

ORDINANCE NO. 17-16

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER AMENDING ARTICLE II ENTITLED "NOISE CONTROL" UNDER CHAPTER 184 OF THE CODE OF THE TOWNSHIP ENTITLED NOISE

WHEREAS, the New Jersey Department of Environmental Protection ("NJDEP") provides a Model Noise Control Ordinance to serve as guidance for municipalities adopting a noise control ordinance pursuant to the State's Noise Control Act; and

WHEREAS, the Township adopted the NJDEP's Model Noise Control Ordinance in 1997; and

WHEREAS, the NJDEP most recently updated its Model Noise Control Ordinance in December 2014; and

WHEREAS, the Township of Hanover desires to update its Noise Control Ordinance to reflect the updated NJDEP Model Noise Control Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey as follows:

Section 1. Part II, entitled "General Legislation," of the Code of the Township of Hanover is hereby amended with the inclusion of a new Article II entitled "Noise Control" under Chapter 184 of the Code of the Township as follows:

Chapter 184. Noise

Article II. Noise Control

§ 184-5. Definitions.

As used in this article, the words and terms described below shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this article have the same meaning as those defined in N.J.A.C. 7:29.

CONSTRUCTION:

Any site preparation, assembly, erection, repair, alteration or similar action, including demolition of buildings or structures.

dBC:

The sound level as measured against the "C" weighting network with a sound level meter meeting the standards set forth in ANSI S1.4-1983 or its successors. The unit of reporting is dB(C). The "C" weighting network is more sensitive to low frequencies than is the "A" weighting network.

DEMOLITION:

Any dismantling, destruction or removal of buildings, structures or roadways.

DEPARTMENT:

The New Jersey Department of Environmental Protection.

EMERGENCY WORK:

Any work or action necessary at the site of an emergency to restore or deliver essential public services, including but not limited to, repairing water, gas, electricity, telephone, sewer facilities or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways or abating life-threatening conditions or a state of emergency declared by a governing agency.

IMPULSIVE SOUND:

Either a single pressure peak or a single burst (multiple pressure peaks) that has a duration of less than one second.

MINOR VIOLATION:

A violation that is not the result of the purposeful, reckless or criminally negligent conduct of the alleged violator; and/or the activity or condition constituting the violation has not been the subject of an enforcement action by any authorized local, county or state enforcement agency against the violator within the immediately preceding 12 months for the same or substantially similar violation.

MOTOR VEHICLE:

Any vehicle that is propelled other than by human or animal power on land.

MUFFLER:

A properly functioning sound dissipative device or system for abating the sound on engines or equipment where such a device is part of the normal configuration of the equipment.

MULTI-DWELLING-UNIT BUILDING:

Any building comprising two or more dwelling units, including but not limited to apartments, condominiums, co-ops, multiple-family houses, townhouses and attached residences.

MULTI-USE PROPERTY:

Any distinct parcel of land that is used for more than one category of activity. Examples include, but are not limited to:

A. A commercial, residential, industrial or public service property having boilers, incinerators, elevators, automatic garage doors, air conditioners, laundry rooms, utility provisions or health and recreational facilities or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels at another category on the same distinct parcel of land; or

B. A building which is both commercial (usually on the ground floor) and residential property located above, below or adjacent.

NOISE CONTROL OFFICER (NCO):

An employee of a local, county or regional health agency which is certified pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.) to perform noise enforcement activities or an employee of a municipality with a department-approved model noise control ordinance. All NCOs must receive noise enforcement training as specified by the department in N.J.A.C. 7:29 and is currently certified in noise enforcement. The employee(s) must be acting within his or her designated jurisdiction and must be authorized to issue summons(es).

NOISE CONTROL INVESTIGATOR (NCI):

An employee of a municipality, county or regional health commission that has a Department-approved model noise control ordinance and the employee has not received noise enforcement training as specified by the Department in N.J.A.C. 7:29. However, they are knowledgeable about their model noise ordinance and enforcement procedures. A Noise Control Investigator may only enforce sections of the ordinance that do not require the use of a sound level meter. The employee must be acting within his or her designated jurisdiction and must be authorized to issue a summons.

PLAINLY AUDIBLE:

Any sound that can be detected by a NCO or an NCI using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic bass

component of the music is sufficient to verify plainly audible sound. The NCO or NCI need not determine the title, specific words or the artist performing the song.

PRIVATE RIGHT-OF-WAY:

Any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased or controlled by a nongovernmental entity.

PUBLIC RIGHT-OF-WAY:

Any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased or controlled by a governmental entity.

PUBLIC SPACE:

Any real property or structures thereon that are owned, leased or controlled by a governmental entity.

REAL PROPERTY LINE:

Either (a) the vertical boundary that separates one parcel of property (i.e., lot and block) from another residential or commercial property; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property as defined herein, the vertical or horizontal boundaries between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the real property line would be the interface between the residential area and the commercial area, or if there is an outdoor sound source such as an HVAC unit on the same parcel of property, the boundary line is the exterior wall of the receiving unit.) This definition shall not apply to a commercial source and a commercial receptor which are both located on the same parcel of property (e.g., a strip mall).

SOUND PRODUCTION DEVICE:

Any device whose primary function is the production of sound, including, but not limited to any, musical instrument, loudspeaker, radio, television, digital or analog music player, public address system or sound-amplifying equipment.

SOUND REDUCTION DEVICE:

Any device, such as a muffler, baffle, shroud, jacket, enclosure, isolator, or dampener provided by the manufacturer with the equipment, or that is otherwise required, that mitigates the sound emissions of the equipment.

WEEKDAY:

Any day that is not a federal holiday and beginning on Monday at 7:00 a.m. and ending on the following Friday at 6:00 p.m.

WEEKENDS:

Beginning on Friday at 6:00 p.m. and ending on the following Monday at 7:00 a.m.

§ 184-6. Declaration of policy; applicability.

A. It is the policy of the Township Committee of the Township of Hanover to prevent excessive sound that may jeopardize the health, welfare or safety of the citizens or degrade the quality of life.

B. This article shall apply to the control of sound originating from sources within the Township of Hanover.

(1) This article applies to sound from the following property categories:

- (a) Industrial facilities.
- (b) Commercial facilities.
- (c) Public service facilities.
- (d) Community service facilities.
- (e) Residential properties.
- (f) Multi-use properties.
- (g) Public and private rights-of-way.
- (h) Public spaces.
- (i) Multi-dwelling-unit buildings.

(2) This article applies to sound received at the following property categories:

- (a) Commercial facilities.
- (b) Public service facilities.
- (c) Community service facilities (i.e. non-profits and/or religious facilities).
- (d) Residential properties.
- (e) Multi-use properties.
- (f) Multi-dwelling-unit buildings.

(3) Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.3, except that the testing of the electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.

§ 184-7. Enforcement officers.

A. Noise control officers shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance and pursue enforcement activities.

B. Noise Control Investigators shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance that do not require the use of a sound level meter (i.e., plainly audible, times of day and/or distance determinations) and pursue enforcement activities.

C. Noise Control Officers and Investigators may cooperate with NCOs and NCIs of an adjacent municipality in enforcing one another's municipal noise ordinances.

§ 184-8. Permissible sound levels; sound measurements; sound production devices.

A. Maximum permissible sound levels.

1. No person shall cause, suffer, allow or permit the operation of any source of sound on any source property listed in § 184-6(B)(1) of this Ordinance in such a manner as to create a sound level that equals or exceeds the sound level limits set forth in Tables I, II or III when measured at or within the real property line of any of the receiving properties listed in Tables I, II or III except as specified in paragraph B(2) of this section.

2. Impulsive sound. Between 7:00 a.m. and 10:00 p.m., impulsive sound shall not equal or exceed 80 decibels. Between 10:00 p.m. and 7:00 a.m., impulsive sound which occurs less than four times in any hour shall not equal or exceed 80 decibels. Impulsive sound which repeats four or more times in any hour shall be measured as continuous sound and shall meet the requirements as shown in Tables I and II.

TABLE I
MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS
WHEN MEASURED OUTDOORS

RECEIVING PROPERTY CATEGORY	Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility
	7 a.m.-10 p.m.	10 p.m.-7 a.m.	
TIME			24 hours
Maximum A-Weighted	65	50	65

sound level standard, dB			
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**TABLE II
MAXIMUM PERMISSIBLE A-WEIGHTED SOUND LEVELS
WHEN MEASURED INDOORS**

RECEIVING PROPERTY CATEGORY	Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility
TIME	7 a.m.-10 p.m.	10 p.m.-7 a.m.	24 hours
Maximum A-Weighted sound level standard, dB	55	40	55

**TABLE III
MAXIMUM PERMISSIBLE OCTAVE BAND
SOUND PRESSURE LEVELS IN DECIBELS**

Receiving Property Category	Residential property, or residential portion of a multi-use property		Residential property, or residential portion of a multi-use property		Commercial facility, public service facility, non-residential portion of a multi-use property, or community service facility	Commercial facility or non-residential portion of a multi-use property
	OUTDOORS		INDOORS		OUTDOORS	INDOORS
Octave Band Center Frequency, Hz.	Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB		Octave Band Sound Pressure Level, dB	Octave Band Sound Pressure Level, dB
Time	7 a.m.-10 p.m.	10 p.m.-7 a.m.	7 a.m.-10 p.m.	10 p.m.-7 a.m.	24 hours	24 hours
31.5	96	86	86	76	96	86
63	82	71	72	61	82	72
125	74	61	64	51	74	64
250	67	53	57	43	67	57
500	63	48	53	38	63	53
1,000	60	45	50	35	60	50
2,000	57	42	47	32	57	47
4,000	55	40	45	30	55	45
8,000	53	38	43	28	53	43

Note: When octave measurements are made, the sound from the source must be constant in level and character. If octave band sound pressure level variations exceed plus or minus 2 dB in the bands containing the principal source frequencies, discontinue the measurement.

B. Sound measurements.

1. Sound measurements made by a Noise Control Officer shall conform to the procedures set forth at N.J.A.C. 7:29-2, except that interior sound level measurements shall also conform with the procedures set forth in paragraph A of this section and with the definition of "real property line" as contained herein.

2. When conducting indoor sound level measurements across a real property line the measurements shall be taken at least three feet from any wall, floor or ceiling and all exterior doors and windows may, at the discretion of the investigator, be closed. The neighborhood residual sound level shall be measured in accordance with N.J.A.C. 7:29-2.9(b)2. When measuring total sound level, the configuration of the windows and doors shall be the same and all sound sources within the dwelling unit must be shut off (e.g., television, stereo). Measurements shall not be taken in areas which receive only casual use such as hallways, closets and bathrooms.

C. Sound production devices.

1. No person shall cause, suffer, allow, or permit the operation of any sound production device in such a manner that the sound crosses a property line and raises the total sound levels above the neighborhood residual sound level by more than the permissible sound level limits set forth in Table IV when measured within the residence of a complainant according to the measurement protocol in paragraph B of this section. These sound level measurements shall be conducted with the sound level meter set for "C" weighting, "fast" response.

TABLE IV
MAXIMUM PERMISSIBLE INCREASE IN TOTAL SOUND LEVELS
WITHIN A RESIDENTIAL PROPERTY

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

§ 184-9. Restricted uses and activities.

A. Exceptions.

(1) Except as provided in Subsection **B** below, the provisions of this article shall not apply to the exceptions listed at N.J.A.C. 7:29-1.5.

(2) Sound production devices required or sanctioned under the American with Disabilities Act (ADA), FEMA or other government agencies to the extent that they comply with the noise requirement of the enabling legislation or regulation. Devices which are exempted under N.J.A.C. 7:29-1.5 shall continue to be exempted.

(3) Construction and demolition activities are exempt from the sound level limits set forth in Tables I, II and III except as provided for in Subsection **B** below.

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

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

(2) Excluding emergency work, power tools, landscaping and/or yard maintenance equipment used by nonresidential operators (e.g. commercial operators, public employees) shall not be operated on a residential, commercial, industrial or public (e.g. golf course, parks, athletic fields) property between the hours of 6:00 p.m. and 8:00 a.m. on weekdays, or between the hours of 6:00 p.m. and 9:00 a.m. on weekends or federal holidays, unless such activities can meet the limits set forth in Tables I, II or III. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device. At all other times, the limits set forth in Tables I, II and III do not apply.

(3) All construction and demolition activity, excluding emergency work, shall not be performed between the hours of 6:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 6:00 p.m. and 9:00 a.m. on weekends and federal holidays, unless such activities can meet the limits set forth in Tables I, II or III. All motorized equipment used in construction and demolition activity shall be operated with a muffler and/or sound reduction device. At all other times, the limits set forth in Tables I, II and III do not apply.

(4) Motorized snow removal equipment shall be operated with a muffler and/or a sound reduction device when being used for snow removal. At all other times, the limits set forth in Tables I, II or III do not apply.

(5) All interior and exterior burglar alarms of a building or motor vehicle must be activated in such a manner that the burglar alarm terminates its operation within five (5) minutes for continuous airborne sound and fifteen (15) minutes for intermittent sound after it has been activated. At all other times, the limits set forth in Tables I, II or III do not apply.

(6) Self-contained, portable, non-vehicular music or sound production devices shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound, operated on a public space or public right-of-way, from such equipment shall not be plainly audible at a distance of 25 feet in any direction from the operator.

(7) It shall be unlawful for any property owner or tenant to allow any domesticated or caged animal to create a sound across a real property line which unreasonably disturbs or interferes with the peace, comfort, and repose of any resident, or to refuse or intentionally fail to cease the unreasonable noise when ordered to do so by a Noise Control Officer or Noise Control Investigator. Prima facie evidence of a violation of this section shall include but not be limited to:

(a) Vocalizing (howling, yelping, barking, squawking, etc.) for five (5) minutes without interruption, defined as an average of four (4) or more vocalizations per minute in that period; or,

(b) Vocalizing for twenty (20) minutes intermittently, defined as an average of two vocalizations or more per minute in that period.

It is an affirmative defense under this subsection that the dog or other animal was intentionally provoked to bark or make any other noise.

§ 184-10. Enforcement.

A. Violation of any provision of this article shall be cause for a Notice of Violation (NOV), Notice of Penalty Assessment (NOPA), or other enforcement document to be issued to the violator by the noise control officer or noise control investigator.

B. Any person who violates any provision of this article shall be subject to a civil penalty for each offense of not more than the maximum penalty pursuant to N.J.S.A. 40:49-5, which is \$2,000 as of April 2016. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

C. Upon identification of a violation of this Ordinance, the Noise Control Officer or Noise Control Investigator shall issue an enforcement document to the violator. The enforcement document shall identify the condition or activity that constitutes the violation and the specific provision of this Ordinance that has been violated. It shall also indicate whether the violator has a period of time to correct the violation before a penalty is sought.

D. If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a minor violation (as defined by § 184-5), a NOV, NOPA or other enforcement document

1. The document shall indicate that the purpose of the enforcement document is intended to serve as a notice to warn the responsible party/violator of the violation conditions in order to provide them with an opportunity to voluntarily investigate the matter and voluntarily take corrective action to address the identified violation.

2. The enforcement document shall identify the time period (up to 90 days), pursuant to the Grace Period Law, N.J.S.A. 13:1D-125 et seq. where the responsible party's/violator's voluntary action can prevent a formal enforcement action with penalties issued by the Noise Control Officer or Noise Control Investigator. It shall be noted that the enforcement document does not constitute a formal enforcement action, a final agency action or a final legal determination that a violation has occurred. Therefore, the enforcement document may not be appealed or contested.

E. If the violation is deemed by the Noise Control Officer or Noise Control Investigator to be a non-minor violation, the violator shall be notified that if the violation is not immediately corrected, an enforcement document with a civil penalty of not more than the maximum penalty allowed pursuant to N.J.S.A. 40:49-5, which is \$2,000 as of April 2016, will be issued. If a non-minor violation is immediately corrected, an enforcement document without a civil penalty shall still be issued to document the violation. If the violation occurs again (within 12 months of the initial violation), an enforcement document shall be issued regardless of whether the violation is immediately corrected or not.

F. The violator may request from the Noise Control Officer or Noise Control Investigator, an extension of the compliance deadline in the enforcement action. The Noise Control Officer or Noise Control Investigator shall have the option to approve any reasonable request for an extension (not to exceed 180 days) if the violator can demonstrate that a good faith effort has been made to achieve compliance. If an extension is not granted and the violation continues to exist after the grace period ends, an enforcement document shall be issued.

G. The recipient of an enforcement document shall be entitled to a hearing in a municipal court having jurisdiction to contest such action.

H. The Noise Control Officer or Noise Control Investigator may seek injunctive relief if the responsible party does not remediate the violation within the period of time specific in the enforcement document.

I. Any claim for a civil penalty may be compromised and settled based on the following factors:

1. Mitigating or any other extenuating circumstances;

2. The timely implementation by the violator of measures which lead to compliance;
3. The conduct of the violator; and
4. The compliance history of the violator.

§ 184-11. Severability; repealer.

A. If any provision or portion of a provision of this article is held to be unconstitutional, preempted by federal or state law or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the article shall not be invalidated.

B. All ordinances or parts of ordinances which are inconsistent with any provisions of this article are hereby repealed to the extent of such inconsistencies.

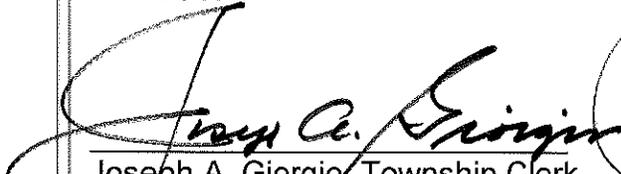
C. No provision of this article shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this article or from other law.

Section 2. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 3. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 4. This ordinance shall take effect in accordance with the law.

ATTEST:



Joseph A. Giorgio, Township Clerk
DATE OF INTRODUCTION: May 12, 2016
DATE OF ADOPTION: May 26, 2016

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY


Ronald F. Francioli, Mayor