

Morgantown, West Virginia Noise Ordinance

ARTICLE 527 NOISE CONTROL

527.01 Declaration of Policy

The City of Morgantown finding that excessive levels of sound are detrimental to the physical, mental and social well being of the citizens of the City of Morgantown as well as to their comfort, living conditions, general welfare and safety, hereby declares it to be necessary to provide for the greater and more effective regulation of excessive sounds through the adoption of Article 527, Noise Control.

527.02 Definitions

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) "Construction" means any site preparation, assembly, erection, substantial repair, alteration, demolition, or similar action.
- (2) "Continuous Sound" means and denotes a sound the intensity of which remains essentially constant during a given period of time. Continuous sound shall be measured by the slow response setting of a sound level meter.
- (3) "DBA (Decibel-A-Weighted)" means sound pressure level as measured on the "A" scale of a sound level meter manufactured in accordance with the specifications of the American National Standards Institute, Inc. (ANSI), Type 2, ANSI-S1.4(1971), calibrated within two (2) hours of being used for measurement. Unless otherwise noted, measurements shall be made in the slow response mode of the meter.
- (4) "A-Weighted Sound Level" means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dB(A) or dBA.
- (5) "Decibel (dB)" means a unit of sound pressure, equal to twenty (20) times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
- (6) "Daytime" denotes the local time of day between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 9:00 a.m. and 9:00 p.m. on Saturdays, Sundays and local legal holidays.
- (7) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- (8) "Emergency Signal Device" means any audible warning device, such as a gong, whistle or siren or any air horn or any similar device.
- (9) "Emergency Work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- (10) "Impulsive Sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.
- (11) "Mobile Source" means any moving sound source on a public right-of-way.
- (12) "Motor Vehicle" means as defined in the Traffic Regulation Code of the State of West Virginia, or any vehicles which are propelled or drawn by mechanical equipment, such as, but

not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, minibikes, go-carts, snowmobiles, mopeds, amphibious craft on land, dune buggies, all-terrain vehicles or racing vehicles.

(13) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a trailer.

(14) "All-Terrain Vehicle (ATV)" means any motor vehicle designed for off highway use and designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

(15) "Nighttime" means those hours excluded from the definition of "daytime."

(16) "Noise" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological effect on humans.

(17) "Noise Disturbance" means any sound which (a) endangers or injures the safety or health of humans or animals; or (b) annoys or disturbs a reasonable person of normal sensitivities; or (c) endangers or injures personal or real property; or (d) exceeds the applicable maximum permissible sound levels as they appear in the table in section 527.05 of this Article.

(18) "Noise Sensitive Zone" means any area designated for the purpose of ensuring exceptional quiet and shall include schools and churches while the same are in use, any hospital and any nursing home; provided, that conspicuous signs are displayed on the exterior realty of any such school, church, hospital or nursing home which clearly notifies a member of the general public of its use.

(19) "Person" means any individual, corporation, partnership firm or any legal successor, representative or agent of the foregoing.

(20) "Public Right-of-Way" means any street, avenue, boulevard, highway, alley, sidewalk or public space which has been dedicated for use by the general public and the dedication of which has been accepted by the appropriate governmental entity.

(21) "Real Property Boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but it does not include intra-building real property division.

(22) "Small Power Equipment" means any motorized or engine powered device, including but not limited to lawn mowers, lawn and garden tools, riding lawn tractors and power saws, excluding other motor vehicles.

(23) "Sound" means vibratory disturbance (including an oscillation) in the pressure and/or density of a liquid or gas or in the particular displacement of a solid or liquid. Such disturbance takes place at a rate between approximately 20 and 20,000 hertz (cycles per second); and the physiological perception of such a vibration of displacement.

(24) "Sound Amplifying Equipment" means any machine or device for the amplification of the human voice, music or any other sound. Sound amplifying equipment as used herein shall not be construed as including standard automobile radio when used and heard only by occupants of the vehicle in which installed or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.

(25) "Sound Level" means that which is measured with the "A" weighting network on a sound level meter unless otherwise specified.

(26) "Sound Level Meter" means the instrument, meeting the requirements of ANSI S1.4-1971 Type II rating, used for making sound level measurements.

- (27) "Sound Pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.
- (28) "Sound Pressure Level" means the intensity in decibels (dB) of a sound.
- (29) "Stationary Source" means any sound source operating or occurring on any public or private property, not including a public right-of-way.
- (30) "Weekday" means any day Monday through Friday which is not a legal holiday.
- (31) "Zoning District" means and refers to the scheme of land use classification contained in the Morgantown Zoning Ordinance Section 13.

527.03 Loud and Unnecessary Noises Prohibited

No person shall make, continue or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the City.

527.04 Certain Loud and Disturbing Noises Enumerated

The following acts are declared to be loud, disturbing and unnecessary noises in violation of Section 527.03, but such enumeration shall not be deemed to be exclusive, namely:

- (a) Animals and Birds. The keeping of any animal or bird by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.
- (b) Defect in Vehicle or Load The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (c) Domestic Power Tools Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snowblower, small power equipment, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 8:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary.
- (d) Drums The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.
- (e) Engine-Repair and Testing It shall be unlawful for any person to repair, rebuild or test any engine so as to create a noise disturbance.
- (f) Exhaust The discharge into the open air of the exhaust of any stream engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (g) Horns and Signaling Devices The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.
- (h) Loudspeakers/Public Address System
 - (1) Using or operating for any noncommercial purpose any loudspeaker, public address system, or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone.

- (2) Using or operating for any commercial purpose any loudspeaker, public address system, or similar device (a) such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or (b) between the hours of 8:00 p.m. and 10:00 a.m. the following day on a public right-of-way or public space.
- (i) Radios, Musical Instruments and Similar Devices Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
- (1) Between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone. (except for activities open to the public and for which a permit has been issued by "appropriate authority" according to criteria set forth in Article 315 of the Morgantown City Code;
- (2) In such a manner as to create a noise disturbance at 50 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters; or,
- (3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.
- (j) Yelling and Shouting Yelling, shouting, whistling, hooting, or generally creating a racket on public right-of-ways or public spaces between the hours of 8:00 p.m. and 10:00 a.m. the following day so as to annoy or disturb the quiet, comfort or repose of persons in any business or residence, or of any person in the vicinity.

527.05 Measurement and Control of Noise

- (a) Noise Prohibited No person shall make, continue or cause to be made or continued any noise in excess of the noise levels set forth herein unless such noise be reasonable necessary to the preservation of life, health, safety or property.
- (b) Measurement and Control It shall be unlawful for any person to cause a sound from a stationary source which exceeds any sound level as set forth in the applicable column in the following table titled "Maximum Permissible Sound Levels" when measured at any point within any other property affected by the sound. Measurement shall be made by a duly authorized individual who is knowledgeable in the proper use of the measurement equipment. Measurement shall be made in slow response, A-weighting, except in the case of impulsive sound which shall be measured with an impulsive sound level meter, ANSI S1.4-1971. Octave band measurements, where noted, shall be made with an octave band analyzer.

MAXIMUM PERMISSIBLE SOUND LEVELS FROM STATIONARY SOURCES

Zoning District	Time of Day	Continuous Sound (dBA)	Impulsive Sound (dBA)
All Residential PRO O-1	All	60	80
All Business	All	65	90
All Industrial	All	70	110

527.06 Applicability of Article

The provision of this article shall not apply in using any of the sound equipment mentioned and described herein where such equipment is being used for civil defense or in the event of a disaster or other emergency, or is being used by any governmental agency or at any public meeting.

527.07 Exceptions and Special Waivers

(a) Exceptions. The following uses of an activity shall be exempt from noise level regulations:

- (1) Noise of safety signals and warning devices.
- (2) Noises resulting from any authorized vehicle, when responding to an emergency.
- (3) Noises resulting from the provision of municipal services.
- (4) Any noise resulting from activities of a temporary duration permitted by law and/or for which a waiver has been granted by the city.
- (5) The unamplified human voice (except as specified in Section 527.04(j)).
- (6) Parades and public gatherings for which a special waiver has been issued.
- (7) Bells, chimes, carillons while being used for religious purposes or in conjunction with religious services, or for national celebrations or public holidays, and those bells, chimes, carillons that are presently installed, and in use, for any purpose.

(b) Exemptions for time to comply. Upon good cause shown by the owner or responsible party for any noise source, the City Manager shall have the power to grant an exemption from the requirement of this ordinance in order to allow sufficient time for installation of needed control equipment, facilities, or modifications to achieve compliance, not to exceed ten (10) days, provided that such exemption may be renewed as necessary, but only if satisfactory progress toward compliance is shown. A request for exemption shall be filed in writing with the City Manager.

(c) Use exemptions. The following uses and activities shall be exempt from noise level regulations:

- (1) Lawn maintenance equipment when it is functional within manufactures specifications and with all mufflers and noise reducing equipment in use and in properly operating condition between the hours of 8:00 a.m. and 9:00 p.m.
- (2) Non-amplified crowd noises resulting from the activities such as those planned by day care centers, schools, governmental or community groups.
- (3) Amplified announcements, electronically amplified announcements at athletic or special events from 8:00 a.m. to 12:01 a.m.

(d) Special Waivers.

- (1) The City Manager shall have the authority, consistent with this ordinance, to grant special waiver, provided, that no live bands shall be allowed in single family residence zoning districts.
- (2) Any person seeking a special waiver pursuant to this ordinance shall file a written application with the City Manager. A fee of \$20.00 shall accompany the application. The written application shall contain information which demonstrates that bringing the source of sound or activity for which the special waiver is sought into compliance with the ordinance would constitute an unreasonable hardship on the applicant, on the community, or for another purpose.
- (3) In determining whether to grant or deny the application, the City Manager shall balance the hardship to the applicant, the community, and other persons of not granting

the special waiver against the adverse impact on the health, safety and welfare of persons affected, the adverse impact of granting the special waiver.

(4) Special waivers shall be granted by notice to the applicant and may include all necessary conditions, including time limits on the permitted activity. The special waiver shall not become effective until all conditions are agreed to by the applicants. Noncompliance with any condition of the special waiver shall terminate it and subject the person holding it to those provisions of this ordinance regulating the source of sounds or activity for which the special waiver was granted.

(5) The City Manager may issue guidelines defining the procedures to be followed in applying for special waivers and the criteria in declaring whether to grant a special waiver.

(e) Social Gatherings and Parties.

(1) Any person who is planning a social gathering or party at which it is anticipated that the noise levels will exceed those set forth in 527.05 herein may file a written application with the City Manager for a special waiver from said noise levels.

(2) Any person seeking such a special waiver shall indicate in his or her application to the City Manager the specific reason why he or she will not be able to meet the established noise levels. The applicant shall also include a written statement that he or she has personally contacted all residents of properties within 400 feet of the property in question and none oppose the special waiver being requested. A fee of \$20.00 shall accompany the application. For purposes of the preceding sentence, an applicant will also be required to notify and receive permission from applicant's landlord, if the property in question is a rental property.

(3) Should the applicant be granted a special waiver pursuant to this subsection, it will be subject to the condition that any such special waiver will expire at 10:00 p.m. on Sunday through Thursday evenings and midnight on Friday and Saturday evenings.

527.08 Enforcement and Penalties

Penalties.

(1) Any person who violates any portion of this ordinance shall receive a verbal order to cease or abate the noise immediately or within a reasonable time period, except that after 8:00 p.m. and until 8:00 a.m. any person designated to enforce this ordinance need not issue a verbal order to cease or abate the noise before charging any person with a violation of this ordinance.

(2) If the order to cease or abate the noise is not complied with, or is complied with and then violated again within sixty (60) days, the person or persons responsible for the noise under Section 527.03 shall be charged with a violation of this ordinance and be subject to a fine of not more than five hundred dollars (\$500.00).

527.09 Penalties: Violations Deemed Nuisances

Any person violating any of the provisions of this article shall be punished in accordance with section 501.99(a) for general Code penalty if no specific penalty is provided. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

As an additional remedy, the operation or maintenance of device, instrument, vehicle or machinery in violation of any provision of this article, which operation or maintenance cause

discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed, and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

527.10 Conflicts

In any case where a provision of this article is found to be in conflict with any other provision of the Morgantown Code existing on the effective date of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this article is found to be in conflict with any other provision of the Morgantown Code existing on the effective date of this article which established a less stringent standard for the promotion and protection of the health and safety of the people, the provision of this article shall prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this article.

527.11 Severability

Should any of the articles, sections, paragraphs, sentences, clauses or phrases of this chapter be declared unconstitutional or invalid, at the valid judgment or decision of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the chapter in its entirety or any of the remaining articles, sections, paragraphs, sentences, clauses and phrases.