

Explanation

A review of the community noise ordinance of the Columbus City Codes, in addition to feedback from the community, has contributed to the need to amend section 2329.11 of Chapter 2329 to clarify the criteria by which a request for a variance is to be determined by the Columbus Board of Health.

FISCAL IMPACT: No funding is required for this legislation.

Emergency Justification: Emergency action is requested to ensure that amendments to Section 2329.11, pertaining to the variance procedures of the Columbus Board of Health, to ensure the Board of Health considers these amendments in its determination for any pending noise variance request that may occur in the 30 days following passage of this legislation.

Title

To amend section 2329.11 of Chapter 2329 of the Columbus City Codes to clarify variance criteria to be used by the Columbus Board of Health; and to declare an emergency.

Body

WHEREAS, it has become necessary to clarify the criteria by which the Columbus Board of Health will determine what constitutes an unnecessary hardship or practical difficulty when seeking a community noise variance; and

WHEREAS, feedback from the community has contributed to these amendments to section 2329.11 of Chapter 2329 to clarify provisions related to community noise by clarifying the variance procedures of the Columbus Board of Health; and

WHEREAS, an emergency exists in the daily operation of the Columbus Health Department and Board of Health such that it is immediately necessary to ensure the Board of Health considers these amendments in its determination for any pending noise variance request that may occur in the 30 days following passage of this legislation; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Section 2329.11 of the Columbus City Codes is hereby amended as follows:

Chapter 2329.11 – COMMUNITY NOISE

(A) Definitions. All definitions/terminology used in this chapter, not defined below, shall be in conformance with applicable standards of the American National Standards Institute (ANSI) or its successor body. For the purpose of this chapter certain words and phrases used herein are defined as follows:

- (1) "Auditory device" means any device that can be used to create a sound that can be heard.
- (2) "Average sound level" means a sound level typical of the sound levels observed at a certain place during a given period of time averaged by the general rule of combination for sound levels, said general rule being set forth in ANSI specifications for sound level meters. Average sound level is also called equivalent continuous sound level.

- (3) "Decibel" means a unit for measuring the intensity of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals. Decibel is denoted as "dB."
- (4) "Device" means any system or machine devised or constructed to perform one or more tasks.
- (5) "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.
- (6) "Health commissioner" means the health commissioner of the City of Columbus or an authorized representative.
- (7) "Musical instrument" means any device designed to produce music.
- (8) "Land use category" means those land uses defined and established by the Zoning Code and all subsequent changes and additions.
- (9) "Loud or raucous noise" means any noise or sound that emanates in such manners and/or volume and is of such intensity, character and duration to be offensive or disturbing to a person of ordinary sensibilities.
- (10) "Machine" means any system or device together with its power source and auxiliary equipment used to accomplish a specific objective.
- (11) "Person" means any public corporation, private corporation, individual, firm, partnership, association or other entity.
- (12) "Property line" means the line along the ground surface, and its vertical extension, which separates the real property owned, rented, leased or occupied by one or more persons from that owned, rented, leased or occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, rents, leases, or otherwise occupies an apartment, condominium, hotel or motel room or any other type of occupancy.
- (13) "Property zoned residential" means any area zoned or utilized for residential purposes.
- (14) "Safety director" means the director of the department of public safety of the City of Columbus or authorized representative.
- (15) "Sound amplification system" means any device used for the amplification of the human voice, music, or other sound and includes, but is not limited to, any radio, tape player, compact disc player or loud speaker.
- (16) "Stationary sound source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including, but not limited to standing motor vehicles, industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.
- (17) "Warning device" means any device, which signals an unsafe or potentially dangerous situation.

(B) Sound levels for land use districts.

- (1) The maximum allowable hourly average sound level, emitted from any stationary sound source, auditory device, or sound amplification system shall not exceed the limits set forth in Table I for the respective categories of receiving land use. The actual sound level shall be determined during any measurement period, which shall not be less than sixty (60) consecutive minutes, and shall be measured at the property boundary affected by the sound.

Table I

| Receiving Land Use Category | Time | | 1 hr. Average Sound Level (dBA) |
|------------------------------|------------|------------|---------------------------------|
| Institutional | 10:00 p.m. | 7:00 a.m. | 60 |
| | 7:00 a.m. | 10:00 p.m. | 65 |
| Residential (all categories) | 10:00 p.m. | 7:00 a.m. | 60 |
| | 7:00 a.m. | 10:00 p.m. | 65 |
| Commercial | 10:00 p.m. | 7:00 a.m. | 70 |
| | 7:00 a.m. | 10:00 p.m. | 75 |
| Manufacturing | Anytime | | 80 |

- (2) New Structures and Development. Prior to the approval of a zoning change, the noise impact of the zoning change may be reviewed by the director of the department or his designee, identifying existing and projected noise sources and their associated sound level. Such review shall include, but is not limited to, air transportation and land transportation noise sources as well as stationary noise sources. Adequate control measures may be recommended to mitigate the impact of those identified noise sources to effect compliance with this code.

(C) Prohibited sounds:

- (1) No person shall make or allow to be made any unreasonably loud and/or raucous noise in such a manner or at such a volume as to disturb the quiet, comfort, or repose of a person of ordinary sensibilities. Strict liability is intended to be imposed for this section.
- (2) In addition to the prohibition set out in (C)(1), the following specific acts are declared to be in violation of this ordinance:
- (a) No person shall operate or permit the operation of any sound amplification system, auditory device, or stationary sound source from real property that is zoned residential in a manner as to be heard at a distance of fifty (50) feet beyond

the property line of the property from which the sound emanates. Strict liability is intended to be imposed for this section.

- (b) Where there are two (2) or more residential units contained within one (1) structure within a property zoned residential, no person shall operate or permit the operation of any sound amplification system, auditory device, or stationary sound source in a manner as to be heard within said structure at a distance of twenty-five (25) feet beyond the property line of the residential unit from which the sound emanates. Strict liability is intended to be imposed for this section.
- (c) Where there are adjoining properties that are zoned residential, each of which has a residential unit, and where the residential units are located within fifty (50) feet of one another, no person shall operate or permit the operation of any sound amplification system, auditory device, or stationary sound source in a manner as to be heard at a distance of twenty-five (25) feet onto the adjoining residential property. Strict liability is intended to be imposed for this section.

(D) Special provisions (exemptions).

- (1) The provisions of Section 2329.11 shall not apply to the following:
 - (a) The emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.
 - (b) Warning devices necessary for the protection of public safety.
 - (c) Outdoor gatherings, public dances, shows, and sporting and entertainment events, provided these events are conducted pursuant to a permit or license issued by the of License Section of the Department of Public Safety or The Special Events Section of The Department of Recreation and Parks.
 - (d) Public works projects as authorized by the state and/or other political subdivisions
 - (e) The emission of sound from property zoned residential that is periodically generated by activities required to maintain the property in compliance with housing, building, zoning, fire, safety, health or sanitation codes and which occurs between the hours of 7:00 a.m. to 10:00 p.m.

(E) Inspection.

- (1) The appropriate authority may inspect upon consent, at any reasonable time and in a reasonable manner, any device or mechanism, which creates any disturbing noise, including but not limited to the premises where such device or mechanism is used.
- (2) If entry to the premises is denied or refused, the appropriate authority shall obtain an inspection warrant from a court of competent jurisdiction.

(F) Variance Procedure.

- (1) Any person who violates any provision of Section 2329.11(B)(1) and (2) not covered by permit or license, may file an application with the Columbus Board of Health for a variance.

The board of health may grant a variance in a specific case and from a specific provision of any regulation, order or notice subject to appropriate conditions and

provided the board makes specific findings of fact based on evidence relating to the following:

- (a) That there are practical difficulties or unnecessary hardships in carrying out the strict letter of any regulation, order or notice; and
- (b) That the effect of the application of the provisions would be arbitrary in the specific case; and
- (c) That an extension would not constitute an appropriate remedy for these practical difficulties or unnecessary hardships and this arbitrary effect; and
- (d) That such variance is in harmony with the general purpose and intent of the board in securing the public health, safety and general welfare.

In determining whether there are practical difficulties or unnecessary hardships in carrying out the strict letter of any regulation, order, or notice, the Board shall take into consideration whether strict compliance would result in practical difficulties, unnecessary hardships or closing down of an existing business, plant or operation due to a change in the allowable dBA at the property boundary occasioned by an alteration in the receiving land use category of an adjoining or adjacent property.

The application shall be accompanied by a fee in the amount of one hundred (\$100.00) dollars. A separate application shall be filed for each noise source; however, several mobile sources under common ownership, or several fixed sources on a single property may be combined into one (1) application. Upon receipt of said application and fee, the board will render a decision within thirty (30) calendar days.

- (2) Any person who violates any provision of Section 2329.11 other than those specified in Section 2329.11(F)(1) which is not covered by permit or license may file an application with the director of public safety for a variance. The applicant shall set forth all actions taken to comply with said provision, the reasons why compliance cannot be achieved, the proposed method for achieving compliance, and the proposed time schedule for its accomplishment. The application shall be accompanied by a fee in the amount of one hundred (\$100.00) dollars. A separate application shall be filed for each noise source; however, several mobile sources under common ownership, or several fixed sources on a single property may be combined into one (1) application. Upon receipt of said application and fee, the safety director will render a decision within thirty (30) calendar days.

(G) Issuance of orders.

- (1) The health commissioner, safety director or their designee may issue orders requiring the abatement of all violations of this chapter and the correction of any condition, which may result in a violation of this chapter. Failure to act upon such order within the time limit set forth therein or within the time extension granted by the commissioner, director or their designee, may result in revocation of any existing permit issued under this chapter.

- (H) Severability. If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated.
- (I) Penalty.
- (1) Whoever violates division (C)(1) of this section is guilty of unreasonably loud and/or raucous noise. Except as otherwise provided in this division, unreasonably loud and/or raucous noise is a minor misdemeanor. If the offender persists in making or allowing to be made unreasonably loud and/or raucous noise after reasonable warning or request to desist within a twelve-hour period, unreasonably loud and/or raucous noise is a misdemeanor of the fourth degree.
 - (2) Whoever violates division (C)(2) of this section is guilty of prohibited sound. Except as otherwise provided in this division, prohibited sound is a minor misdemeanor. If the offender persists in operating or permitting the operation of a sound amplification system, auditory device, or stationary sound source in violation of the prohibitions contained in division (C)(2) after reasonable warning or request to desist within a twelve-hour period, prohibited sound is a misdemeanor of the fourth degree.
 - (3) If the offender has previously been convicted of a violation of C.C.C. Section 2329.11, a violation of this section is a misdemeanor of the fourth degree.

SECTION 2. That the existing Section 2329.11 is hereby repealed.

SECTION 3. That, for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage or approval by the Mayor or ten days after its passage if the Mayor neither approves nor vetoes the same