal conversation - 60 dB
 - Lawnmower - 90 dB
 - Car horn - 110 dB
 - Rock concert or a jet engine - 120 dB
 - Gunshot or firecracker - 140 dB
- (see <https://science.howstuffworks.com>, Maine SPO/MDEP Technical Assistance Bulletins “Noise”)

2. Sound level meter meeting ANSI standards and regularly calibrated, usually placed four feet above ground.

3. Often measured as equivalent sound levels average sound levels over a one hour or one minute time period.

4. “A-weighting” is used in measurement of sound levels to account for human hearing (“dBA”), which perceives higher frequencies better than low frequencies; the human ear is less sensitive to low audio frequencies.

C. Where measured:

1. Lot/property line
2. Receptor (nearest building, residence) on adjoining or nearby property

D. Sound levels.

1. Typically, establish higher sound levels in industrial zones and lower in residential zones, and higher sound levels in any zone daytime and lower at nighttime.

2. Alternatively, can set a maximum increase in sound level above background noise (all other existing noises) or ambient noise levels (all other existing noises plus the new proposed use)

E. Standard. Must incorporate a standard the generator of the “noise” must meet.

1. Without a standard, an ordinance potentially is void for vagueness. “An ordinance is improperly vague ‘when its language either forbids or requires the doing of an act in terms so vague that people of common intelligence must guess at its meaning, or if it authorizes or encourages arbitrary and discriminatory enforcement.’” *Town of Baldwin v. Carter*, 2002 ME 52 ¶ 10, 794 A.2d 62. This is a constitutional requirement based upon the due process clauses of the 14th Amendment to the U.S. Constitution and Art. 1 § 6-A of the Maine Constitution.

2. Can state an objective standard – specific decibel level (or different levels based on time of day), or a limit on increased sound pressure levels (10 dB over background or ambient sound levels, for example)

- a. Requires necessary equipment, maintenance and calibration, and
- b. Requires sufficient training to properly use that equipment.

3. Can rely upon a “reasonableness” standard – a prohibition on generating sound at levels that are unreasonable.

a. “Barking Dog” ordinance – *Town of Baldwin v. Carter*. The essential part of the ordinance read:

No owner or keeper of any dog kept within the legal limits of the Town of Baldwin shall allow such dog to unnecessarily annoy or disturb any person by continued or repeated barking, howling or other loud or unusual noises anytime day or night.

Neighbors who lived 300 to 800 feet away complained of noise from barking dogs. Carter held a town license to operate a kennel and had 16 dogs on her property. Neighbors submitted a videotape from 800 feet away – could hear barking dogs inside neighbor’s house. Town animal control officer could hear barking over the telephone when a neighbor called. The Town filed a complaint and Carter argued that the ordinance was unconstitutionally vague for lack of objective standards. The Law Court stated that where a person challenges the validity of an ordinance, the person is claiming the ordinance is not capable of any valid application, and the court will, if possible, construe it to preserve the ordinance’s validity. Law Court adopted the construction of the term “any person” in ordinance to mean “any reasonable person,” thereby incorporating a “reasonable person” standard in order to withstand constitutional challenge. In other words, Law Court interpreted the ordinance to prohibit unnecessary barking or howling that is annoying to a reasonable person. (In footnote 6, the Law Court noted that it was not unreasonable for neighbors to be annoyed by the continued barking of 16 dogs 800 feet way for hours at a time, audible to an investigator over a neighbor’s telephone.)

Look to examples in III. B. above for similar standards.

F. Common exemptions:

1. Sirens, whistles and bells used by emergency vehicles or alarm systems, except that burglar alarms not terminated within 30 minutes are unlawful;

2. Safety signals and warning devices required by OSHA or other State or federal regulations;

3. Church bells rung as part of official church ceremony or service, or tower bells ringing the hour during daytime hours;
4. Construction or demolition activities 7 am to 7pm;
5. Emergency construction or repair work by municipality and public utilities at any hour;
6. Noise created by solid waste and recycling collection activities between 6 am and 7 pm;
7. Noise created by recreational activities permitted by law or for which municipality has issued a license or permit, including, but not limited to parades, sporting events outdoor concerts, and fireworks;
8. Domestic power equipment, such as power saws, grinders, lawn and garden tools;
9. Traffic noise;
10. Municipal activities – sound generated by legitimate activities of municipality or water or sewer district;
11. Farm operations as defined in 7 M.R.S. § 152;
12. Timber harvesting during daytime hours.

G. Enforcement

1. Who enforces? Law Enforcement Officer (police power ordinances); Code Enforcement Officer (zoning/land use ordinances)

2. Civil Violation. Using procedure of M.R.Civ.P. Rule 80K and authority of 30-A M.R.S. §4452, can seek fine, injunctive relief and attorney’s fees and costs

2. Public Nuisance. Can bring action against generator of noise as public nuisance under 17 M.R.S. §2701 *et seq.*, seeking injunction, abatement or discontinuance of nuisance or recovery of damages for cost of same, and/or fine of up to \$100.

VI. State Regulation of Noise

A. Site Location of Development Act (SLODA)

1. DEP Rules Chap. 375, Section 10 (“Control of Noise”). 27 pages of regulation regarding measurement and control of noise generated by new and expanded development subject to SLODA.

2. Regulation “applies to proposed developments within municipalities without a local quantifiable noise standard and in unorganized areas of the State.” When proposed development is located in a municipality with ordinance that has “an applicable quantifiable noise standard, which (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 dBA, and (2) limits or addresses the various types of noises contained in this regulation or all the types of noises generated by the development,” DEP applies that local standard, rather than Chap. 375, §10.

3. Establishes general limits of:

a. 75 dBA at any time of day.

b. At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

1) 60 dBA between 7:00 a.m. and 7:00 p.m. (the "daytime hourly limit"), and

2) 50 dBA between 7:00 p.m. and 7:00 a.m. (the "nighttime hourly limit").

c. At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

1) 70 dBA between 7:00 a.m. and 7:00 p.m. (the "daytime hourly limit"), and

2) 60 dBA between 7:00 p.m. and 7:00 a.m. (the 'nighttime hourly limit').

4. Limits are measured at “protected locations”:

Any location, accessible by foot, on a parcel of land containing a residence or planned residence or approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the development site at the time a Site Location of Development application is submitted; or any location within a State Park, Baxter State Park, National Park, Historic Area, a nature preserve owned by the Maine or National Audubon Society or the Maine Chapter of the Nature Conservancy, The Appalachian Trail, the Moosehorn National Wildlife Refuge, federally-designated wilderness area, state wilderness area designated by statute (such as the Allagash Wilderness Waterway), or locally-designated passive recreation area; or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a protected location.

At protected locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally-designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation and the daytime hourly sound level limits shall apply regardless of the time of day.

Transient living accommodations are generally not considered protected locations; however, in certain special situations where it is determined by the Department that the health and welfare of the guests and/or the economic viability of the establishment will be unreasonably impacted, the Department may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations.

5. Additional Requirements/Standards for Wind Energy Development.