



City of West Allis

Legislation Text

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Ordinance to Repeal and Recreate Section 7.035 of the City of West Allis Revised Municipal Code Relating to Excessive Noise and Vibration

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 7.035 of the Revised Municipal Code is hereby repealed and recreated to read as follows:

7.035 EXCESSIVE NOISE AND VIBRATION

(1) **Statement of Purpose.** The City of West Allis recognizes that excessive noise and vibration are serious threats to the public health and welfare, public safety, quality of life and property values. Current science and technology permit abatement of noise and vibration sources which were not available in the past. Therefore, it is the policy of the City to prevent and abate excessive noise and vibration which may jeopardize the public health, safety or welfare or which would cause harm to property values or which would impair the quality of life within the city.

(2) **Definitions.** All terminology used in this ordinance, not defined below or elsewhere within the West Allis Revised Municipal Code, shall be given the definitions provided by applicable publications of the American National Standards Institute (ANSI) or its successor body.

(a) **A-Weighted Sound Level:** the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated as db(A) or dBA.

(b) **Ambient Noise:** the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources.

(c) **Authorized Emergency Vehicle:** the City hereby adopts and incorporates the definition of this term as set forth in Section 340.01(3), Wis. Stats. and any subsequent modification, revision, or amendment of that term as set forth in that section of the Wisconsin Statutes.

(d) **Commercial District.** Any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as C-1, C-2, C-3, C-4, or M-1.

(e) **Construction:** any activity necessary or incidental to the erection, demolition, assembling, altering, installing, repairing or equipping of buildings, roadways, or utilities, including land clearing, grading, excavating and filling.

(f) **Day** means the hours between 7:00 a.m. and 9:59 p.m.

(g) **Decibel:** A logarithmic (dimensionless) measure used in describing the amplitude of sound.

(h) **Emergency Work:** short term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.

(i) **Impulse Noise:** Any sound of short duration, usually less than one second, with an abrupt increase and rapid decay.

Examples of sources of impulse noise include explosions, drop forge impacts, and the discharge of firearms.

- (j) Motor Vehicle: Any vehicle, including a combination of two or more vehicles or an articulated vehicle, that is self-propelled, except a vehicle operated exclusively on a rail.
- (k) Night means the hours between 10:00 p.m. and 6:59 a.m.
- (l) Noise Disturbance: Any sound or vibration which
 1. may disturb or annoy reasonable persons of normal sensitivities or;
 2. causes, or tends to cause, an adverse effect on the public health and welfare or;
 3. endangers or injures people or;
 4. endangers or injures personal or real property.
- (m) Octave Band Sound Pressure Level: The sound pressure level detected in any band of frequencies one octave wide.
- (n) Person: Any individual, association, partnership, joint venture, company, or corporation.
- (o) Place of Public Entertainment: Any building that is open to the public for entertainment purposes.
- (p) Plainly Audible Sound: Any sound for which the information content is unambiguously communicated to the listener, such as, but not limited to, understandable speech, comprehension of whether a voice is raised or normal, repetitive bass sounds, or comprehension of musical rhythms, without the aid of any listening device.
- (q) Power Tool: Any device powered mechanically, by electricity, by gasoline, by diesel fuel or by any other fuel, which is intended to be used, or is actually used for, but shall not be limited to, the performance of such functions as cutting, nailing, stapling, sawing, vacuuming or drilling.
- (r) Real Property Boundary: An imaginary line along the ground surface and its vertical extension which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
- (s) Residential District: Any area of the City, designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as RE, RA-1, RA-2, RA-3, RA-4, RB-1, RB-2, RC-1, or RC-2.
- (t) Sound: A temporal and spatial oscillation in pressure, or other physical quantity, in a medium resulting in compression and rarefaction of that medium, and which propagates at finite speed to distant locations.
- (u) Sound Level: The conversion of sound pressure to a logarithmic measure called the decibel.
- (v) Sound Level Meter: an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighing networks used to measure sound pressure levels. The instrument shall comply with the standards for Type 1 or Type 2 sound level meters as specified in the American National Standards Institute ANSI S1.4-1983 (Revised 2001) with Amendments S1.4A-1995 or its successor.
- (w) Sound Pressure: The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.
- (x) Sound Reproduction Device: Any device, instrument, mechanism, equipment or apparatus for the amplification of

any sounds from any radio, computer, stereo, CD player, musical instrument, television, loudspeaker or other sound-making or sound-producing device or any device or apparatus for the reproduction or amplification of the human voice or other sound.

(y) Stationary Noise: noise which the source thereof is either affixed to or operated upon a fixed point of land, building or other real property.

(z) Total octave band sound pressure level: The sound pressure level of the source of concern, plus the ambient sound pressure level.

(aa) Vibration: A temporal and spatial oscillation of displacement, velocity, and acceleration in a solid material. Vibration is measured in vDba.

(3) Scope and Enforcement. This section shall apply to the control of all noise and vibration originating within the City of West Allis. The West Allis Health Department is the primary agency responsible for the enforcement of this section, and the West Allis Police Department may also enforce the provisions of this section. The City of West Allis's policy is to comply with this section in its own operations and in the operations of its contractors and subcontractors.

(4) Determining Sound Levels. Sound levels shall be measured using the following procedures:

(a) All persons conducting sound measurements to assess compliance with this ordinance must be trained in the current techniques and principles of sound measurement equipment and instrumentation.

(b) Instruments used to measure sound levels must, as a minimum standard, conform to the specifications of the American National Standard Institute ANSI S1.4-1983 (Revised 2001) with Amendments S1.4A-1995 for Type 1 or Type 2 sound level meters. Sound level meters shall be capable of both fast and slow meter response.

(c) The following steps must be followed when preparing to take sound level measurements:

1. The instrument manufacturer's specific instructions for preparation and use of the instrument shall be followed.
2. The sound level meter shall be calibrated periodically, in accordance with the manufacturer's instructions.
3. When outdoor measurements are taken, a windscreen shall be placed over the microphone of the sound level meter in accordance with the manufacturer's instructions.
4. The sound level meter shall be placed at an angle to the sound source, as specified by the manufacturer's instructions, and placed at least four (4) feet above the ground. The meter shall be placed so as not to be interfered with during the taking of sound measurements.
5. Measurements shall be taken at any point within a receiving zone which point is outside of the property line of the source of the stationary noise.
6. Impulsive noise shall be measured with the sound level meter set for fast meter response, all other noise shall be measured with the sound level meter set for slow meter response.
7. Under this section, noises capable of being accurately measured are those noises which cause no more than (+ or -) two decibels fluctuation of the sound level meter or, in the case of impulsive noise, the mean average of four peak readings measured over the period of an hour.

(5) Determining Vibration Levels. Vibration levels shall be measured using the following procedures:

- (a) All persons conducting vibration measurements to assess compliance with this ordinance must be trained in the current techniques and principles of vibration measurement equipment and instrumentation.
- (b) The instrument manufacturer's specific instructions for preparation and use of the instrument shall be followed.
- (6) Maximum Permissible Sound Levels.

(a) General Limitations: Except as enumerated in Subsection 8 of this Section below, sound emitted from any source of stationary noise shall not exceed the following limits at any point within a receiving zone which point is outside of the property line of the source of the stationary noise:

1. Noise Limitations in Various Use Districts.

Maximum Sound Pressure Levels (dB) Along District Boundaries

Octave Band Center Frequency (Hertz)	Residential	Commercial
31.5	69	72
63	67	71
125	62	66
250	54	60
500	47	54
1000	41	49
2000	36	44
4000	32	40
8000	30	37
A-scale levels	50 dBA	58 dBA

- (b) Additional Restrictions on Impulse Noise. A reduction of 5 dBA will apply to each of the limitations set forth under subsection (6)(a) and above for all impulse noises.
- (c) In the M-1 District, at no point where any such district boundary adjoins a residential or commercial district, or at one hundred twenty-five (125) feet from the nearest lot line of a plant or operation located within the M-1 District, whichever distance is greater, shall the sound pressure level emitted from any such plant or operation, or the combined operations of any person exceed the noise limitations (decibel levels) in the designated octave bands set forth above for the various use districts.
- (d) In Commercial and Residential Districts, any property use shall conform with the performance standards stated above, provided that performance standards shall, in every case, be applied at the boundaries of the lot on which such use is established.
- (e) When an octave band analysis is not done, an A-weighted sound level measurement of the noise shall be taken. When this method is used, the noise limitations shall be the A-scale levels included in the table.
- (f) When the total octave band sound pressure level exceeds the noise source limitations, because of high ambient sound levels, the following correction factors shall be subtracted from the total sound pressure level to determine compliance with this section:

When the ambient level differs from the noise source limitation by: The correction factor to be subtracted is:

-10 dB or More	0	
-4 to -9 dB		1
-2 to -3 dB		2
0 to -1 dB		3
+1 dB		4

(g) When the ambient level is 2 dB or more above a noise limitation, a source may add no more than 2 dB to the ambient level.

(7) Public Nuisance. Excessive noise and vibration, as defined in this section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures, as provided in Section 7.03(3) of this Code. Such abatement shall be in addition to administrative proceedings, forfeitures, and penalties provided in this section.

(8) Noise Disturbance Prohibited. No person shall make, continue, or cause to be made or continued, any noise disturbance. No person shall make, continue, or cause to be made or continued any noise which exceeds the noise limitations as set forth in this section. Unamplified, non-commercial public speaking and public assembly activities conducted at conversational voice levels on any public property or public right-of-way shall be exempt from the operation of this article if such sound is not plainly audible beyond 150 feet or does not infringe on the legitimate rights of others.

(a) Sound Reproduction Devices. No person shall operate, play, or permit the operation of or playing of any sound reproduction device at night that is plainly audible across a real property boundary. No person shall operate, play, or permit the operation of or playing of any sound reproduction device during the day that is plainly audible from 150 feet beyond the real property line of the premises from which it emanates or from the source if located in a public street, public park, or other public place.

(b) Sound Amplification Device. No person shall use or operate for any sound amplification device, loudspeaker, public address system, or similar device at night that is plainly audible across a real property boundary. No person shall use or operate any sound amplification device, loudspeaker, public address system, or similar device during the day that is plainly audible at a distance of 150 feet.

(c) Loading and Unloading. No person shall load, unload, open, close, or otherwise handle boxes, crates, containers, building materials, garbage cans, or similar objects at night, in a manner that is plainly audible across a real property boundary.

(d) Domestic Power Tools. No person shall operate, or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snow blower, leaf blower, or similar device used outdoors at night.

(e) Tampering. No person shall remove or render inoperative any noise control device, element of design, or noise label of any product, other than for the purpose of maintenance, repair, or replacement; or, no person shall modify or replace any noise control device to increase the sound pressure level of the device.

(f) Multi-family dwellings. No person shall make, continue, or cause to be made or continued any noise disturbance at night that is plainly audible in another occupied space within any multi-family dwelling within the real property boundary.

(g) Places of Public Entertainment. No person shall operate, play or permit the operation or playing of any sound reproduction device, sound amplifier or similar device, or any combination thereof, which produces, reproduces or amplifies sound in any place of public entertainment at a sound level greater than 100 dBA, as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least two hundred twenty-five (225) square inches in area is placed outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."

(h) Train Warning Devices. It shall be unlawful for any person owning or operating any railroad, or any of its agents and employees, to cause the ringing of any bell or the blowing of any whistle or horn within the City limits on any locomotive under its control, except in the event of an emergency to avoid an impending accident, or where otherwise permitted by state or federal law.

(i) Motor Vehicles.

1. Light Motor Vehicles. It shall be unlawful for any person to create or cause or permit noise levels from the operation of any motor vehicle of ten thousand (10,000) pounds (4536 kilograms) gross vehicle weight rating, or less, including, but not limited to, passenger automobiles, light trucks or motorcycles, in excess of 80 dBA at any location within the corporate limits of the City of West Allis. Measurement shall be made at a distance of fifteen (15) feet (4.6 meters), or more, from the closest approach of the vehicle.

2. Heavy Motor Vehicles. It shall be unlawful for any person to create or cause or permit noise levels from the operation of any motor vehicle of more than ten thousand (10,000) pounds (4536 kilograms) gross vehicle weight rating in excess of 86 dBA in a zone with a speed limit of more than thirty-five (35) miles (56 kilometers) per hour. Measurement shall be made at a distance of fifty (50) feet (15 meters) from the closest approach of the vehicle in use.

3. Stationary Testing.

a. Light Motor Vehicles. Motor vehicles of ten thousand (10,000) pounds (4536 kilograms) gross vehicle weight rating, or less, shall not exceed 95 dBA at twenty (20) inches (0.5 meters) in the stationary run-up test. Such tests shall conform to the Society of Automotive Engineers Recommended Practices SAE J1169, a copy of which is on file in the office of the Health Commissioner.

b. Heavy Motor Vehicles. Motor vehicles of more than ten thousand (10,000) pounds (4536 kilograms) gross vehicle weight rating shall not exceed 88 dBA measured at fifty (50) feet (15 meters) under stationary run-up. Stationary run-up tests shall conform to the Society of Automotive Engineers SAE Standard J366b, a copy of which is on file in the office of the Health Commissioner.

(j) Vibration. No person shall operate or permit the operation of any device or combination of devices that creates vibration which exceeds 70 VdBa, as measured at or across a real property boundary of the premises from which it emanates or from the source if located in a public street, public park, or other public place.

(9) Exemptions. The provisions of this ordinance 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, or the emission of sound brought about by emergency conditions where such sound is a byproduct of activities necessary for the preservation of public safety or the protection of the health, safety and welfare of any person or property.

(b) Warning devices necessary for the protection of public safety, the emission of any noise necessary for the protection of the health, safety, or welfare of person or property or to any noise which is either necessary or required by law.

(c) The operation of authorized emergency vehicles.

(d) Public works projects as authorized by the United States government, the State of Wisconsin, and/or other political subdivisions.

(e) Limited Exemptions for Construction Noise.

1. No person shall operate or permit the operation of any equipment used in construction work at night.
 - a. Emergency Work. The hour limitations in this subsection shall not apply to emergency work.
2. No person shall operate or permit the operation of any equipment used in construction work that exceeds 86dBa or 70VdBa when the sound or vibration level is measured at or across a real property boundary or from the source if located in a public street, public park, or other public place without prior approval from the Common Council's Board of Public Works.
 - (f) Parades duly licensed, pursuant to Section 6.031 of this Code.
 - (g) Aircraft operations.
 - (h) Any fireworks display permitted under and operated in compliance with Section 167.10, Wis Stats.
 - (i) Any bells or chimes of any building clock, public or private school building, church, synagogue, or other place of religious worship.
 - (j) Carnivals duly licensed, pursuant to Section 9.09 of this Code.
- (10) Notice of Violation.
 - (a) When the ambient noise or vibration level at the site of a stationary or fixed noise producing device equals or exceeds the decibel limits provided in this section, the Health Commissioner or his/her designee shall serve a notice, by first-class mail, on the person(s) or corporation creating or maintaining the noise. The notice shall be dated, contain a description of the violation, and advise such person of the right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed.
 - (b) For violations of subsection (8)(a)-(g), officers of the West Allis Police Department may issue a citation, without prior notice of the violation.
- (11) Variance.
 - (a) Application for Variance Permit. The owner or operator of a stationary or fixed noise producing or vibration producing device may seek a variance from the noise and/or vibration limitations herein. Application for a variance from the noise and/or vibration limitation in a zoning district shall be made to the City Clerk thirty (30) days of the applicant receiving notice that s/he or it is in violation of this Section. The proper filing of an application within such time shall toll all penalties provided in this section for any such violation until a final decision has been issued on the merits of such application. Such application shall specify the grounds upon which the variance permit is sought and the date by which the source of any excess noise or vibration for which the variance is sought shall be brought into compliance with this section.
 - (b) Hearing on Variance Permit. Within 15 days of receiving the application for a variance permit, the License and Health Committee shall schedule the matter for a public hearing. The Clerk shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.
 - (c) Procedure at Hearing. At the hearing, the appellant, the municipal authority, and any person or corporation who claims to be adversely affected by allowance of the variance permit may be represented by an attorney and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. In addition, the License and Health Committee may examine such other persons as it may deem necessary for a fair and impartial hearing. All witnesses shall be sworn by the chairperson of the License and Health Committee. The clerk shall record the testimony by means of a recording device or stenographer and shall mark and preserve all exhibits and testimony.

1. Subpoenas. The Committee may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Section 805.07 (4), Wis. Stats. and must be served in the manner provided in Section 805.07 (5), Wis. Stats. The attorney shall, at the time of issuance, send a copy of the subpoena to the License and Health Committee.

(d) Recommendation to the Common Council.

1. After the close of the hearing, the Committee shall deliberate and reach a decision. Based on the evidence presented at the hearing, the Committee shall recommend to the Common Council whether a variance permit should be issued and under what conditions the Committee finds necessary to protect the public health, safety and welfare, including a schedule for achieving compliance with noise and vibration limitations. In deciding whether to recommend granting the permit, the Committee shall balance the hardship to the applicant, the community, and other persons; the impact on the health, safety, and welfare of the community; the effect on the property in the area; and any other impact that the granting of the variance may have. The Committee shall prepare findings on factual matters, conclusions of law, and a recommendation on what action, if any, should be taken with regard to the license(s) at issue. The report shall be filed with the City Clerk/Treasurer with a copy to the licensee and complainant. The findings and recommendations shall be distributed to each member of the Common Council.

2. The licensee and complainant may file a written statement or response to the findings and recommendation, including objections, exceptions, and arguments of fact and law. A written statement must be filed with the City Clerk/Treasurer before the close of business on a day that is at least three working days prior to the date set for determination by the Common Council. Copies of written statements shall be provided to each member of the Common Council at least 24 hours before any vote on the matter is scheduled before the Common Council.

(e) Common Council Determination.

1. Not less than five working days prior to the matter being scheduled before the Common Council, the Clerk/Treasurer shall notify the licensee and complainant by U.S. first class mail, postage prepaid, sent to the last known address, that the Common Council will convene to determine the matter.

2. Unless an alderperson states that he/she has not read the findings and recommendations, and written statements, if any, the matter shall proceed to debate amongst members of the Common Council. Neither the complainant nor the licensee shall be permitted to make oral arguments.

3. The Common Council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the Committee or make such modification as is deemed appropriate. Such vote shall be a roll call vote, and such hearing shall constitute the final determination of the matter. If the Common Council finds the complaint to be untrue or unsupported by sufficient evidence, the proceedings shall be dismissed without cost to the accused.

(f) The permit, if granted, shall contain a time limit for such activity. Variances exceeding two (2) years may be granted only in exceptional cases, including those for which, in the opinion of the Committee, control technology is unavailable or available only at a prohibitive cost. Non-compliance with any conditions imposed on the variance shall terminate the variance and subject the person or corporation holding it to those provisions of this section for which the variance permit was granted.

(g) Notice of Decision. Within twenty (20) days after completion of the hearing, the Clerk shall mail the decision of the Committee to all parties to the appeal, as well as any other persons who may have appeared therein, at their last known post office address. Such notice shall specify the grounds of the decision.

(h) Extension and Modification. Application for extension of time limits or modification of other conditions specified in

the variance permit shall be treated like applications for an initial variance, except that the Common Council must find that the need for such extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

(i) Judicial Review. Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination.

1. If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense.

(12) Effect of Zoning Change of Affected Property. When the zoning classification of a receiving property is changed in a manner which would result in an existing noise source being in noncompliance with this ordinance, the noise source shall be considered a nonconforming use.

(13) Penalties. Any person violating any provision of this ordinance shall, upon conviction, be subject to a forfeiture of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense, together with the costs of prosecution. In default of payment thereof, the person shall be imprisoned in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(1) (b) of the Wisconsin Statutes, and/or by suspension of the defendant's operating privilege, pursuant to Section 800.095(1) (a) of the Wisconsin Statutes. Each day that any violation continues shall be considered a separate offense.

(14) Severability. If any provision, clause, sentence, paragraph, or phrase of this ordinance or the application thereof to any person or circumstances is held, for any reason by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. This ordinance shall take effect and be in force from and after its passage and publication.

ATTO-Repeal&RecreateSec 7.035ExcessiveNoise&Vibration