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ORDINANCE

An Ordinance to Provide Noise Control and Establish, and To Enforce, Civil Infraction for Violation

Be it ordained by the City Council of the City of Brockton, a new ordinance to be added to the Revised Ordinances, Chapter 14 – Offenses – Miscellaneous, as Section 14-49 or in the next section available.

Noise Control

1. Purpose. The purpose of this Act is to minimize exposure of residents to the harmful effects of excessive noise. It is the express intent of the City Council to control the level of noise in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose, quiet enjoyment, and the quality of the environment.

2. Definition. “Noise” for the purpose of this section shall mean the intensity, duration and character of sound from any and all sources.

“Public nuisance noise” means any sound which unreasonably annoys, injures, interferes with, or endangers the comfort, repose, quiet enjoyment, health or safety of persons residing within separate residences in the same community or neighborhood, although the extent of the damage may be unequal.

3. Excessive Noise Declared Nuisance. All loud or unusual noises or sounds and annoying vibrations which offend the peace and quiet enjoyment of persons of ordinary sensibilities are public nuisances and public disturbances.

4. General Noise Restrictions. It is unlawful, and no person shall make, generate or be the cause of making and/or generating, and/or shall continue to cause to make, to cause, or to generate, any loud, unnecessary, or unusual noise or sound, and/or any noise or sound which either annoys disturbs, injures, and/or endangers the comfort, repose, health, peace, and/or safety of other residents, and/or the general public, within the limits of the City.

It is unlawful for any person to cause or allow to be emitted a noise which has been determined to be a public nuisance noise as defined in this chapter. It is unlawful for any person to cause or any person in possession or control of property to allow to originate from the property, sound that is a public disturbance noise.

5. Noises Exempt – Completely or partially.

A. The following noises are exempt from the provisions of this chapter at all times; provided that nothing in these exemptions is intended to preclude the possible reduction of noise consistent with economic feasibility:

1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;
2. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety relief intent of the device;
3. Noise created by fire alarms, or noise created by emergency equipment, including but not limited to emergency standby or backup equipment, and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community, and including, but not limited to, any emergency work necessary to replace or repair essential utility services;

4. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;
 5. Noise originating from officially sanctioned parades, sporting events, and other public events;
 6. Noise created by warning devices not operated continuously for more than thirty minutes per incident;
 7. Noise created by natural phenomenon and unamplified human voices;
 8. Noise created by motor vehicles, licensed or unlicensed when operated off public highways except when such sounds are received in residential zones of the City; and
 9. Noise created by existing stationary equipment used in the conveyance of water by utilities and noise created by existing electrical substations.
- B. The following sources of noise are exempt, upon permission by the City Clerk after a determination the conduct of the activities is necessary or in the best interest of the City for a limited period of time:
1. Noise created by the operation of equipment of facilities of surface carriers engaged in commerce by railroad;
 2. Noise created by aircraft;
 3. Noise emanating from the temporary construction sites except between the hours of ten p.m. and six a.m.; and
 4. Noise resulting from work on or about rights of way of state highways arising from the construction, maintenance or repair of said highways or other public facilities on or about said highways;
- 6. Noise Restrictions in Vehicle.** No person who shall be operating, and/or who shall be in control of a moving and/or parked vehicle (includes all motor vehicles, including, but not limited to, passenger cars, pickup trucks, trucks, motorcycles, mopeds, recreational vehicles, and/or unlicensed vehicles) shall not operate or permit the operation of an electronically amplified sound system in, on or about the vehicle, so as to produce sound that is clearly audible at a distance of fifty (50) feet from the vehicle, during the hours of 7:00 AM and 10:00 PM, or clearly audible at a distance of twenty-five (25) feet from the vehicle between the hours of 10:00 PM and 7:00 AM.

The General Noise Restrictions shall not be applied to, and shall not be enforced as to sounds and/or noise emanating from the following:

- (A) Emergency Vehicles. Any authorized police, fire, or emergency vehicle when responding to an emergency call, or when testing such police fire or emergency vehicles in the course of performing normal duties.
- (B) Emergency Warnings. The use and/or testing of emergency warning signals, beacons, and/or devices.
- (C) Building and/or Construction. Necessary excavations and/or repairs of streets and/or highways by and/or on behalf of the City, County and State, at any time, especially when public safety, welfare, and convenience renders it necessary to have such work done at night and/or not during the daytime hours. Also, during daylight hours, necessary excavations for, and/or construction of approved building projects.
- (D) Public Events. The use of stationary amplifiers and/or loud speakers in the course of the public address for public events and/or public gatherings. Also,

noise emanating from such public events as boat races, football games, and other public happenings.

(E) Horns and Signal Devices. The sound of any or signal device on any automobile, motorcycle, bus, truck, train, or other vehicle, if used reasonably as a danger signal and/or warning.

7. Specifically Prohibited Sounds/Noise. The creation of the following sounds and/or noise are specifically prohibited:

(A) Unnecessary Use of Horns and Signal Device. The use of any horn or signal device on any automobile, motorcycle, bus, truck, train, or other vehicle not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or to give warning of intent to get under motion, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound and the sounding of such device for any unnecessary or unreasonable period of time is unlawful.

(B) Radio, Television and Musical Instruments. The use of, or playing of any radio, television, phonograph or musical instrument, or allowing any electrically or electronically produced, reproduced or amplified sound to emanate from any place or premises exceeding 75 decibels (DBA) between the hours of 10:00 PM and 7:00 AM, so as to be heard more than one hundred (100) feet from the property line of such places or premises, or so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, residence, or other place of employment or repose, or any other person in the vicinity. This provision shall not be applicable to community events approved by resolution of the City Clerk.

(C) Shouting/Whistling. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noise on the public street, or at such other place so that the noise may be heard on a public street, between the hours of 10:00 PM and 7:00 AM, or the making of such noise at any time, so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, residence, or other place of employment or repose, or any other person in the vicinity. This provision shall not be applicable to community events approved by resolution of the City Clerk.

(D) Hawking. The hawking of goods, merchandise and/or newspapers in a loud and boisterous manner.

(E) Animal and Bird Noises. The keeping of any animal or bird which, by causing loud, frequent or habitual noise, which could disturb the comfort or repose of any person, or which causes a serious annoyance to the neighborhood.

(F) Whistles or Siren. The blowing of any whistle or siren, except to give notice of the time to begin or stop work, or except as a warning of fire or danger, or the testing of such a warning signal.

(G) Construction Noises. The erection (including excavating), demolition, alteration or repair, of any building and/or grounds, other than between the hours of 7:00 AM and 6:00 PM, unless a permit is first obtained from the City Clerk. Snow removal during the hours between 3:00 AM and 7:00 AM is also permitted. Also, emergency repairs and maintenance shall be permitted.

(H) Handling Merchandise. The use of a loud speaker, amplifier, or other instrument or device for the purpose of attracting attention.

(I) Noise or Commotion in Vehicles. The making of a commotion or making of unnecessarily loud noises in vehicles, whereby the peace and good order of the neighborhood is disturbed, or persons owning or occupying property in the neighborhood are disturbed or annoyed.

(J) Sound Trucks. To operate, or cause to be operated, without prior approval or permit, a sound truck with a loud speaker, amplifier, or other instrument or device within the City, for the purpose of attracting attention.

(K) Vehicle Theft Alarm Systems. Installing, operating or using any vehicle theft alarm system that emits or causes the emission of an audible sound, which is not, or does not become, automatically and completely silenced within five (5) minutes. The time period shall be calculated based upon the emission of the first audible sound and shall end five (5) minutes thereafter notwithstanding any variation or stoppage in the emissions of audible sound.

8. Enforcement by Civil Infraction. After a complaint has been received from an identified person who resides on, owns, rents or leases property or is employed in the area that is affected by a noise source, the Police Department, Board of Health and Fire Department may issue a civil infraction notice; provided, that the section of this chapter relating to motor vehicles shall be subject to enforcement proceedings, regardless of whether a complaint has been received.

9. Violation. Violation of this ordinance may be enforced in the manner provided in MGL, c. 40, s. 21D. Any person found to be in violation of this chapter shall be deemed to have committed a civil infraction and for each violation shall be subject to a civil penalty as follows:

1. First violation in any twelve-month period: Written Warning issued by the Enforcing Department.
2. Second violation in any twelve-month period: \$100.00 fine.
3. Third and any subsequent violations in any twelve-month period: \$300.00 fine.

Evidence of sound level through the use of sound level meter readings shall not be necessary to establish a violation of this Act. A violation of section (B) may require evidence of a properly calibrated sound level meter indicating a reading exceeding 75 decibels (DBA) during the prohibited hours from at least 100 feet from the offending property line.

10. Provisions not exclusive. The provisions of this Act shall be cumulative and nonexclusive, and shall not affect any other claim, violation of any other noise standard in the City Ordinances, cause of action or remedy, not unless specifically provided, shall this chapter be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.



Councilor Jeffrey Thompson, Ward 5

IN CITY COUNCIL

SEPTEMBER 14 2020
 READ AND REFERRED TO STANDING
 COMMITTEE ON ORDINANCE



In City Council November 23, 2020

The amendment passed by a hand vote.

Passed to a third reading as amended by a hand vote.



City Clerk

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It is unlawful for any person to cause or allow to be emitted a noise which has been determined to be a public nuisance noise as defined in this chapter. It is unlawful for any person to cause or any person in possession or control of property to allow to originate from the property, sound that is a public disturbance noise.

5. Time Restrictions

The general prohibition on unreasonable or excessive noise restrictions is prohibited during the following time periods:

- (A) Between 10:00 p.m. and 7:00 a.m. Sundays through Thursdays; and
- (B) Between 11:00 p.m. and 7:00 a.m. Friday and Saturdays

6. Measurement

A. Maximum Noise Levels
Noise levels shall not exceed 50 decibels (DBA) during the restricted hours.

B. Measure devices
The City of Brockton Police Department shall use standard electronic devices generally accepted as measuring tools of noise (tonal sounds, sound measurement level, etc.) for the purposes of determining the decibel levels of unreasonable or excessive noise.

C. Distance

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Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

7. Noises Exempt – Completely or partially.

A. The following noises are exempt from the provisions of this chapter at all times; provided that nothing in these exemptions is intended to preclude the possible reduction of noise consistent with economic feasibility:

1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;
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4. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;
5. Noise originating from officially sanctioned parades, sporting events, and other public events;
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B. The following sources of noise are exempt, upon permission by the City after a determination the conduct of the activities is necessary or in the best interest of the City for a limited period of time:

1. Noise created by the operation of equipment of facilities of surface carriers engaged in commerce by railroad;
2. Noise created by aircraft;

AS AMENDED

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- 3. Noise emanating from the temporary construction sites except between the hours of ten p.m. and six a.m.;
- 4. Noise resulting from work on or about rights of way of state highways arising from the construction, maintenance or repair of said highways or other public facilities on or about said highways; and
- 5. Public Events. The use of stationary amplifiers and/or loud speakers in the course of the public address for public events and/or public gatherings, with applicable permits. Also, noise emanating from such public events as football games and other public happenings.

8. Enforcement by Civil Infraction and Violation. After a complaint has been received from an identified person who resides on, owns, rents or leases property or is employed in the area that is affected by a noise source, the Police Department may issue a civil infraction warning issued in the usual course of the operation of the City of Brockton police department. A written record will be stored in the police department's computer system evidencing the date, time, place, decibel reading, and party receiving the warning, with the violating party receiving a written copy. Within seven (7) days, the police department shall send a copy of the written warning to the owner of record.

A subsequent violation of this ordinance may be enforced in the manner provided in MGL, c. 40, s. 21D. Any person found to be in violation of this chapter shall be deemed to have committed a civil infraction and for each violation shall be subject to a civil penalty as follows:

- 1. First violation in any twelve-month period: Written Warning issued by the Police Department as stated above.
- 2. Any subsequent violations in any twelve-month period: \$300.00 fine.

9. Provisions not exclusive. The provisions of this Act shall be cumulative and nonexclusive, and shall not affect any other claim, violation of any other noise standard in the City Ordinances, cause of action or remedy, not unless specifically provided, shall this chapter be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.



Councilor Jeffrey Thompson, Ward 5

In City Council February 8, 2021

Ordained, as amended, by a roll call vote taken by "yeas" and "nays"; eleven members present and nine voting in the affirmative. Councilors Cardoso and Rodrigues voted in the negative.

Councilor Nicastro motioned for reconsideration in the hopes that it not prevail and was properly seconded. Motion failed by a roll call vote taken by "yeas" and "nays"; eleven members present with two voting in the affirmative. Councilors Asack, Cruise, Eaniri, Farwell, Lally, Mendes, Monahan, Nicastro and Thompson voting in the negative.



City Clerk

In City Council February 8, 2021

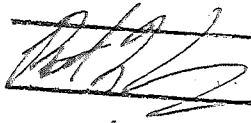
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City Clerk

SENT TO MAYOR FOR APPROVAL

February 9 2021
APPROVED

 **MAYOR**

2/12/21