

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

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MEMO

To: City Council
Bill Bridgeo, City Manager
Mike Duguay, Director of Development Services

From: Matt Nazar, Deputy Director of Development Services

Date: September 9, 2011

Re: Outdoor Loudspeakers and Noise Regulations

As a result of a variety of concerns brought to the Planning Board related to noise complaints during the spring of this year, the Planning Board asked me to draft an amendment to the existing noise standard in the Land Use Ordinance. The Board held a public hearing on August 9, 2011, on the proposed language and several members of the public spoke with concerns about auto dealership loudspeakers in particular. Loudspeakers at every dealer in the city were cited as concerns for abutting residents.

In addition to auto dealers, the city has received complaints in the past about fast food drive through speakers, fuel pump speakers, and most recently about regular outdoor concerts being held at a local restaurant.

While the Board heard from a half dozen residents and city staff have heard from dozens more related to various noise sources over the last few years, those that are generating the noise were not present to speak at the public hearing. It is expected that the auto dealers, restaurateurs, and others that would have to change the way the currently conduct business as a result of the proposed ordinance may have some concerns.

The attached ordinance limits certain outdoor noise sources, eliminates some, and exempts others (power tools like lawnmowers and snowblowers). It requires pre-existing noise sources to be turned down to specified levels immediately, and requires some sources such as outdoor loudspeakers to be eliminated within 3 years of the effective date of the ordinance. The Planning Board voted unanimously to recommend that the Council adopt the amendment.

5.1.15.1 Noise.

(1) NOISE STANDARDS:

(A) APPLICABILITY

1. Not Applicable. This subsection shall not apply to the following:
 - a. **Outdoor entertainment/music.** Events authorized via any municipal permit/license shall be exempt for normal operation hours of 7:00 a.m. to 10:00 p.m.; Regular operations beyond 10:00 p.m. shall require authorization through City Council.
 - b. **Recreational activities.** Events otherwise permitted by law, for which a permit has been granted by the City, including but not limited to sporting events, parades, concerts, and fireworks displays shall be exempt.
 - c. **Power equipment and maintenance equipment.** Such equipment when operated during between 7:00 a.m. to 10:00 p.m. shall be exempt. Such equipment includes but is not limited to power mowers, chainsaws, power tools, leaf blowers, and hedge trimmers. Snowblowers shall be exempt at all times of the day.
 - d. **Generators.** Generator noise when operated during any time of the day during a power outage shall be exempt. Generator noise when operated between 7:00 a.m. and 10:00 p.m. when there is no power outage shall be exempt. Medical facilities shall be exempt at all time of the day, regardless of power outage conditions.
 - e. **Safety signals, warning devices, emergency pressure relief valve.** Noise from such devices shall be exempt.
 - f. **Motor vehicle re-fueling station speakers.** Noise for speakers required by local, state, or federal law at re-fueling pumps shall be exempt, provided they are used only to allow employees to communicate directly with customers at re-fueling pumps in accordance with state or federal laws, or for other purposes mandated by law.
 - g. **Emergency vehicles.** Any siren, whistle, horn, or bell lawfully used by emergency vehicles or emergency personnel shall be exempt.
 - h. **Maintenance vehicles.** Noise generated by municipal and private maintenance vehicles during the removal of snow, debris, or refuse shall be exempt.

- i. **School or church chimes and bells.** Any bell or chime from any school or church shall be exempt.
 - j. **Construction, development, and maintenance.** Sounds emanating from construction, development and maintenance activities conducted between 7:00 a.m. and 10:00 p.m. and conducted in compliance with all other sections of this Ordinance and all other applicable ordinances shall be exempt.
 - k. **Agriculture.** Noise generated by an agricultural use shall be exempt between the hours of 4:00 a.m. and 11:00 p.m.
 - l. **Forestry and other natural resources uses.** Noise generated by forestry or other natural resources uses shall be exempt between the hours of 6:00 a.m. and 10:00 p.m., except that "Mineral Extraction Activities and Associated Uses" shall comply with Augusta's Mineral Extraction Ordinance or their individual license, whichever is more restrictive, regarding hours of operation.
 - m. **Blasting.** Blasting conducted in accordance with City of Augusta ordinance or State of Maine law, whichever is more restrictive, shall be exempt.
 - n. **Temporary Activities.** Nonconforming temporary noise may be permitted by the Planning Board after considering: (A) the public and/or private benefits that will result from the temporary noise; (B) any annoyance or safety problems that may result from the use of the temporary noise; and (C) the duration of the temporary nonconforming noise. The applicant shall submit a detailed description of the proposed temporary nonconforming noise to the Planning Board, who shall consider the request at a duly called meeting of the Planning Board.
 - o. **Road and public utility construction and maintenance.** Upon approval by the City Council at a public meeting of the City Council, road and public utility work may occur at times and in a manner approved by the City Council. In particular, road and utility work in public roads is often best done during night hours to avoid disrupting busy traffic corridors during the daytime. This section is intended to allow the City Council to approve such work.
2. **Applicable.** This section shall apply to all uses and properties in the City of Augusta, except as exempted in Section 5.1.15.1 of this ordinance.
 3. **Pre-existing, non-conforming uses and properties.** All pre-existing, non-conforming uses and properties shall fully comply with Section 5.1.15.1 within 3 years of the effective date of the section. All pre-existing, non-conforming uses with outdoor speakers shall turn the volume of the speakers down to levels found in Section 5.15.1.1.E below as of the effective date of this section.

(B) PERFORMANCE STANDARDS

1. **General.** Noise levels shall be controlled to the extent that they do not adversely affect nearby residences, institutions, and businesses due to intermittence, beat frequency, shrillness, or volume, and to the extent that they do not interfere with the normal enjoyment of nearby properties. Excessive noise at unreasonable hours shall be prohibited.
2. **Engine Idling.** Engine idling for a motor vehicle with a weight in excess of 10,000 pounds manufacturer's gross vehicle weight for a period shall not exceed fifteen (15) minutes when such vehicle is parked on a property with a residence or within 100 feet of a property with a residential unit.
3. **Speakers.** Speakers mounted outside a non-residential or mixed-use building, or placed such that they project sound outside any non-residential or mixed-use building, shall be prohibited, except as follows:
 - (i) **Drive-through.** Speakers used only to enable employees to directly communicate with customers at a drive-through are permitted, provided the sound from the speaker is not audible at the property line of the business using the speaker. Speaker volume should be set at the lowest volume necessary to communicate with customers having normal hearing.
 - (ii) **Restaurant.** In the Kennebec Business District 1 (KBD1) zone, speakers used only to provide background ambiance music for outdoor seating are permitted, provided the sound is not audible at distances greater than one hundred (100) feet from the exterior wall of the business.

In all other zoning districts speakers used to provide background ambiance music for outdoor seating is permitted, provided the sound from the speaker is not audible at the property line of the business using the speaker.

When outdoor seating is not in use, speakers intended to project sound outside the restaurant shall be turned off.
4. Attention shall be given during site planning to deal with audial quality and volume. The site planner shall consider and where appropriate shall implement the following measures to mitigate the impact of noise (in order of preference):
 - (i) Suppression of noise source to create lowest noise generation possible for proposed use.
 - (ii) Putting distance between the noise source and its receiving uses.

- (iii) Use of buildings, walls, or berms as partial barriers and arrangement of openings away from conflicting uses.
 - (iv) Deliberate introduction of background noise in order to mask the noise level, pitch or information content (background noise should be of a type to mask offensive noise rather than contribute to it.)
 - (v) Where possible, completely sealing the building and operating entirely indoors.
5. One (1) or more of the following noise muffling mechanisms may be required by the Planning Board or Code Enforcement Officer. Orientation of structure including placement of windows and major entryways shall be such that noise impact is directed away from neighboring uses.
- (i) Operation of equipment/processes which generate noise shall be required to take place indoors.
 - (ii) The use of block heaters shall be preferred over idling vehicles.
 - (iii) If the original noise is not too powerful, masking mechanisms which add desirable random noises between conflicting land uses may be used. An example of such a masking mechanism is the play of water.
 - (iv) Surfaces with absorption capacity shall be placed between conflicting land uses.
 - (v) Air turbulence to disperse sound may be used.
 - (vi) Barriers between noise generator and receiver such as berms, walls, buildings etc., may be used.
6. These noise regulations are enforceable by law enforcement officers or by the Code Enforcement Officer.

(C) NOISE IMPACT STUDY

1. The Planning Board or Code Enforcement Officer may require that a noise impact study be conducted. Pre and post development noise levels may be required as part of the study. The noise impact study may be either one or more of the following:
- (i) Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.43-1997 (R2007))
 - (ii) If the use proposed is nonresidential, the noise impact study, if required, may utilize data from one (1) or more existing sources which roughly correspond (density, existing traffic volume, location of neighborhood, type of equipment used, and other similar noise generators) with the proposed use.
 - (iii) If no meters are at hand, a rough survey can be conducted without special equipment by two (2) people of normal hearing and average

voice. A. It is based on the fact that the point at which conversation just becomes impossible to understand is rather sharply defined. One person stands and reads something unfamiliar to both parties in a normal voice. The other gradually backs away and notes the distance at which he/she just no longer understands the gist of what is being read to him/her, that is, when he/she catches a scattered word or two in a ten-second period.

- a) The trial is repeated rotating reader and listener, and the distances averaged.
- b) If the distance is over twenty (20) m (65 feet), the noise level is less than forty-five (45) dBA and the site is good for housing and outdoor use.
- c) If it lies between eight (8) and twenty (20) m (25 and 65 feet), the noise lies between forty-five (45) and sixty (60) dBA, and so the location is acceptable for housing.
- d) Distances between two (2) and eight (8) m (7 and 25 feet) indicate levels of sixty (60 to seventy-five (75) dBA, and the site can only be used for housing if the latter will have special insulation.
- e) Distances under two (2) m (7 feet) means levels over seventy-five (75) dBA, and the location is simply unusable for residence.

(D) WAIVER FROM SOUND LEVEL LIMITS

1. The City recognizes that there are certain developments or activities associated with development for which noise control measures are not reasonably available. Therefore, the Planning Board, as part of the Public Hearing, may grant a waiver from any of the sound level limits contained in this rule to some other limit upon:
 - (i) A showing by the applicant that a comprehensive assessment has been made of the available technologies for the development, expansion or modification and that the sound level limits cannot practicably be met with any of these available technologies; and
 - (ii) A showing by the applicant that noise easements for the affected premises are either not practical or not available; and
 - (iii) A finding by the Planning Board that the proposed development will be not excessively incompatible with the surrounding neighborhood, will not unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.
2. In addition, a waiver may be granted by the Planning Board if:

- (i) A development is deemed necessary in the interest of public safety and the applicant has shown that the sound level cannot practicably be reduced or mitigated without unduly limiting the development's intended function; and
 - (ii) A finding by the Planning Board that the proposed development will be not excessively incompatible with the surrounding neighborhood, will not unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.
3. The Planning Board shall consider the request for a waiver after the review of a completed development application by the Planning Board. In granting a waiver, the Planning Board may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

(E) PREFERRED MAXIMUM NOISE LEVELS (7am to 10pm/10pm to 7am)

1. Noise levels will not be specifically measured unless a request for a noise impact study is made by the Planning Board in the application phase, or unless a complaint is registered against a use. The following list of preferred maximum noise levels, measured in decibels, is intended as a guide to assist developers in assessing what are considered reasonable levels of noise and what might be construed as excessive, objectionable, or unnecessary:
- (i) Rural Districts 50/40
 - (ii) Residential and Capitol-Commerce Districts 55/45
 - (iii) Planned Development, Civic Center, Medical, and Government Services Districts 60/50
 - (iv) Business and Industrial District 70/60
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. Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.