



City of West Allis

Legislation Text

File #: O-2013-0047, Version: 3

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

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PART I. Section 7.035 of the Revised Municipal Code is hereby repealed and recreated to read as follows: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

(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 (hereinafter "ANSI") or its successor body.

(a) "A-Weighted Sound Level" means 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 dB(A).

(b) "Ambient Noise" means the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources from near and far.

(c) "Authorized Emergency Vehicle" means the definition of this term as set forth in Sec. 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" means 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 PDD-2.

(e) "Construction" means 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) "dB(A)" means the symbol designation of a noise level, reported in decibels, using the A-Weighting network of a sound level meter, as defined in ANSI S1.4 - Specification for Sound Level Meters. For example, noise will be reported as seventy-two (72) dB(A). For purposes of this ordinance, the noise shall be measured using the slow exponential time weighting characteristic of the sound level meter unless otherwise noted.

(h) "Decibel" means a unit of measure of the volume of a sound.

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

(j) "Impulse Noise" means any sound of short duration, usually less than one (1) second, with an abrupt increase, rapid decay, and a peak value that exceeds the ambient noise level by more than ten (10) dB(A). Examples of sources of impulse noise include explosions, drop forge impacts, and the discharge of firearms.

(k) "Manufacturing District" means any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as M-1.

(l) "Maximum Sound Level" (hereinafter "Lmax") means the maximum sound level over a measurement interval determined by using a sound level meter set to "Fast" response time.

(m) "Motor Vehicle" means any vehicle, including a combination of 2 or more vehicles or an articulated vehicle, that is self-propelled, except a vehicle operated exclusively on a rail.

(n) "Night" means the hours between 10:00 p.m. and 6:59 a.m.

(o) "Noise Disturbance" means 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.

(p) "Person" means any individual, association, partnership, joint venture, company, or corporation.

(q) "Place of Public Entertainment" means any building that is open to the public for entertainment purposes.

(r) "Plainly Audible Sound" means 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.

(s) "Power Tool" means 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.

(t) "Real Property Boundary" means 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.

(u) "Residential District" means 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, RC-2, or PDD-1.

(v) "Root Mean Square" (hereinafter "RMS") means the square root of the mean-square value of an oscillating waveform, where the mean-square value is obtained by squaring the value of amplitudes at each instant of time and then averaging these values over the sample time.

(w) "Sound" means 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. The description of sound may include any characteristics of such sound, including duration, intensity, and frequency.

(x) "Sound Level Meter" means an instrument, either Type I or Type II, as defined by the most current ANSI specifications. A sound level meter for purposes of this section shall contain at least an A-scale and both fast and slow response.

(y) "Sound Pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy.

(z) "Sound Reproduction Device" means 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.

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

(bb) "VdB" means the vibration level as measured in decibels. The reference velocity in the United States is one micro-inch per second. It is calculated as $VdB = 20 \times \log_{10}(v / (1 \times 10^{-6} \text{ in./sec.}))$, where "v" is the RMS velocity amplitude, calculated as the average of the squared amplitude of the vibration, measured in inches per second.

(cc) "Vibration" means a temporal and spatial oscillation of displacement, velocity, and acceleration in a solid material.

(dd) "Vibration Velocity Level" (hereinafter "LV") means ten (10) times the common logarithm of the ratio of the square of the amplitude of the RMS vibration velocity to the square of the amplitude of the reference RMS vibration velocity.

(3) Scope and Enforcement. This section, in addition to other ordinances and statutes, shall apply to the control of 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) Sound level shall be measured with a Type 1 or Type 2 sound level meter that shall, as a minimum standard, conform to the specifications of ANSI S1.4-1983 (Revised 2001) with Amendments S1.4A-1995 for Type 1 or Type 2 sound level meters and 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 sound level meter manufacturer's specific instructions for preparation and use of the sound level meter 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. 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.

6. All sound level measurements shall be made using an "A" weighted network of the sound level meter.

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

(a) All persons conducting vibration measurements to assess compliance with this section 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, in the following zoning districts, the noise emitted from any source of stationary noise shall not exceed the following dB(A) limits at any point beyond one hundred twenty-five (125) feet outside of the real property boundary of the source of the stationary noise or beyond one hundred twenty-five (125) feet of the noise source on public property:

SOUND PRESSURE LEVEL

Zone	Time	Decibel (dB(A)
		Level
Residential, Park District	10:00 p.m. to 6:59 a.m.	55 dB(A)
	7:00 a.m. to 9:59 p.m.	65 dB(A)
Commercial, Manufacturing	10:00 p.m. to 6:59 a.m.	60 dB(A)
	7:00 a.m. to 9:59 p.m.	70 dB(A)

(b) A reduction of 5 dB(A) will apply to each of the limitations set forth under subsections (6)(a) for all impulse noises.

(c) When the ambient level is 2 dB(A) or more above a noise limitation, a source may add no more than 3 dB(A) 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) and Section 18.04 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 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, leaf blower, or similar device at night.

1. This subsection does not apply to snow blowers being used to remove snow that has fallen within the past 24 hours.

(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; 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 dB(A), 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. No person owning or operating any railroad, or any of its agents and employees, shall cause the ringing of any bell or the blowing of any whistle or horn within the City limits on any locomotive under his/her 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. No person shall create or cause or permit noise levels from the operation of any motor vehicle of ten thousand (10,000) pounds gross vehicle weight rating or less, including, but not limited to passenger automobiles, light trucks or motorcycles, in excess of 80 dB(A) at any location within the corporate limits of the City of West Allis. Measurement shall be made at a distance of fifteen (15) feet or more from the closest approach of the vehicle.

2. Heavy Motor Vehicles. No person shall create or cause or permit noise levels from the operation of any motor vehicle of more than ten thousand (10,000) pounds gross vehicle weight rating in excess of 86 dB(A) in a zone with a speed limit of more than thirty-five (35) miles per hour. Measurement shall be made at a distance of fifty (50) feet from the closest approach of the vehicle in use.

3. Stationary Testing.

a. Light Motor Vehicles. Motor vehicles of ten thousand (10,000) pounds gross vehicle weight rating or less shall not exceed 95 dB(A) at twenty (20) inches in a 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 gross vehicle weight rating shall not exceed 88 dB(A) measured at fifty (50) feet in a stationary run-up test. 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) Refuse Collection Vehicles and Compacting Equipment.

1. No person shall collect refuse or permit the collection of refuse with a refuse collection truck at night.
2. No person shall operate or permit the operation of the compacting equipment mechanism of any motor vehicle which compacts refuse at night.

(k) Vibration. No person shall operate or permit the operation of any device or combination of devices that creates vibration which exceeds the amounts listed in the table below, 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.

Event Frequency	Lv (VdB)
Frequent (>70 events per day)	72
Occasional	75
Infrequent (<30 events per day)	80

(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, at or adjacent to the construction site, as authorized by the United States government, the State of Wisconsin, and/or other political subdivisions.

(e) Limited Exemptions for Construction Noise. The provisions of this ordinance shall not apply to equipment used in commercial construction activities when such equipment has sound control devices no less effective than those provided in the original equipment, a muffled exhaust, and are in compliance with the pertinent standards of the U.S. Environmental Protection Agency.

1. No person shall operate or permit the operation of any equipment used in construction work at night or on Sunday.

a. Emergency Work. The hour limitations in this subsection shall not apply to emergency work.

(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 Wis. Stat. Section 167.10.

(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 of a 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 owner and occupant of the premises that is creating or maintaining the noise. The notice shall be dated, contain a description of the violation, require the person to remove or abate the condition described in the order within the time specified therein, and advise such person of the right to apply for a variance permit and the office or person to whom the variance permit application shall be filed.

(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 occupant of the premises may seek a variance from the noise and/or vibration limitations herein. A new or renewal application for a variance from the noise and/or vibration limitations in a zoning district shall be made to the City Clerk. The proper filing of an application 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 sixty (60) days of receiving the application for a variance permit, the License and Health Committee shall hold a public hearing. The City Clerk shall serve the appellant with notice of such hearing by mail or personal service at least ten (10) days before such hearing.

(c) Procedure at Hearing. If the matter proceeds to hearing before the Committee, the following procedures shall apply:

1. The variance applicant shall first present evidence in support of the variance.
2. After the variance applicant rests, any person(s) who claims to be adversely affected by allowance of the variance permit may present evidence in opposition to the variance.
3. After the variance applicant and any person(s) who claims to be adversely affected by allowance of the variance permit rest, the Health Commissioner may present evidence in regard to the variance application.
4. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.

5. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit shall each be limited to one (1) hour for testimony unless the chair, subject to approval of the Committee, extends the time to assure a full and fair presentation.

6. Questions by Committee members or the advising City Attorney and answers to such questions shall not be counted against the time limitations.

7. At the close of testimony, the variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit shall be given a reasonable time to make arguments upon the evidence produced at hearing.

(d) Miscellaneous Procedural Matters.

1. At all stages of the proceedings, the variance applicant and any person(s) who claims to be adversely affected by allowance of the variance permit shall be entitled to appear in person or by an attorney of his or her own expense.

2. The Health Commissioner may be represented by a City Attorney.

3. The Committee shall be, when required, advised by an advisory City Attorney who shall not be the same individual as the City Attorney representing the Health Commissioner.

4. The chair of the License and Health Committee shall be the presiding officer. The chair shall direct that oaths and affirmations be administered and subpoenas issued upon request of each person. The chair shall ensure that an orderly hearing is conducted in accordance with the provisions of this section. The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the Committee and a majority vote of those members present and voting reverses such ruling.

5. An audio recording or stenographic record shall be made of all proceedings at the hearing, and the clerk shall mark and preserve all exhibits and testimony. Any interested party may obtain a copy of the recording or transcript at his or her own expense.

(e) 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 within twenty (20) days and the Clerk shall mail a copy of the report to the last-known address of the variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by the allowance of the variance permit. The findings and recommendations shall be distributed to each member of the Common

Council.

2. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by the allowance of the variance permit 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.

(f) Common Council Determination.

1. Not less than five (5) working days prior to the matter being scheduled before the Common Council, the Clerk/Treasurer shall notify the variance applicant and any person(s) who claims to be adversely affected by the allowance of the variance permit 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 variance applicant nor any person(s) who claims to be adversely affected by the allowance of the variance permit 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. The Clerk/Treasurer shall notify the variance applicant and any person(s) who claims to be adversely affected by the allowance of the variance permit by U.S. first class mail, postage prepaid, sent to the last known address, of the Common Council's decision.

(g) 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.

(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 thirty (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) 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)1 of the Wisconsin Statutes. Each day that any violation continues shall be considered a separate offense.

(13) 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&Recreate AMEND Sec 7.035ExcessiveNoise&Vibration to NoiseControlRegulation