



City of Cambridge

Committee Report #1A

IN CITY COUNCIL

April 28, 1997

COUNCILLOR DAVIS

ORDERED: That the City Manager be and hereby is requested to instruct the Law Department draft an ordinance amendment to allow towing companies to tow cars whose alarm is sounding and to disable car alarms.

In City Council April 28, 1997

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

D. Margaret Drury

ATTEST:-

D. Margaret Drury
City Clerk



City of Cambridge

Committee Report #1B

IN CITY COUNCIL

April 28, 1997

COUNCILLOR DAVIS

ORDERED: That the City Manager be and hereby is requested to forward a copy of the Noise Ordinance to the Harvard University and MIT Police Departments.

In City Council April 28, 1997

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "D. Margaret Drury".

ATTEST:-

D. Margaret Drury
City Clerk



City of Cambridge

Committee Report #1C

IN CITY COUNCIL

April 28, 1997

COUNCILLOR DAVIS

ORDERED: That the City Manager be and is hereby is requested to provide interdepartmental training and accurate information to the public on the Noise Ordinance.

In City Council April 28, 1997

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

D. Margaret Drury

ATTEST:-

D. Margaret Drury
City Clerk

ATTACHMENT A

SOME IDEAS AND EXAMPLES FOR NOISE ORDINANCES

1. Require permits for sound amplifiers -- Ocean City, MD code.
2. Make absentee landlords responsible for noise at their rental properties -- Plattsburgh, NY code. (Also see Ocean City, MD code.)
3. Require leases to provide for the eviction of noise ordinance violators -- Newark, DE code.
4. Restrict noise in streets, parks and public areas (including that from street performers) -- Alexandria, VA code.
5. Restrict noise from vehicle stereos -- Articles about Wichita, KS and NY, NY ordinances.
6. Create a presumption of accuracy for sound level meter readings -- Montgomery County, MD code.
7. "Noise Ordinances: What Kind of Noise Annoys?" -- An article about what kind of noise ordinances the courts consider to be constitutional., by the City Attorney of Clearwater, Florida.

Compiled by Michael Smith, College Park, MD City Councilman.

OCEAN CITY, MD CODE

**ARTICLE I
Unreasonable Loud Noise**

...§ 67-3. Responsibility of owner of premises.

It shall be unlawful for any person to knowingly permit the making, creation or maintenance of unreasonably loud noises upon any premises owned or possessed by him or under this control.

**ARTICLE IV
Sound Amplifiers**

§ 67-14. Permit required.

It shall be unlawful for any person or persons, firm or corporation to use or permit to be used for business purposes upon any public street, sidewalk, alley or way within the corporate limits of the Town of Ocean City any mechanical device for magnifying the human voice or music or other sounds without first having received a permit therefor from the Mayor and City Council of Ocean City.

§ 67-15. Application; permit fee.

Each application for such permit shall be addressed to the Mayor and City Council of the Town of Ocean City, accompanied by a fee of five dollars (\$5.), and shall set forth the date and the hours between which such use is to be made, the nature of the mechanical device to be employed for such purpose and the person to be in charge of the operation thereof.

§ 67-16. Violations and penalties.

Any person, persons or group of persons who shall violate this Article shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.) nor more than five hundred dollars (\$500.) and/or shall be sentenced to no more than fifteen (15) days' incarceration. Each day that such a violation continues or reoccurs shall be deemed a separate offense. The commission of such violation by a corporation, firm or partnership shall be construed, insofar as is legally permissible, as the commission of such offenses by any and all officers and/or partners of said corporation, firm or partnership.

PLATTSBURGH, NY CODE

§ 206-5. Certain persons responsible for violations.

The following persons will be in violation of this chapter for causing or permitting impermissible noise:

- A. The person causing the noise or operating the noise-producing device or equipment.
- B. The owner or lessee of premises which is the source of the noise, provided that the owner, lessee or an employee or agent of an owner or lessee is present on that part of the premises where the noise is produced when the noise violation occurs.
- C. Owner or lessee when not present.
 - (1) The owner or lessee of premises which is the source of the noise, regardless of whether the owner or lessee is present on that part of the premises where the noise is produced when a violation occurs if:
 - (a) The owner or lessee has received notice that the person charged has been convicted of violating this chapter on the same premises on two (2) separate occasions within twelve (12) months of the date of the violation charged; and
 - (b) Prior to the date of the violation charged, the owner or lessee has not commenced a proceeding to evict the person charged.
 - (2) Notice of a conviction will be deemed to have been given to an owner or lessee if, within five (5) business days of the date of conviction, a copy of a certificate of conviction is mailed by certified or registered mail to the owner at the tax billing address on file with the City Chamberlain's office or to the lessee at the address of the leased premises or by personal service upon such owner or lessee.
- D. It shall be a defense to liability hereunder, if a person who has not caused the noise reports the suspected noise violation to the Plattsburgh Police Department before the police arrive on the premises to investigate the alleged noise violation. Persons reporting suspected violations are required to give their name and address and the location of the suspected violation.

(5) on private property pursuant to a special use -permit, displayed at the place of sound generation, approved by the city council under section 11-500 of the City of Alexandria Zoning Ordinance.

(g) This section shall be enforced by the director, the chief - of police, the director of citizen assistance, the director of parks, recreation and cultural activities within any public park, marina or open space, and the director of general services within market square, and by their respective designees.

(h) As used in this section, "background noise level" means all sound sources impacting at the place of measurement, excluding the specific source that is suspected of violating this section.

(i) A violation under the section may be proved by either or both:

(1) Testimony or other evidence that the sound generation was plainly audible above the background noise level at the distance from the source, and for the duration of time, specified in subsections (c) or (d); or

(2) Testimony or other evidence that the sound generation equalled or exceeded the sound level, at the distance from the source, and for the duration of time, specified in subsections (c) or (d) , as measured with a sound level meter, maintained in good working order, and having an accuracy specification of 1 2 dB at 114 dBSPL (sound pressure level) or better, and using the A weighting network of such meter. The measurement of sound level under this section, made with such meter) need -not comply with the provisions of section 11-5-5.

NEWARK, DE CODE

PM-403.11.2 Unlawful Leases.

(a) No owner or landlord shall enter into any agreement, contract, lease, or sublease which provides for, permits, allows, contemplates, or facilitates occupancy of any structure which would require a rental permit in accord with Subsection PM-403.11 of this Code, contrary to the use requirements of the city's zoning code, Section 32-9, EN, ET and ES districts; Section 32-10, ED districts, Section 32-11, KNI districts, and Section 32-13, RE districts. Any agreement, contract, lease, or sublease which provides for, permits, allows, contemplates, or facilitates such occupancy by more persons than permitted in the aforementioned zoning code sections is unlawful and hereby declared to be contrary to public policy.

(b) Agreements, contracts, leases, or subleases for the occupancy of dwelling units requiring rental permits, as specified in this section, shall prominently stipulate that any renter who is convicted more than one time of violating Chapter 20A, Noise, and/or Section 22-74.1, Disorderly premises, Code of the City of Newark, Delaware, shall result in the termination of the rental agreement, contract, lease or sublease as it applies to that renter, and providing that said renter has no more than seven days to vacate the dwelling unit. If it is necessary to evict the tenant, the landlord shall immediately initiate and pursue in good faith summary proceedings for possession as specified in 25 Del.C., Part III, Landlord-Tenant Code. If the landlord or owner fails to initiate and pursue in good faith summary proceedings as stipulated herein, the building director shall revoke for one year the rental permit of the affected dwelling unit.

(c) Landlords or owners shall be required to stipulate in writing, as part of their application for rental permits, that the lease's for the dwelling unit(s) for which application is made contains the prominent notification to renters as specified in this section.

(d) The city shall notify the landlord, owner, or owner's agent if a renter in a unit for which a rental permit is required as stipulated in this section, is convicted of violating Chapter 20A, Noise, and/or Section 22-74.1, Disorderly premises, Code of the City of Newark, Delaware. Notice shall be deemed to be properly served upon owner or owner's agent if a copy thereof is delivered to the owner, or owner's agent, or by leaving a notice at the usual place of abode, in the presence of someone in the family of suitable age and discretion, who shall be informed of the contents thereof, or by certified mail addressed to the owner or owner's agent at the last known address with return receipt requested; or by posting a copy thereof in a conspicuous place in or about the structure affected by such notice.

PM-403.11.3 Enforcement.

Pursuant to the procedures herein, the director of building is hereby empowered to deny issuance of or revoke any permit applied for or issued as described herein if it is discovered either that the applicant or holder has misrepresented himself or the state of his property, or at any time subsequent to the issuance of said permit, becomes violative of this section.

PM-403.11.4 Penalty.

Any person, firm, corporation, partnership, or representatives thereof, who fails to comply with Sections PM-403.11 through PM-403.11.3 of this chapter shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than \$250.00 nor more than \$500.00, or imprisonment for not more than 30 days, or both.

ALEXANDRIA, VA
ORDINANCE NO. 3726

Section 1. That Chapter 5 of Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding thereto a new Section 11-5-4.1, to read as follows:

Sec 11-5-4.1 Noises prohibited--central business district.

(a) Notwithstanding any conflicting provision of this chapter or other law, it shall be unlawful for any person to engage in, or to suffer or permit on or with property under such person's control, any sound generation, as defined in this section, in or on any public or private street, sidewalk or alley, any public park, marina or open space, or any private outdoor property that is open to the public for commercial or recreational purposes, within the central business district established by section 8-300 (A) of the City of Alexandria Zoning Ordinance, except as is permitted by this section.

(b) "Sound generation" shall mean any conduct, activity or * operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary, ambulatory or from a vehicle, which produces or generates sound in excess of the volume levels, and for a duration of time greater than the duration, specified in this section.

(c) Between the hours of 7:00 a.m. and 11:00 p.m., Monday through Sunday, no sound generation shall result in sound having a volume of 75 dB(A) or more, at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of time greater than 60 seconds in any one hour period. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 75 dB(A) at 10 feet of distance and thus violate this subsection, and the burden shall be on the person responsible for such sound generation to prove otherwise.

(d) Between the hours of 11:00 p.m. and 7:00 a.m., no sound generation shall exceed a volume of 65 dB(A) at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of 60 seconds between such hours. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 65 dB(A) at 10 feet of distance and thus violate this subsection, and the burden shall be on the person responsible for such sound-generation to prove otherwise.

(e) This section shall not apply to any sound generation which occurs:

(1) as part of a city-sponsored festival or event;

(2) at a designated performance area within a public park, marina or open space in conformity with regulations promulgated by the city manager or the director of parks, recreation and cultural activities;

(3) in conformity with regulations promulgated by the city manager for the use of market square;

(4) under a special permit, displayed at the place of sound generation, issued by the city manager pursuant to section 11-5-7; or

EXAMPLES OF PROGRAMS FOR CITIES

Compiled by the Municipal Reference Service on 11/30/95
A Member Service of the National League of Cities

MUNICIPALITY: Wichita, Kansas POP: 304,011
PROGRAM NAME: Automobile Noise Control Ordinance
STARTED: 1992
CONTACT: City Hall (316) 268-4331
ADDRESS: City of Wichita
455 Main Street
Wichita, KS 67202

DESCRIPTION: The vehicular noise control ordinance prohibits the projection of sound "plainly audible" from a distance of 50 or more feet, "plainly audible" being defined as "clearly" heard, as determined by "auditory senses based upon direct line of sight." Elements of violation specifically include bass reverberations, with the further stipulation that "words or phrases need not be discernible." Offenders may be either "operating or occupying" the vehicle which may be on "street, highway, alley, parking lot or driveway" and need not be in motion. Exempted are amplified requests for "medical or vehicular assistance or to warn of a hazardous road condition"; emergency or public safety vehicles; vehicles owned and operated by the municipality or the following companies: "gas, electric, communications, or refuse"; vehicles giving "instructions, directions, talks, addresses, lectures or transmitting music...in compliance with" city ordinances; vehicle is otherwise authorized to participate in public activities, such as "parades, fireworks, sports events, musical productions" or other activities so designated by the municipality. The ordinance covers any "person, individual, partnership, corporation or association" who violates the ordinance, punishable by "a fine not to exceed \$500 or by imprisonment of not more than six months" with each day of violation to be considered a separate offense.

SOURCE: AUTOMOBILE NOISE CONTROL. By Donald L. Moler, Jr. Kansas Government Journal, v78 n5 (May 1992) p139. Topeka, KS: League of Kansas Municipalities.

MUNICIPALITY: New York, New York POP: 7,322,564
PROGRAM NAME: Operation SoundTap
CONTACT: Public Affairs Assistant Commissioner (718) 595-6600
ADDRESS: City of New York
Department of Environmental Protection
59-17 Junction boulevard
Elmhurst, NY 11373

DESCRIPTION: A joint program by New York police and the Department of Environmental Protection is targeting cars playing loud stereos. Vehicles that have stereos louder than 80 decibels from a distance of 50 feet, about the noise level of a ringing telephone, can be confiscated until the owner's case has been adjudicated. Fines start at \$100.

SOURCE: SOUPED-UP SYSTEMS, SPLITTING HEADACHES. By Peter Fimrite. San Francisco Chronicle, November 5, 1993. San Francisco, CA: Chronicle Publishing Company.

MONTGOMERY COUNTY, MD CODE

Sec. 31B-7. Admissibility of sound level meter readings; presumptions.

- (a) The results of any reading of any sound meter approved for use by the director shall be admissible in any civil or criminal action for enforcement of this chapter and shall be presumed to be accurate to within plus or minus 2 dB(A), if it is first shown that the meter was properly calibrated, that it was manned by a competent operator, that proper operating procedures were followed and that proper records were kept. "Properly calibrated" shall mean approved by the director as being within plus or minus 0.5 dB at a single frequency between 200 and 1000 Hz (cycles per second) prior to the reading. "Competent operator" shall mean any person who has received training in the use of the equipment in a training program approved by the director. The director may approve for use any meter conforming at least to the requirements for Type II sound level meters, as defined by ANSI S1.4-1971 (specifications for sound level meters) or the latest revision thereof, using the A-weighting network.
- (b) In any civil or criminal action for enforcement of this chapter, it shall be presumed that any meter approved by the director for use or calibration is in conformity with the above standards. It shall also be presumed in any civil or criminal action for enforcement of this chapter that where any person is prima facie shown to have violated the sound level limitations set forth by or through this chapter, the alleged violator was not within the allowable deviations of section 31B-8. (1975 L.M.C., ch. 31, § 2.)

NOISE ORDINANCES: WHAT KIND OF NOISE ANNOYS?

By Milton A. Galbraith, Jr.

(Milton A. Galbraith, Jr. is the City Attorney of Clearwater, Florida.)

Must a noise ordinance contain "objective" standards expressed in decibels and measurable with a meter in order to be valid?

In this "high-tech" age, with footprints on the Moon and telescopes in orbit, one might assume that the answer is yes. However, a growing body of state and federal case law beginning with a 1949 decision of the Supreme Court supports the proposition that decibel limits and meter readers are not necessarily essential to a valid noise ordinance.

THE CLEARWATER "MAKO'S" CASE

Early in the morning on various dates in April of 1987, an owner, a manager and an employee of "Mako's," a nightclub in Clearwater, Florida, were issued citations and notices to appear in county court for violating Sections 96.01 and 96.02(5) of the Clearwater Code of Ordinances, which prohibit "loud and raucous noise" under certain specified circumstances.¹

In each instance, a police officer cited a defendant because of the volume of sound emanating from the nightclub's sound amplification system, after receiving complaints from nearby residents and verifying the volume of sound at the scene. The complaints from the neighbors were to the effect that they could not sleep in their homes because of the loud noise coming from the nightclub.

Each defendant pleaded not guilty, and the cases were consolidated. The County Court of Pinellas County eventually dismissed the charges and declared the noise ordinance unconstitutional, finding the ordinance to be sufficiently overbroad to allow the punishment, not for criminal conduct, but for speech. The county court relied upon *City of Houston v. Hill*, 482 U.S. 451 (1987), *Clanton v. Stage*, 357 So.2d 455 (Fla. 2d DCA 1978), and *State v. Saunders*, 339 So.2d 641 (Fla. 1976).

In *Hill*, an ordinance which made it unlawful for any person to "assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty," was found to be substantially overbroad. The ordinance, read literally, might deter a significant range of protected speech and expression, such as a verbal interruption of a police officer, and

was not limited in scope to fighting words or to obscene or opprobrious language.

In *Clanton*, an arrest for disorderly conduct was declared unlawful because the appellant's conduct -- offensive language directed at a police officer which did not constitute either fighting words or false words likely to cause harm -- was found to be protected speech. The validity of the disorderly conduct statute was not at issue.

In *Saunders*, the Florida Supreme Court held that Florida's disorderly conduct statute is not facially unconstitutional when given a narrowing interpretation. As narrowed by judicial interpretation, the statute is limited to fighting words and words known to be false which create a clear and present danger of bodily harm to others.

On appeal to the circuit court, Clearwater distinguished Mako's case from the cases cited by the county court on the basis that the city's noise ordinance does not attempt to regulate disorderly conduct, does not attempt to prohibit protected speech and is content-neutral; a person may say virtually anything to a police officer without violating the ordinance unless it is said so loudly as to be "loud and raucous" when heard from one of the locations described in the ordinance. The city argued that the noise ordinance is neither too vague nor overly broad, does not violate the Free Speech or Due Process clauses, and is a valid exercise of the city's powers.

Clearwater also argued that its noise ordinance is narrowly tailored to further the significant state interest of protecting citizens from the unwanted loud noises of others. The ordinance applies if the noise is heard from places where the public has a right to be, such as a public street or park, but from a distance of at least 50 feet from the noise source. The ordinance applies if the noise is heard from a residence, a courthouse or school, for example, but only when occupied or in use. The noise must disturb, not "tend to" disturb. The noise must meet an objective test, not a subjective test; according to the ordinance, the noise must be one which, because of its volume level, duration and character, annoy, disturb, injure or endanger the comfort, health, peace or safety of "reasonable persons of ordinary sensibilities."

The circuit court of Florida's Sixth Judicial Circuit, sitting in its appellate capacity, found Clearwater's noise ordi-

nance constitutional on its face and remanded for an evidentiary hearing to determine if the ordinance is constitutional as applied. *State of Florida and City of Clearwater v. Dodge, et al.*, 35 Fla. Supp. 2d 1 (Fla. 6th Cir. 1989). Ultimately, the defendants pleaded guilty and paid fines.

The court's brief opinion is of limited precedential value outside Pinellas County, Florida. However, the research results may be of interest to other municipal attorneys.

KOVACS V. COOPER

Noise ordinances prohibiting "loud and raucous" noise, or employing similar language to describe objectionably loud noise without using decibel-based standards, have been upheld in a number of cases beginning in 1949 with *Kovacs v. Cooper*, 336 U.S. 77, 69 S.Ct. 448, 92 L.Ed. 513 (1949). In that case, an ordinance of the City of Trenton, New Jersey, prohibited the operation of sound trucks, sound amplifiers and any other instruments which emit "loud and raucous noises" on the public streets. The ordinance was upheld against a challenge that the words "loud and raucous" are so vague, obscure and indefinite as to be unenforceable. The appellant raised a variety of constitutional claims under the Fourteenth Amendment -- freedom of speech, freedom of assembly, and the Due Process Clause -- to no avail. The Supreme Court said that, although the words "loud and raucous" are abstract words, they have through daily use acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden. The court found the ordinance to be a valid police power exercise which protects unwilling and otherwise helpless listeners, prohibits dangerous distractions, and protects the quiet and tranquility of residential areas. After contrasting the distributor of handbills with the unwelcome visitor who inserts his foot in the door and insists on being heard, the Court said:

The unwilling listener is not like the passer-by who may be offered a pamphlet in the street but cannot be made to take it. In his home or on the street he is practically helpless to escape this interference with his privacy by loud speakers except through the protection of the municipality. *Kovacs*, 336 U.S. at 86-87, 69 S.Ct. at 453.

On the free speech issue, the Supreme Court observed that the right is not absolute but is subject to regulation for the protection of the public welfare. The ordinance was found to be justified as a reasonable protection of the public's ears.

SUBSEQUENT FAVORABLE CASES

The "loud and raucous" standard, and similar standards, have been upheld in numerous federal² and state³ court cases. In these cases, noise ordinances without decibel stan-

dards survived challenges based upon vagueness and overbreadth, free speech, and other Constitutional claims. A few of these ordinances prohibit excessively loud noise from specific noise generators such as television sets, sound reproducing devices, and barking dogs, but a majority of the ordinances are aimed at excessively loud noise in general.

Vagueness. The most common allegation in a challenge to a noise ordinance is vagueness, a challenge brought under the Due Process Clause. In the cases favorable to noise ordinances without decibel standards, almost every court has been called upon to decide the vagueness issue.

The traditional standard is whether the terms of a statute are so indefinite that a person of common intelligence must necessarily guess at its meaning and differ as to its application.⁴ A vague statute may trap the innocent by not providing fair warning, may lead to arbitrary and discriminatory enforcement by delegating basic policy matters to policemen and the courts, and may operate to inhibit the exercise of sensitive First Amendment rights.⁵ The Supreme Court in *Kovacs* found "loud and raucous" to have acquired sufficient meaning through daily use to convey to any interested person a sufficiently accurate concept of what is forbidden.

Similar statements can be found in most of the cited cases. For example, in 1970, a federal court in Michigan examined an ordinance prohibiting any willful "noise, disturbance, or improper diversion by which the peace, quietude or good order of any public, private, or parochial school is disturbed."⁶ In response to the criticism that several of the words and phrases in the ordinance were unclear, the court said:

But of this kind of semanticism there can be no end. No word has an intrinsic content. It gets meaning and contour from its usage. The thought expressed in the term "fast horse" is not the same as that in the term "fast woman" despite the similarity in terminology.... The vagueness label is properly applicable only to a statute or ordinance the terms of which are such that one of common intelligence must be in doubt both as to its meaning and its application. *McAlpine*, at 138-139.

The Supreme Court revisited the vagueness and other issues in 1972 in *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972), in which Grayned had been convicted of violating both a noise ordinance and an antipicketing ordinance. The noise ordinance prohibited "any noise or diversion which disturbs or tends to disturb the peace or good order" of any school. The antipicketing ordinance was declared invalid, but of the noise ordinance, the Court said that there was no impermissible vagueness:

Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the Rockford ordinance are marked by "flexibility and reasonable breadth, rather than meticulous specificity." . . . but we think it is clear what the ordinance as a whole prohibits. *Grayned*, 408 U.S. at 110, 92 S.Ct. at 2300 (footnotes omitted).

The Court contrasted Rockford's ordinance with breach-of-the-peace and unlawful assembly ordinances previously found to be vague. The noise ordinance was found to be a reasonable regulation, narrowly tailored to further a significant state interest without unnecessarily interfering with First Amendment rights, and neither impermissibly vague nor overly broad.

Overbreadth. Generally, a law is overly broad if it does not aim specifically at the evils within its allowable areas of control, but sweeps within its ambit other activities that constitute an exercise of First Amendment rights.⁷ A law will not be voided for overbreadth, however, unless its deterrent effect on protected activity is substantial.⁸

Kovacs has been cited numerous times for the rule that even protected speech may be restricted as to time, place and manner. Where an ordinance regulates the volume, not the content, of amplified sound, defendants must establish that the regulation infringes upon a substantial amount of protected expressive activity. *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908 (1973); *City of Philadelphia v. Cohen*, 479 A.2d 32 (Pa. App. 1984).

The Fifth Circuit Court of Appeals in *Reeves v. McConnell*, 631 F.2d 377 (5th Cir. 1980), decided that the time and place restrictions of a Houston ordinance regulating the operation of sound amplification equipment were invalid because they were overly broad, leaving few times and places for the use of sound amplification equipment. However, the sound volume restrictions ("unreasonably loud, raucous, jarring, disturbing, or a nuisance to persons within the area of audibility") were found to be not void for vagueness, citing *Kovacs* and *Grayned*.

Freedom of Speech. The amplification of sound is an activity protected under the First Amendment but subject to reasonable time, place and manner restrictions.⁹

In *State ex rel. Nicholas v. Headley*, 48 So.2d 80 (Fla. 1950), the Florida Supreme Court cited *Kovacs* with approval in upholding an ordinance of the City of Miami which prohibited the operation of sound trucks upon the public streets. The term "loud and raucous" was not used in the ordinance, but the ordinance was challenged (unsuccessfully) on free speech grounds.

In *McAlpine v. Reese*, a Federal district court concluded that a noise ordinance was valid, saying:

Much has been written of the preferred position of the constitutional freedoms under the First Amendment and their sanctity. Such concern is both proper and praiseworthy. But it is apparent that there is an attempted erosion, in the name of the First Amendment, of other freedoms equally dear . . . The cloak of the First Amendment is not so broad as to cover their destruction, even their disruption. *McAlpine*, 309 F.Supp. at 140.

BARKING DOGS

Three of the cases cited in Footnote 3 relate specifically to the problem of constantly barking dogs, or dogs "in the habit" of "barking."¹⁰ Unfortunately, the Spokane, Washington case was a loss for the city, although the Washington Supreme Court has allowed the prosecution of "loud or raucous" and unreasonably disturbing behavior by a human being on a bus under a disorderly bus conduct ordinance.¹¹

NOISY MUFFLERS

There is a line of cases dealing specifically with noisy motor vehicle equipment, usually mufflers. A recent example is *St. Louis County v. McClune*, 762 S.W.2d 91 (Mo. App. 1988), where a county ordinance prohibiting "excessive and unnecessary noises" made by a vehicle was upheld against a vagueness challenge. The officer testified that the vehicle was "really loud," and that he had heard the vehicle before it came into sight, even with the patrol car's windows up. The court cited decisions from California, New York and Texas in support of its decision.¹²

In response to the problem of noisy vehicles, some states have enacted noise emission standards for motor vehicles while in operation, and for new motor vehicles. Florida's statutes¹³ incorporate decibel-based standards. The Florida statute relating to motor vehicles in operation has been employed against the operators of vehicles with loud music systems with some practical success. Recently, the Florida Legislature enacted House Bill 1383, which prohibits the operation in motor vehicles of radios or other mechanical soundmaking devices which are audible at a distance of 100 feet or more, or which are louder than necessary in areas adjoining churches, schools or hospitals. The bill does not incorporate a decibel-based standard.

AIRPORT NOISE

Airplanes are inherently noisy, and municipal ordi-

nances regulating noise from aircraft have tended to regulate the hours of airport operation, flight patterns, minimum altitudes, and types of aircraft which may land at airports. Unfortunately, airplane and airport noise regulations face the problem of federal preemption.

In *City of Burbank v. Lockheed Air Terminal*, 441 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973), the Supreme Court examined an ordinance which banned take-offs by "pure jet aircraft" between 11 p.m. and 7 a.m. The Court found that Congress had preempted the field of aircraft noise regulation by enacting the Federal Aviation Act of 1958, 49 U.S.C. Appx. Sections 1301 *et seq.*, as amended by the Noise Control Act of 1972, 49 U.S.C. Appx. Section 1431, and the ordinance was found to be an invalid exercise of the city's police powers. The majority opinion's focus is on the effect of nighttime curfews on the scheduling of airline flights, and the delegation to the Environmental Protection Agency and the Federal Aviation Administration of the task of developing aircraft noise emission standards. The opinion acknowledged that the control of noise is deep-seated in the police power of the states, and expressed uncertainty as to the ultimate remedy for the "plague" of aircraft noise. In dissent, Justice Rehnquist noted the distinction between controlling aircraft noise sources and regulatory means such as airport availability times. He would not have found a preemption of every conceivable method of regulating airport noise.

In *Santa Monica Airport Ass'n v. City of Santa Monica*, 659 F.2d 100 (9th Cir. 1981), the Ninth Circuit Court of Appeals upheld an airport noise reduction ordinance enacted by a municipality in its proprietary capacity. The ordinance established a 100-decibel maximum single event noise exposure level by aircraft during takeoffs and landings. The court held that the method used by the city to regulate the noise for which the city could be held liable was not preempted by the federal regulation of aviation.

The City of Clearwater unsuccessfully asserted the proprietary exemption in *Pirolo v. City of Clearwater*, 771 F.2d 1006 (1983). The city's airport had been leased to an airport operator, and the city later adopted ordinances banning night flights and imposing traffic controls for takeoffs and landings. The court held that the city had leased away its proprietary powers and the ordinances were invalid.

Continuing dissatisfaction with the *Burbank* decision is evident in one of the most recent airport noise cases, *Harrison v. Schwartz*, 572 A.2d 528 (Md. 1990), where the Court of Appeals of Maryland felt compelled to declare invalid several zoning restrictions that had been imposed upon the use of a private airport for glider operations. The zoning restrictions related to timing between takeoffs, and a ban on night takeoffs. The dissent questions the application of *Burbank* to the facts of the case.

UNFAVORABLE CASES

The municipal attorney in a jurisdiction other than those represented by the cases cited above should proceed with caution. There are several cases in which the courts have examined similar facts and similar ordinances, and have simply gone the other way. Citations to two of the most recent unfavorable decisions, from intermediate state appellate courts in Minnesota and Wisconsin, are included at the end of this article.¹⁴ In these decisions, the courts often are troubled by the lack of an objective standard. The inclusion of a "reasonable person of ordinary sensibilities" standard in the description of the offensive noise should preclude an arrest based upon the complaint of an overly sensitive neighbor or the officer's personal sense of annoyance, and should provide the requisite level of objectivity.

WHY A NOISE ORDINANCE WITHOUT DECIBEL STANDARDS?

Although the modern trend has been to adopt decibel-based ordinances to control noise, such ordinances are not without their drawbacks. Clearwater's ordinance was written in response to a request to avoid the expense of purchasing the equipment and training the operators, and the logistical problem of an officer's not having the equipment readily available when the need arises. Also, operators of sound detection equipment often encounter certain practical problems in the field.

For example, in *U.S. Labor Party v. Pomerleau*, 557 F.2d 410 (4th Cir. 1977), the enforcement of Baltimore's decibel-based noise control ordinance against the amplification of political speech on downtown public streets ran into an unexpected snag when the court examined the procedures used by the inspectors to measure sound volume. The ordinance prohibited sound levels above certain limits "at any point on the property line of the use," but inspectors could not easily locate the appropriate point from which to measure the sound volume. The inspectors took their readings from the sidewalks, adjacent street corners, and areas from which complaints had been received. The meter readings depended, in part, upon the distance from the sound source. The distances varied, in this case, from 4 1/2 to 57 feet. The court found the ordinance unconstitutional as applied because the ordinance gave the inspectors no clear guidance as to where to stand to take their measurements in the downtown area, and because the ordinance permitted readings to be taken within a few feet of the loud-speaker.

City of Farmington v. Wilkins, 740 P.2d 1172 (N.M. Ct. App. 1987) involved both a decibel-based noise ordinance and

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an ordinance regulating noise without decibel standards. In this case, the defendant proved that his external loudspeakers emitted noise below the decibel standards set forth in one section of the ordinance. The court nevertheless found him in violation of another section, which prohibited any "unreasonably loud, disturbing or unnecessary noise, or noise of such character, intensity or duration as to be detrimental to the repose, life or health of others." That standard, said the court, was not too vague.

An effective noise ordinance can be useful as an alternative tool for handling certain kinds of public disturbances. For example, the City Court of Oswego, New York, said that squealing tires and jack-rabbit starts were not disorderly conduct, but the defendant should have been charged under a section of the law which bans "unreasonable noise." in *People v. Brown*, 520 N.Y.S.2d 315 (N.Y. City Ct. 1987). That section had earlier been determined valid in *People v. Bakolas*, 59 N.Y. 2d 51, 462 N.Y.S.2d 844, 449 N.E.2d 738 (N.Y. Ct. App. 1983), which cites numerous cases including *Kovacs*.

CONCLUSION

In at least fifteen jurisdictions, cities have adopted enforceable noise protection ordinances relying upon terms commonly heard in ordinary speech rather than "objective" standards expressed in decibels. The reviewing courts have generally had no difficulty finding that noise protection is a legitimate police power activity of cities. The terminology used in these ordinances has been found neither vague or overly broad, nor do the ordinances violate Freedom of Speech protections. Barring possible federal preemption problems, ordinances such as these are a useful weapon against the plague of excessive noise in a "high-tech" age.

END NOTES

¹Sections 96.01 and 96.02(5) state:
Sec. 96.01. Prohibited generally.

It shall be unlawful for any person to willfully make, continue or cause to be made or continued any loud and raucous noise, which term shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the city. The term includes the kinds of noise generated by the activities enumerated in section 96.02, except as provided in section 96.04. The term shall be limited to loud and raucous noise heard upon the public streets, in any public park, in any school or public building or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees

or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof, and in any event from a location not less than fifty (50) feet from the source of the noise, measured in a straight line from the radio, loudspeaker, motor, horn or other noise source. (Emphasis added.)

Sec. 96.02. Enumeration.

The following acts, as limited by Section 96.01 and subject to the exceptions provided in Section 96.04, are declared to be public nuisances in violation of Section 96.01, namely:

(5) Radios, amplifiers, phonographs, etc. The using, operating or permitting to be played, used or operated any radio, amplifier, musical instrument, phonograph or other device for the producing or reproducing of sound in such manner as to cause loud and raucous noise. (Emphasis added.)

Section 96.04 contains certain exceptions, none of which applied to the Defendants at the time the citations were issued.

¹*Jim Crockett Promotion v. City of Charlotte*, 706 F.2d 486 (4th Cir. 1983) ("unnecessary" is unconstitutionally vague, but "unreasonably loud, disturbing, . . . noise" is valid).

Reeves v. McConn, 631 F.2d 377 (5th Cir. 1980) ("unreasonably loud, raucous, jarring, disturbing, or a nuisance to persons within the area of audibility").

McAlpine v. Reese, 309 F.Supp. 136 (E.D. Mich. 1970) ("any noise. . . by which the peace, quietude or good order of any public, private or parochial school is disturbed").

²In order to include a comprehensive collection of supportive case citations, the cases cited in this endnote may include some which are published but not yet final. Counsel should, as usual, check the current validity of any decision which appears to be useful.

ARIZ: *State of Arizona v. Cole*, 501 P.2d 413 (Ariz. Ct. App. 1972) (keeping a dog which is "in the habit of barking or howling or disturbing the peace and quiet of any person within the city").

CAL: *Mann v. Mack*, 202 Cal. Rptr. 296 (Cal. Ct. App. 1984) ("loud, unnecessary and unusual noise").

ILL: *Town of Normal v. Stetzel*, 441 N.E.2d 170 (Ill. 4th DCA 1978) ("loud and raucous").

MD: *Eanes v. State*, 569 A.2d 604 (Md. 1990), cert. denied, 110 S.Ct. 3218 (1990) (willfully disturbing any neighborhood by "loud and unseemly noises").

MICH: *People of Dearborn Heights v. Bellock*, 169 N.W.2d 347 (Mich. Ct. App. 1969) ("any noise... by which the peace and good order of the City of Dearborn Heights are disturbed").

NJ: *State v. Holland*, 331 A.2d 262 (N.J. App. 1975) ("loud and unnecessary").

NY: *People v. Holstegge*, 493 N.Y.S.2d 720, 129 Misc.2d 580 (Vill. Ct. Ocean Beach 1985); *People v. Bakolas*, 449 N.E.2d 738, 59 N.Y.2d 51 (N.Y. Ct. App. 1983).

NC: *State v. Smadberg*, 229 S.E.2d 841 (N.C. Ct. App. 1976) ("unreasonably loud, disturbing and unnecessary noise").

ND: *State v. Beyer*, 441 N.W.2d 919 (N.D. 1989) (muffler must prevent "excessive or unusual noise").

OHIO: *State v. Dorso*, 446 N.E.2d 449 (Ohio 1983) ("in such manner as to disturb the peace and quiet of the neighborhood, having due regard for the proximity of places of residence, hospitals or other residential institutions and to any other conditions affected by such noises"); *City of Marletta v. Grams*, 531 N.E.2d 1332 (Ohio Ct. App. 1987) (disturbing the "good order and quiet" of the city by "clamors or noises of the night season," limited by the court to be applicable to one who, with a reckless mental state, produces loud and continuous noise which offends a reasonable person of common sensibilities and disrupts the reasonable conduct of basic nighttime activities such as sleep).

ORE: *City of Portland v. Aziz*, 615 P.2d 1109 (Ore. Ct. App. 1980) ("plainly audible within any dwelling unit which is not the source of the sound"); *City of Portland v. Ayers*, 764 P.2d 556 (Ore. Ct. App. 1988) (operating a sound reproducing device on a public right-of-way so as to be "plainly audible" fifty feet or more from the device).

PA: *Commonwealth v. Alpha Epsilon Pi*, 540 A.2d 580 (Pa. Super. Ct. 1988) (disorderly conduct defined to include making "unreasonable noise" with intent to cause public inconvenience, annoyance or alarm).

TEX: *Lear v. State*, 753 S.W.2d 737 (Tex. Ct. App. 1988) (harboring a dog which makes "frequent or long continued noise" which is disturbing to persons of "normal nervous sensibilities"); *Blanco v. State*, 761 S.W.2d 38 (Tex. Ct. App. 1988) (intentionally or knowingly making "unreasonable noise" in a public place or in or near a private residence that he has no right to occupy).

VA: *City of Virginia Beach v. Murphy*, 389 S.E.2d 462

(Va. 1990) (playing a television set, radio, tape player, phonograph or musical instrument in manner or volume as to annoy "any person" is not facially unconstitutional on ground that the ordinance could only be a private nuisance).

WASH: *City of Seattle v. Ese*, 759 P.2d 366 (Wash. 1988) ("disorderly bus conduct" defined to include "loud or raucous behavior" which "unreasonably disturbs others" while in a bus); but see, *City of Spokane v. Fischer*, 754 P.2d 1241 (Wash. 1988) (allowing a dog "to disturb or annoy any other person or neighborhood by frequent or habitual howling, yelping or barking" -- found void for vagueness).

⁴*Raees v. McConn*, 631 F.2d 377, at 383 (5th Cir. 1980); *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126 (1926).

⁵*Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294 (1972).

⁶*McAlpine v. Reese*, 309 F.Supp. 136 (E.D. Mich. 1970).

⁷*Beckerman v. City of Tupelo*, 664 F.2d 502 (5th Cir. 1981); *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).

⁸*Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

⁹*Saia v. People*, 334 U.S. 558 (1948).

¹⁰The Arizona decision in *State v. Cole*, the Texas decision in *Lear v. State*, and the Washington decision in *City of Spokane v. Fischer*, note 3, supra.

¹¹*City of Seattle v. Ese*, note 3, supra.

¹²CAL: *Smith v. Peterson*, 280 P.2d 552 (Cal. Ct. App. 1955).

NY: *People v. Byron*, 215 N.E.2d 345, 17 N.Y.2d 64, 268 N.Y.S.2d 24 (N.Y. Ct. App. 1956).

TEX: *Ex Parte Trafion*, 271 S.W.2d 814 (Tex. Ct. App. 1953).

¹³Sections 316.293 (vehicles in operation) and 403.415 (new vehicles), Florida Statutes.

¹⁴MINN: *City of Edina v. Dreher*, 434 N.W.2d 621 (Minn. Ct. App. 1990) (ordinance prohibiting the keeping of an animal that "by any noise disturbs the peace and quiet of persons in the vicinity" does not provide adequate notice or

WIS: *City of Madison v. Baumann*, 445 N.W.2d 647 (Wis. Ct. App. 1990) ("any noise tending to unreasonably disturb the peace and quiet of persons in the vicinity thereof" unless the noise cannot be prevented and is necessary).

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 65 - NOISE CONTROL

-HEAD-

Sec. 4913. Quiet communities, research, and public information

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U.S. Code (p2 of 17)

-STATUTE-

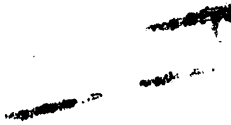
To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this chapter, and to otherwise carry out the policy of this chapter, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions -

-- press space for more, use arrow keys to move, '?' for help, 'q' to quit.
U.S. Code (p3 of 17)

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or

private organization or any person on the effects, measurement,
-- press space for more, use arrow keys to move, '?' for help, 'q' to quit.



and control of noise, including but not limited to -

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise

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U.S. Code (p5 of 17)

control technology for products subject to possible regulation under sections 4905 and 4907 of this title and section 44715 of title 49;

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property

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U.S. Code (p6 of 17)

and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

City of Cambridge

The Noise Sub-Committee of the Environment Committee held a public meeting on Wednesday, April 9, 1997 at six o'clock and thirty-five minutes p.m. in the Sullivan Chamber.

Present at the meeting were Councillor Henrietta Davis, Chair of the Committee; Councillors Michael Sullivan, Francis Duehay; Donna P. Lopez, Deputy City Clerk; Ronnie Watson, Police Commissioner; Harold Murphy, Superintendent of Police; Dave Degou, Superintendent of Police; Sergeant John Kenney, Police Department; Richard Scali, Executive Officer, License Commission; Robert Bersani, Commissioner of Inspectional Services; Arthur Goldberg, Legal Counsel; and George Fosque, Emergency Communication Center.

Councillor Davis opened the meeting by stating that the subject of the noise ordinance came up at a Collaborative Solutions to Solvable Problems Conference at a community policing meeting and he suggested some solutions to the problems. Furthermore, at the City Council round table discussions the problem of noise came up and the solutions which could be implemented such as those around car alarm noise.

The committee heard from Councillor Francis Duehay who stated that he appointed Councillor Davis as Chair of the Sub-Committee on Noise, a Sub-Committee of the Environment Committee, and she would be reporting to the Environment Committee and the City Council on this matter. He stated that the Noise Ordinance has been written several times and there are certain matters that keep eluding the city. On enforcement, it is not easy. There are a lot of types of noise such as car radios, air conditioners, car alarms, street noise, heating systems and the street musicians in Harvard Square. He stated that some noise need not be measured and can be regulated at all times of day and night. For other noise we can regulate the decibel level and then we have to have people trained to measure the decibel level. He stated that noise is a quality of life issue. Councillor Duehay submitted for the record a document entitled "Some ideas and examples for Noise Ordinances." (ATTACHMENT A)

Councillor Davis asked Commissioner Watson to inform the committee of the problems his department has experienced.

Commissioner Watson stated that when a noise complaint is filed, the police are the first department contacted through the 911 Emergency Communication Center. He stated that complaints of noise fall into many different categories, for example, street construction sites and alarms. He stated that data bases are being developed to keep track of the different categories of the complaints. He stated that the police department has given fines for car alarm offenses and that progressive fines for each offense should be reviewed. He stated that if an alarm in a car goes off for a long period of time, the only measure the police can take is to go to the car and issue a citation. He stated that if the noise is audible 50 foot from the source is a violation of the ordinance. He informed the committee that it was difficult to enforce the prohibition of excessively loud car stereos because when the police are seen, the car stereos are turned down. He suggested reviewing the possibility of fining the installers of the larger stereo systems.

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The committee heard from Superintendent Harold Murphy who stated that the department received complaints of idling engines, recycling bins and trash pickup up at early morning hours. He stated that all of these things constitute noise. He stated that the police department is working to educate their officers to understand where the offenses are coming from. For example, daytime noise can be serious for people who work and are having their sleep disturbed. Superintendent Murphy stated that enforcement is a three part effort with the Inspectional Services Department, License Commission and the Police Department. The Police Department, he stated, is responsible for enforcement of the ordinance on a twenty-four hours a day basis. He stated that the police cannot go on private property to turn off a car alarm.

Councillor Davis stated that she was glad the Police Department was keeping track of the noise complaints by category on the CAD system.

The committee heard from Richard Scali, Executive Officer, License Commission, who stated that the License Commission gets involved with consistent noise problems. He stated that when a complaint is received, the License Commission investigates the source of the problem and negotiates a solution. He stated that the License Commission has two investigators, Ms. Boyer and Mr. Headley. He stated that the License Commission can fine up to \$300.00 per day. Mr. Scali stated that the License Commission, with the Data Processing Department of the City, has prepared a noise sensitive zone map and it is being sent to the dumpster companies to prevent violations of the noise ordinance. The dumpster companies are being asked not to pick up trash in these areas before 7:00 a.m. Mr. Scali stated that HVAC systems, heating and air conditioning units that are making noise have meter readings taken by the investigators of the License Commission and repairs are made to make the system in compliance with the law.

The committee heard from George Fosque, Emergency Communication Center, who stated that the dispatchers receive 2,000 to 2,400 noise complaints per year. He stated that he feels that the noise ordinance is obscure. Mr. Fosque stated that his thirty-seven member department needs to have a clearer idea of how to handle the ordinance.

Councillor Duehay stated that the Law Department worked with the City Council on the ordinance and asked what was the problem. Mr. Fosque responded that if a car alarm complaint comes in at different times during the day, the answer is different. Mr. Fosque stated the need for dispatchers' training.

The committee heard from Noel Johnson, 139 Pine Street, who stated that the ordinance is clear.

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The committee heard from Nicholas Churchill, 29 Essex Street, who stated that the dispatchers gave different answers each time he called. Mr. Fosque stated that people are being trained; that there are new supervisors. Mr. Churchill questioned whether there was any way car alarms could be improved so that they are not so sensitive. Councillor Davis stated that car alarms can go off for ten minutes; this is a long time. Mr. Fosque responded that there are sanctions in the false alarm ordinance.

Councillor Davis asked Commissioner Watson what the police do in this instance. Commissioner Watson responded that after ten minutes, the police tow the car if it is in the public way. Superintendent Degou stated that the police cannot legally tow the vehicle. Mr. Arthur Goldberg, Legal Counsel, stated that a non-criminal ticket can be issued. Commissioner Watson stated that this does not alleviate the problem. Mr. Goldberg stated that if the city wants to legalize towing, it should be put into the ordinance. The ordinance could also provide for disabling of the alarm by the towing company. Superintendent Murphy stated that this could be put into the towing contracts.

Councillor Davis made a motion that the Law Department draft an ordinance amendment to allow towing companies to tow cars whose alarm is sounding and to disable car alarms. The motion carried.

Mr. Goldberg stated that each ten minutes could be a separate violation.

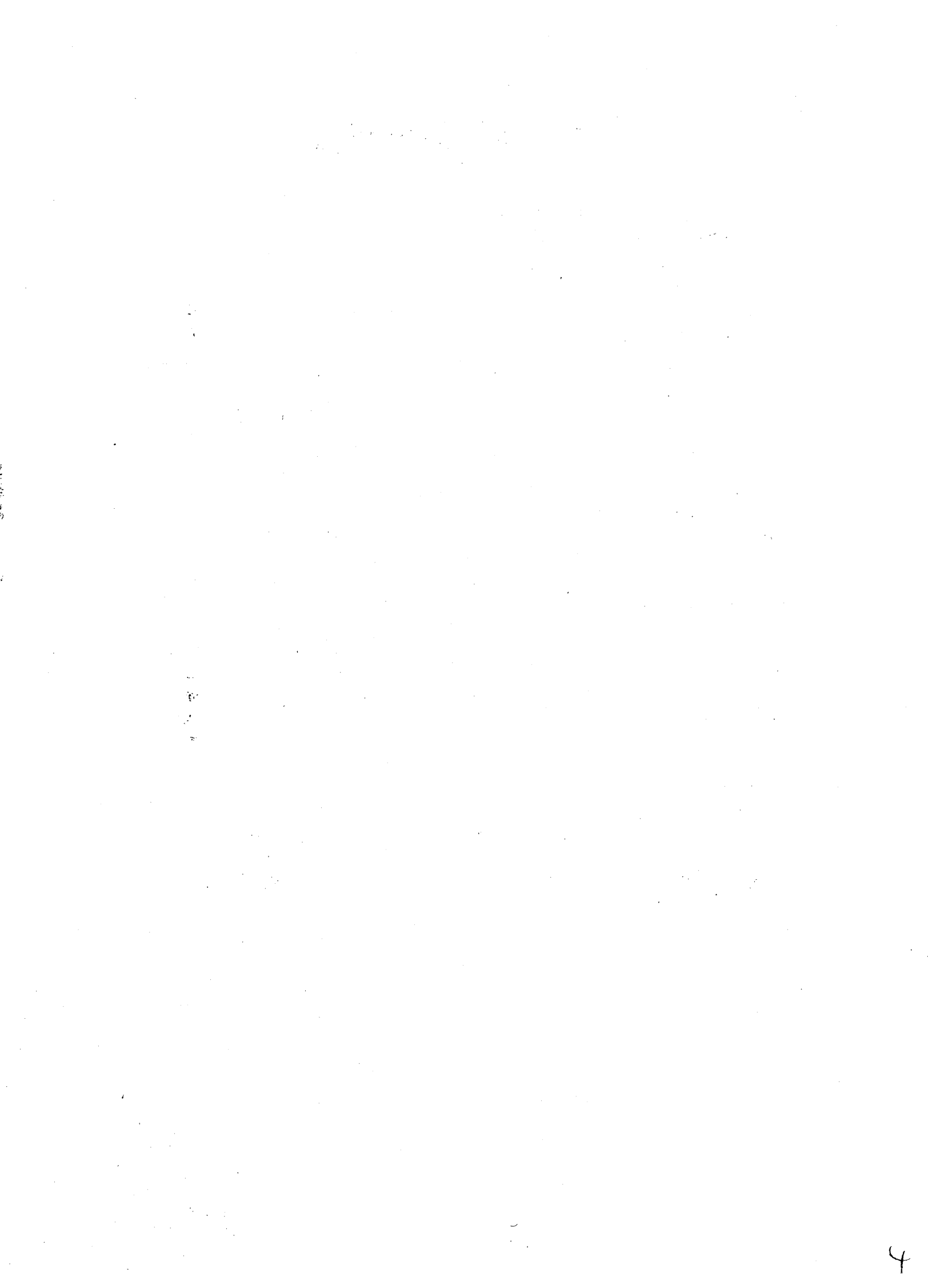
Ms. Johnson stated that a representative from New York has drafted legislation outlawing automatic car alarms.

Mr. Scali stated that the License Commission can call the owner in to a hearing if the person's alarm is consistently and repeatedly going off.

Councillor Davis asked Mr. Goldberg about the responsibility of garage owners. Mr. Goldberg stated that garage owners could be fined. Mr. Scali stated that any garage with four or more vehicles is licensed by the License Commission and the License Commission could call them in for a hearing and suspend their license.

Councillor Davis asked if a resident called 911 and the noise was on a Harvard or MIT property, would the same rule apply. Commissioner Watson stated that the same rules apply to the property of Harvard and MIT.

Commissioner Watson stated that the police cannot legally tow a vehicle because it is a violation of the law. Mr. Goldberg stated that if a ticket is issued it will cover the nuisance violation which caused the car to be towed.



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The committee heard from George Despotes, 66 Winthrop Street, who related an incident where a car alarm was sounded for six hours on JFK Street. He stated that there was no prohibition for private towing companies to break into cars. Commissioner Watson stated that the Police Department opens itself to liability if they open cars for the public. Mr. Despotes stated that there should be signage outlining that the Cambridge Noise Ordinance will be strictly enforced, in particularly with respect to car alarms. He urged a state wide law to ban car alarms.

The committee heard from Laura M. Lob, 9 Pleasant Place #2, who stated that she lives across from the Graham & Parks School with a basketball court where the noise level is loud. She stated that the posted hours of 7:00 a.m. to 7:00 p.m. are not enforced. Commissioner Watson stated that the school could help by relocating the basketball court. Ms. Lob requested a re-evaluation of the use of the courts because it is also a safety issue. Commissioner Watson stated that he would investigate the situation. Ms. Boulrice stated that the noise level will be addressed.

Ms. Boulrice stated that the open space committee will deal with standardization of park use, clarification of the ordinance and better enforcement and more responsible hours.

Ms. Johnson stated that the Area Four Crime Task Force sent out a flyer in different languages and asked the community to cut down on noise. She complained about amplified music until 11:00 p.m., stereos and fights on the corner in the Pine, Columbia and Harvard Street area. Commissioner Watson stated that people sit out on their steps at night and asked what can a police officer do to keep the noise down. Ms. Johnson asked whether the law allows people to drink on their front porch. Commissioner Watson responded that on private property, there is nothing the police can do. Superintendent Degou stated that if people are loud, the police can speak to them. Superintendent Murphy stated that the police need a complaint to file a complaint in court. Commissioner Watson further explained some people call the police to complain, but do not want to go to court. He further stated that the police cannot do anything unless the offense occurs in the presence of the officer. If a person files a complaint, he must follow it up by going to court.

Mr. Scali stated that the License Commission can handle complaints regarding constant loud music. Loud music is a violation of the noise ordinance. He stated loud music and/or radios on the public way is a violation of the Noise Ordinance, a complaint should be filed and the License Commission will investigate the complaint and may schedule a hearing. Mr. Scali stated that with floor to floor noise, however, the License Commission cannot enforce the Noise Ordinance because it is private property.

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Councillor Davis inquired how would people know what to do to solve the problem of noise. Ms. Johnson suggested a series on the Access channel on the Noise Ordinance and what action can be taken. Ms. Jackie Carroll stated that Cable TV and the Chronicle could be used. Commissioner Watson stated that the Police Department has a Web page and will be publishing a news letter.

The committee heard from Henry Delaurain, 50 Follen Street, who told the committee of his four year problem with the Lincoln Inn. He asked what can be done if the noise is intermittent. Commissioner Watson stated that unless the disturbance occurs in front of the officer, there is nothing the officer can do. Mr. Scali stated that the License Commission negotiated with the parties concerned in the case of the Lincoln Inn.

Commissioner Watson stated that if there is a consistent problem over a long period of time, a police superintendent can be called so that a police car can be placed in the area for the period of the offense. Commissioner Watson gave the following telephone numbers:

349-3309	Police Department
349-3323	8:30 a.m. - 8:00 p.m.
349-3393	Shift Commanders

Ms. Johnson applauded the Shift Commanders. Mr. Fosque stated that the Emergency Communications Center refers the calls to the Police Department.

Commissioner Watson stated that neighborhood meetings will be taking place so that the police can find out what complaints are being made.

The committee heard from Mr. Bersani, Inspectional Services Commissioner, who informed the committee that his department has been aggressive to get information to the contractors regarding the hours construction can take place and cannot begin before 9:00 a.m. on Saturday, Sunday and holidays. In response to a question from Councillor Davis, Mr. Bersani stated contractors can only operate on Sunday with a permit for emergency work.

Mr. Desportes stated that Harvard and MIT ignore the noise ordinance. He inquired if Harvard and MIT were notified of the Ordinance.

Councillor Davis submitted the following motion:

That the City Manager be an hereby is requested to forward a copy of the Noise Ordinance to the Harvard University and MIT Police Departments.

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The motion - Carried.

The committee heard from Star Poole Verry, 17 William Street, who asked if the police followed the 50 foot rule. Commissioner Watson responded in the affirmative.

Councillor Davis inquired what was the penalty for an offense to the Noise Ordinance. Mr. Goldberg responded that the penalty can be up to \$300.00. He stated that the ordinance gives the Inspectional Services, the Police Department and the License Commission the authority to impose fines, injunctive provision to stop the noise, revocation of license or permit including a building or demolition permit. Councillor Davis stated that the city needs more refinements about fines and other methods of enforcement.

Commissioner Watson stated that the Police Department is looking for teeth in the ordinance regarding burglar alarms so they can enforce it.

Mr. Desportes suggested licensing burglar alarms. Mr. Goldberg stated that Chapter 8.32 on security alarms provides for graduated fines, but they top off at \$300.00 and disconnection for up to three months. Mr. Fosque stated that under Chapter 8.32 fines are incurred for subsequent offenses but there is no fine for a ten minute shut off. Commissioner Watson stated that pursuant to Chapter 8.32 alarms connected to the Police Department are supposed to provide a list of two other people to be contacted if the alarms go off. He noted that those people are not always available.

Councillor Davis requested Mr. Goldberg to draft an amendment to provide remedies for all audible alarms. Councillor Davis submitted the following motion:

That the Law Department draft amendments to the noise ordinances to address issues raised with regard to audible alarms including: stopping the noise within a reasonable period of time and fining the violator at a level that prevents repeat offenses; and further that the City Manager provide for joint training of all departments related to the noise enforcement.

Councillor Davis brought up the issue of mechanical devices such as air conditioning units.

Mr. Bersani stated that when a contractor applies for a building permit for HVAC, his department supplies the contractors with copies of the Noise Ordinance.

Ms. Johnson asked if contractors were required to notify abutters of the installation of a HVAC unit. Mr. Bersani responded in the negative. Councillor Davis noted that even when HVAC units comply with the noise ordinance, citizens are still complaining. Mr. Scali suggested contacting Ms. Boyer who can help to resolve some of these issues. Councillor Davis asked, should we examine the ordinance and determine if appropriate levels are described.

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Mr. Desportes gave a copy of excerpts from the U.S. Code as they relate to noise control for inclusion in the minutes. (ATTACHMENT B)

Councillor Davis made a motion that all the items from this meeting be referred to the City Manager for his attention, especially interdepartmental training and accurate information to the public.

The meeting adjourned at 8:45 p.m. on the motion of Councillor Davis.

For the Committee,

A handwritten signature in black ink, appearing to read 'Henrietta Davis', written over the printed name below.

Councillor Henrietta Davis
Chair

A report was received from the Noise Sub-Committee of the Environment Committee, for a meeting held on April 9, 1997 for the purpose of hearing from the public about their concerns regarding noise and to hear from the Law Department and the License Commission about the effectiveness of the Noise Ordinance.

In City Council April 28, 1997

Report accepted,
Placed on file
Three orders
adopted