

**ORDINANCE 2022-07 C**

**ORDINANCE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING TITLE 8, WHICH PERTAINS TO HEALTH AND SAFETY AND CHAPTER 8.16, WHICH PERTAINS TO NOISE**

**STATEMENT OF PURPOSE**

The purpose of the ordinance is to repeal and replace Chapter 8.16 to amend the noise regulations and comply with the State requirements.

**SECTION I**

§8.16 is repealed and replaced as follows.

§8.16.010 Declaration of findings and policy.

- A. WHEREAS excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and, WHEREAS a substantial body of science and technology exists by which excessive sound may be substantially abated; and WHEREAS the people have a right to and should be ensured of an environment free from excessive sound; NOW THEREFORE, it is the policy of the Borough of Ship Bottom to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.
- B. This Chapter shall apply to the control of sound originating from sources within the Borough of Ship Bottom.

§8.16.020 Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this Chapter shall have the same meaning as those defined in N.J.A.C. 7:29-1.1.

**CONSTRUCTION**

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

**dBC**

The sound level as measured using 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 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 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 the following:

- 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 otherwise adjacent to.

### **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 must be acting within his or her designated jurisdiction and must be authorized to issue a summons.

### **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 an 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 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 non-governmental 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). Note- 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.

### **§8.16.030 Applicability.**

- A. This model noise ordinance applies to sound from the following property categories:
1. Industrial facilities;
  2. Commercial facilities;
  3. Community service facilities;
  4. Residential properties;
  5. Multi-use properties;
  6. Public and private right-of-ways;

7. Public spaces;
8. Multi-dwelling unit buildings; and

B. This model noise ordinance applies to sound received at the following property categories:

1. Commercial facilities;
2. Community service facilities (i.e., non-profits and/or religious facilities);
3. Residential properties;
4. Multi-use properties;
5. Multi-dwelling unit buildings; and
6. Public spaces and public service facilities.

C. Sound from stationary emergency signaling devices shall be regulated in accordance with N.J.A.C. 7:29-1.4, except that the testing of the electromechanical functioning of a stationary emergency signaling device shall not meet or exceed 10 seconds.

#### §8.16.040 Exemptions

- A. Except as provided in §8.16.090 and §8.16.100 below, the provisions of this Chapter shall not apply to the exceptions listed at N.J.A.C. 7:29-1.5.
- B. Sound production devices required or sanctioned under the Americans 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.
- C. Construction and demolition activities are exempt from the sound level limits set forth in tables I and II and III except as provided for in §8.16.090 below.

#### §8.16.050 Enforcement officers and enforcement.

- A. It shall be the duty and responsibility of the Long Beach Island Health Department to enforce all of the provisions of this Chapter as the noise control officer. Except that, the provisions of this Chapter that do not require specific dBC measurements be taken shall also be enforced by the Police Department and Code Enforcement Officers as noise control investigators.
- B. The noise control officers and investigators shall have the authority within the Borough of Ship Bottom to perform the following.
  1. Investigate suspected violations of this Chapter and pursue enforcement activities.
  2. Investigate suspected violations of any section of this Chapter 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.
  3. May cooperate with NCOs and NCIs of an adjacent municipality in enforcing one another's municipal noise ordinances.
  4. Coordinate the noise control activities of all Borough departments and cooperate with all other public bodies and agencies to the extent practicable.
  5. Review the actions of the Borough and advise of the effect, if any, of such actions on noise control.

#### §8.16.060 Measurement protocols.



- A. 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 §8.16.060B below and with the definition of “real property line” as contained herein.
- B. 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.

§8.16.070 Maximum permissible sound levels.

- A. No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in §8.16.030A above 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 §8.16.060(B).
- B. 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 4 times in any hour shall not equal or exceed 80 decibels. Impulsive sound which repeats 4 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, 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	65	50	65

**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 or non- residential portion of a multi-use property
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

Note: Table II shall only apply when the source and the receptor are separated by a real property line and they also share a common or abutting wall, floor, or ceiling,



or are on the same parcel of property.

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, 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.

§8.16.080 Sound production devices.

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 §8.16.060B of this Chapter. 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

Weeknights 10:00 p.m. - 7:00 a.m. Weekend nights 11:00 p.m. and 9:00 a.m.	All other times
3 dB(C)	6 dB(C)

§8.16.090 Restricted uses and activities.

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



- A. Excluding emergency work, power tools, home maintenance tools, landscaping and/or yard maintenance equipment used by a residential property owner or tenant 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 or III. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device.
- B. 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. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in these activities shall be operated with a muffler and/or sound reduction device.
- C. 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. At all other times the limits set forth in Tables I, II or III do not apply. All motorized equipment used in construction and demolition activity shall be operated with a muffler and/or sound reduction device.
- D. 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.
- E. 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 5 minutes for continuous airborne sound and 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.
- F. 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.
- G. 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:
  - 1. Vocalizing (howling, yelping, barking, squawking etc.) for 5 minutes without interruption, defined as an average of 4 or more vocalizations per minute in that period; or
  - 2. Vocalizing for 20 minutes intermittently, defined as an average of 2 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.
- H. Cutting of pavers, stone, brick, slate, or masonry shall not be done or performed except with the use of water-damping devices to hold down noise.
- I. The operation of emergency electrical generators for testing is limited to between the hours of 11:00 a.m. and 4:00 p.m. local time prevailing. This time limitation shall not apply when electrical power serving the property on which the emergency electrical



generator is located fails and the operation of the emergency electrical generator is required to provide power for any structures on the lot which such emergency generators serve.

§8.16.100 Motor vehicles.

- A. No person shall remove or render inoperative, or cause to be removed or rendered inoperative or less effective than originally equipped, other than for the purposes of maintenance, repair, or replacement, of any device or element of design incorporated in any motor vehicle for the purpose of noise control. No person shall operate a motor vehicle or motorcycle which has been so modified. A vehicle not meeting these requirements shall be deemed in violation of this provision if it is operated stationary or in motion in any public space or public right-of-way.
- B. No motorcycle shall be operated stationary or in motion unless it has a muffler that complies with and is labeled in accordance with the Federal Noise Regulations under 40 CFR Part 205.
- C. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at distance of 25 feet in any direction from the operator between the hours of 10:00 p.m. and 8:00 a.m.
- D. Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that is 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.

§8.16.110 Violations and penalties.

- A. Violation of any provision of this ordinance shall be cause for a Notice of Violation (NOV) or a Notice of Penalty Assessment (NOPA) 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 ordinance 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 December 2014. 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 in Section II of this ordinance) a NOV shall be issued to the violator.
  - 1. The document shall indicate that the purpose of the NOV 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 NOV 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. It shall be noted that the NOV does not constitute a formal enforcement action, a final agency action or a final legal determination that a violation has occurred. Therefore, the NOV 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, a NOPA 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 December 2014, will be issued. If a non-minor violation is immediately corrected, a NOV without a civil penalty shall still be issued to document the violation. If the violation occurs again (within 12 months of the initial violation) a NOPA 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, a NOPA shall be issued.
- G. The recipient of a NOPA 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 specified in the NOPA issued.
- 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.

## **SECTION II**

All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

## **SECTION III**

If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

## **SECTION IV**

This repeal and replacement of Chapter 8.16 as set forth herein shall be contingent upon the State's approval of this ordinance. In the event the State does not approve this ordinance, the existing Chapter 8.16 shall remain in place.

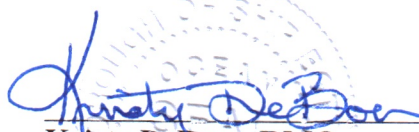
### **Effective date.**

This ordinance shall take effect after final adoption and publication as required by law.

## **NOTICE**

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Mayor and Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on Tuesday, March 28, 2023, at 6:30 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Mayor and Council to be held on April 25, 2023, at 6:30 p.m. at the Municipal Building, 1621 Long Beach Boulevard, Ship Bottom, New Jersey 08008.

  
Kristy DeBoer, RMC  
Municipal Clerk