

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018**

No. 53

Introduced by Council Members Kallos, Constantinides, Dromm, Mendez and Menchaca.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to responses to noise complaints

Be it enacted by the Council as follows:

Section 1. Section 24-207 of the administrative code of the city of New York is amended by adding new subdivisions (e) and (f) to read as follows:

(e) The commissioner shall adopt rules prescribing specific time frames for inspections in response to after hours noise complaints received by the department in order to ensure that such inspections are most likely to occur at (i) a time that the alleged noise is continued from the time of the complaint or (ii) at a time when the alleged noise is likely to be repeated.

(f) The commissioner shall publish on the city's website the manner by which noise levels shall be measured during inspections conducted pursuant to this section and in accordance with section 24-217.1 which shall be available online

(f) By no later than January 31 of each year, the department shall submit to the mayor and the council, and publicly post on its website, a report, containing, at a minimum, for the previous calendar year:

(i) the number of inspectors employed by the department;

(ii) *the number of complaints regarding noise received by the department, disaggregated by the type of noise;*

(iii) *the number of after hours noise complaints responded to within the amount of time prescribed by rule as well as the number of duplicative after hours noise complaints;*

(iv) *the number of non-violation resolutions to complaints;*

(v) *the number of noise related violations issued;*

(vi) *the number of such violations which were dismissed;*

(vii) *the amount of civil penalties which were paid pursuant to such violations;*

(viii) *the number of alternative noise mitigation plans approved pursuant to section 24-221 of this code; and*

(ix) *the number of written stop work orders issued pursuant to section 24-223.1 of this code.*

§ 2. Subdivision (a) of section 24-219 of the administrative code of the city of New York, as amended by local law number 113 for the year 2005, is amended to read as follows:

(a) The commissioner shall adopt rules prescribing noise mitigation strategies, methods, procedures and technology that shall be used [at] *where* construction [sites] *is occurring at any location (sites)* whenever any one or more of the construction devices or activities listed below are employed or performed:

(1) air compressors.

(2) pile drivers.

(3) sledgehammers.

(4) bulldozers.

(5) pneumatic hammers.

- (6) [steam shovels] *interior renovation as defined in such rules.*
- (7) derricks.
- (8) cranes.
- (9) [steam or] electric *powered* hoists.
- (10) off-road construction vehicles other than trucks.
- (11) pumps.
- (12) pneumatic tools.
- (13) blasting.
- (14) power tools.
- (15) tunneling machines.
- (16) construction devices with internal combustion engines.
- (17) construction devices that emit impulsive sound.
- (18) construction devices that create vibration.
- (19) metal plates used in street construction to temporarily cover excavations.
- (20) any other construction devices or activities specified in such rules.

§ 3. Subdivision (e) of section 24-220 of the administrative code of the city of New York, as amended by a local law amending the administrative code of the city of New York relating to public access to noise mitigation plans, as proposed in introduction number 1300-A for the year 2017, is amended to read as follows:

(e) The plan shall be filed *electronically* with the department no later than 30 days after the commencement of construction if it conforms in all respects to the rules of the department with respect to construction devices and activities employed or performed at the construction site. A

plan that deviates in any respect from such rules or an alternative noise mitigation plan required to be certified in conjunction with an undue hardship application pursuant to paragraph (5) of subdivision (e) of section 24-223 shall be subject to the prior approval of the commissioner in accordance with section 24-221 of this code.

§ 4. Section 24-221 of the administrative code of the city of New York, as added by local law number 113 for the year 2005, is amended to read as follows:

§ 24-221. Alternative noise mitigation plan. (a) Upon application, the commissioner may approve an alternative noise mitigation plan for a particular construction site that deviates from strict compliance with the noise mitigation rules. Application for approval of such plan shall be *electronically* submitted to the department at least ten business days prior to the commencement of construction or as soon as practicable but no later than 24 hours prior to the commencement of construction in a form and manner and accompanied by such information and documentation as shall be set forth in the rules of the department. *An application for approval may be submitted after the commencement of construction if an application includes a showing that all reasonable available mitigation measures have been implemented since the commencement of construction but aggregate sound levels from the site exceed or are reasonably anticipated to exceed one or more of the applicable limits in this chapter.*

The commissioner may approve such alternative noise mitigation plan if he or she finds that:

(1) strict compliance with the noise mitigation rules would not be possible or would create an undue hardship because of the location or unique characteristics of the site or of the construction devices or activities to be employed or performed at the site; and

(2) the alternative noise mitigation strategies, methods, procedures or equipment proposed are consistent with the purposes and policies of this code.

(b) [Notwithstanding the foregoing provisions, with respect to construction sites where construction is performed pursuant to a permit issued prior to the effective date of this section or in the case of construction by or on behalf of a city agency where construction is performed under a contract bid out prior to the effective date of this section, application for approval of an alternative noise mitigation plan may be submitted within 60 days after the effective date of this section. The commissioner may approve such plan if he or she finds that:

(1) strict compliance with the noise mitigation rules would not be possible or would create an undue hardship because of the location or unique characteristics of the site or of the construction devices or activities employed or performed at the site, or

(2) strict compliance with such rules would be unreasonable or unduly burdensome with respect to construction work that is imminent or ongoing on the effective date of this section, or

(3) with respect to city construction projects, the implementation of contract modifications to achieve strict compliance with such rules would result in unreasonable delay and/or increased expenditure for a necessary public improvement, and

(4) the alternative noise mitigation strategies, methods, procedures or equipment proposed are consistent with the purposes and policies of this code.

(c) Where the commissioner rejects an alternative noise mitigation plan, an applicant may appeal such rejection in accordance with the rules of the department. An alternative plan shall not be in effect unless and until it has been approved by the commissioner except that where a timely alternative plan has been filed with the commissioner for approval, a construction site in

compliance with such alternative plan shall be deemed to be in compliance with this section unless and until such plan is rejected by the commissioner and for a reasonable time thereafter as determined by the commissioner.

(c) Notwithstanding any other provision of this chapter, construction work performed in accordance with an approved alternative noise mitigation plan containing decibel level limits and requirements prescribed for specific sources or devices that is in full compliance with this section and the rules promulgated by the department thereunder shall be deemed to be in full compliance with all decibel level limits set forth in any other section of this chapter.

§ 5. Subdivision (d) of section 24-223 of the administrative code of the city of New York, as added by local law number 113 for the year 2005, is amended to read as follows:

(d) [Where there is] *During the time that an after hours authorization is in effect, notwithstanding full compliance with the noise mitigation plan [yet nevertheless] the department shall issue an advisory or a violation where aggregate sound levels from the site [where an after hours authorization is in effect] exceed the following limits:*

(1) 8dB(A), and on or after January 1, 2020, 7 dB(A) above the ambient sound level as measured in any residential receiving property dwelling unit [()with windows and doors that may affect the measurement closed], the commissioner may request the person performing the work to confer with representatives of the department regarding additional noise mitigation measures that may be employed at the site to reduce aggregate sound levels. After such conference the commissioner may direct amendment of the noise mitigation plan for the site. Failure to respond to a request for a conference or to amend the noise mitigation plan within the time prescribed in a notice issued by the department shall be a violation of this code., or

(2) the noise levels specified in section 24-228 (a) of this code on a construction site that is not within 200 feet of a residential receptor, or

(3) except as provided in paragraph (4) of this subdivision, 80dB(A), and on or after January 1, 2020, 75 dB(A) as measured 50 or more feet from the source or sources at a point outside the property line where the source or sources are located or as measured 50 or more feet from the source or sources on a public right-of-way when that source is within 200 feet of a residential receptor, or

(4) 85dB(A) as measured 50 or more feet from the source or sources at a point outside the property line where the source or sources are located, or as measured 50 or more feet from the source or sources on a public-right-of-way when the source is street construction.

§ 6. Subchapter 4 of chapter 2 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-223.1 to read as follows:

§ 24-223.1 Stop work order.

(a) Whenever the department finds that any work is being performed in violation of section 24-222 or section 24-228 or any rules promulgated thereunder, and such work poses a threat to human health and safety, the department may issue a stop work order with respect to such work or solely with respect to the equipment used for work being performed in violation of section 24-222 or 24-228.

(b) Such order may be given (i) verbally or (ii) posted at the site and served personally on or mailed to the owner, lessee or occupant of the site, or to the person executing the work at the site, or to the agent of any of them and shall include the reason for the issuance of the stop work order.

A verbal stop work order shall be followed promptly by a written order in accordance with this subdivision.

(c) Upon issuance of a stop work order, work specified in the order shall immediately cease, except work authorized or required by the commissioner or the head of any other agency to ensure public safety or to stabilize the site.

(d) No person shall with knowledge or notice of a stop work order allow, authorize, promote, continue or cause to be continued such work that is the subject of the stop work order.

(e) A stop work order issued pursuant to subdivision a of this section may be appealed in accordance with the rules of the department, and the commissioner shall provide notice and an opportunity to be heard within 14 days of the filing of such appeal. A stop work order shall be lifted if, upon appeal, the commissioner determines that the issuance of such order was not proper, or upon the submission of proof satisfactory to the commissioner that the requirements of such order have been satisfied. In the case of a verbal order, if the commissioner determines that the condition that gave rise to the order has been immediately corrected, including but not limited to which devices or activities may not be used or performed at the same time and which activities may be prohibited, such order shall be lifted at once and shall not be followed by a written order.

§ 7. Section 24-224 of the administrative code of the city of New York, as added by local law number 113 for the year 2005, is amended to read as follows:

§ 24-224. Construction work without noise mitigation plan unlawful. It shall be unlawful to perform work at any construction site in the city that is not in compliance with a noise mitigation plan where such plan is required pursuant to this subchapter and with the noise mitigation rules adopted pursuant to this subchapter. [Notwithstanding any other provision of this code,

construction work performed in accordance with a noise mitigation plan that is in full compliance with this subchapter and such rules shall be deemed to be in compliance with all decibel level limits set forth in other subchapters of this code. The provisions of this subchapter shall supercede all other provisions of this code relating to construction activities or devices that are inconsistent with or in conflict therewith.]

§ 8. Section 24-228 of the administrative code of the city of New York, as added by local law number 113 for the year 2005, is amended to read as follows:

§ 24-228. Construction[, exhausts and other] devices. (a) No person shall operate or use or cause to be operated or used a construction device or combination of devices in such a way as to create an unreasonable noise. For the purposes of this section unreasonable noise shall include but shall not be limited to sound that exceeds the following prohibited noise levels:

(1) Sound, other than impulsive sound, attributable to the source or sources, that exceeds 85 dB(A) as measured 50 or more feet from the source or sources at a point outside the property line where the source or sources are located or as measured 50 or more feet from the source or sources on a public right-of-way.

(2) Impulsive sound, attributable to the source, that is 15 dB(A) or more above the ambient sound level as measured at any point within a receiving property or as measured at a distance of 15 feet or more from the source on a public right-of-way. Impulsive sound levels shall be measured in the A-weighting network with the sound level meter set to fast response. The ambient sound level shall be taken in the A-weighting network with the sound level meter set to slow response.

(3) *Sound that exceeds the decibel levels set forth in subdivision (d) of section 24-223 during the time that an after hours authorization is required to be in effect.*

(b) Where a particular sound source or device is subject to decibel level limits and requirements specifically prescribed for such source or device elsewhere in this code, such specific decibel limits shall apply to such device or source. However, if aggregate sound levels from a construction site exceed the limits set forth in this section, compliance with such specific decibel limits shall not be a defense in any proceeding relating to a violation of this section.

§ 9. This local law takes effect 180 days after it becomes law, provided that section three takes effect on the same date that a local law for the year 2017 amending the administrative code of the city of New York relating to public access to noise mitigation plans, as proposed in introduction number 1300-A, takes effect and except that the department of environmental protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date and further provided that the amendments to section 24-221, 24-223 and 24-228 of title 24 of the administrative code of the city of New York made by sections four, five and eight of this local law that increase or impose new decibel level limits and the amendments to section 24-224 of such code made by section seven of this local law shall not apply to construction sites where construction work is performed pursuant to a permit issued prior to the effective date of sections four, five, seven and eight of this local law or in case of construction by or on behalf of a city agency where construction work is performed under a contract bid out prior to the effective date of sections four, five, seven and eight of this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 19, 2017 and approved by the Mayor on January 17, 2018.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 53 of 2018, Council Int. No. 1653-B of 2017) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.