

The Necessary Noise Ordinance: How to Navigate Potential Constitutional Pitfalls

With the advent of warmer temperatures, so abound backyard parties, outdoor activities and music from open car and house windows. This is also the time of year, not coincidentally, when towns receive an increasing number of complaints from residents about intrusions into their peace and quiet. Residents often ask their local governments to enact or to enforce reasonable controls to prevent unwanted noise from interfering with their everyday lives. But unwelcome sound is subjective at best, and creating and enforcing regulations to limit it can be fraught with constitutional hazards for the unwary town.

The first difficulty for a municipality is ensuring that the enactment prohibits the unwanted noise while still allowing and encouraging the usual sounds found in a vibrant and healthy community.

The second potential pitfall is ensuring that the legislation can be enforced. This is no easy task, and, given the disparity among residents about what noise is acceptable, the ensuing litigation over enforcement is not surprising. When someone challenges a noise regulation, it is often on vagueness grounds. These “void for vagueness” attacks spring from constitutional due process

considerations; laws must give an ordinary person a reasonable opportunity to know what conduct is prohibited. Further, such legislation must be able to be enforced in a fair and nondiscriminatory manner. Only by meeting both requirements will a regulation survive a constitutional

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While noise ordinances seem fairly pedestrian and unlikely to incur the wrath of the courts, a recent decision from the Supreme Court of Virginia striking down a city’s noise ordinance demonstrates otherwise. And, because noise ordinances are particularly subject to challenge by those who want to exercise their First Amendment freedoms, a town can easily find itself embroiled in long-running and costly litigation.

Decisions from the highest court in New York provide some assistance in drafting and enforcing noise controls.

One key to navigating the constitutional spectrum is drafting legislation that is sufficiently definite

for the noise limitations sought. Some communities only want to target loud car radios, for example, while others seek to limit all unnecessary loud noises. Define the unnecessary or unreasonable noise so that anyone reading your law will understand what that unwanted noise is as well as where the intrusive level begins. While many towns attempt to do this with definitions that include language such as “sounds that annoy or disturb the peace or safety of a person,” a better approach would

be to incorporate words reflecting “intent to cause public inconvenience, annoyance or alarm” that a person of “normal sensitivities would not tolerate.” In some instances, defining the unwanted sound level using decibel measurements is appropriate, thereby removing the subjective component altogether.

The prohibitions should also be clearly detailed:

- Do you want to limit yelling, animal noises, horns, music and other car sounds?
- What about noise from construction activities, lawn maintenance, air conditioners, generators and snowblowers?
- The standards of noise detection

will likely play a role in your legislation too; address the volume, intensity, origin, proximity to residential areas or other sensitive receptors, time of day and the like.

Such details will help your code enforcement officer or other official with the difficult task of enforcing the noise ordinance.

Finally, there are exceptions that towns should consider when crafting their law. Certainly, no municipality wants to punish or diminish emergency services. Exceptions for police officers, fire personnel and similar emergency responders while executing their duties may therefore be appropriate. This will also help

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the regulation withstand constitutional scrutiny, as you are not trying to limit all loud or offensive sounds.

Scrutinize your noise ordinance to ensure it can be fairly applied:

- Will a person of reasonable and ordinary senses know what is prohibited?
- Can your code enforcement officer reasonably enforce it?
- Does it target the specific noise concern you have, or is it overly broad?

All of these factors are important when a town is considering enacting new legislation, or if it is reviewing a current law. It is a good time of year to consider these laws, whether creating them or looking at them anew.