

## Chapter 1G — Noise Control

NJLNCA

### 13:1G-1. Short title

This act shall be known and may be cited as the "Noise Control Act of 1971."

### 13:1G-2. Legislative findings

The Legislature finds and determines that the people of the State are entitled to and should be insured an environment free from noise which unnecessarily degrades the quality of life; that the levels of noise in the community have reached such a degree as to endanger the health, safety and welfare of the people of this State as well as the integrity of the environment; and that this threat can be abated by the adoption and enforcement of noise standards embodied in regulations.

### 13:1G-3. Definitions

For the purposes of this act, the following words shall have the following meanings:

a. "Commissioner" means the Commissioner of the State Department of Environmental Protection.

b. "Council" means the Noise Control Council created under this act.

c. "Department" means the State Department of Environmental Protection and Energy.

d. "Noise" means any sounds of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the State or in any portions thereof, but excludes all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment.

e. "Person" means any corporation, company, association, society, firm, partnership, and joint stock company as well as individuals, and shall also include the State and all its political subdivisions and any agencies or instrumentalities thereof.

### 13:1G-4. Codes, rules and regulations; contents; promulgation; enforcement

The department, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) shall, from time to time, adopt, amend, repeal and enforce reasonable codes, rules and regulations necessary to carry out the intent of this act. Such codes, rules and regulations may include, but shall not be limited to the following:

a. Antidegradation provisions which restrain noisemakers from raising their noise output to the maximum allowable limit.

b. Curfew provisions which prohibit particular noisemaking activities or operations during particular days or particular hours;

- c. Spill-over provisions which consider noise only to the extent that it spills over a property line;
- d. Zonal provisions which restrict particular noisemaking activities to specified areas;
- e. Accessory provisions which prohibit the use of machines or vehicles without noise quieting devices and materials such as mufflers, insulation or isolators; and
- f. License and permit provisions which limit or require compliance with performance standards as a condition to the installation or operation of machinery and equipment in the conduct of noisemaking activities.

#### **13:1G-4.1. Municipal curfew; alarm**

It shall not be a violation of the "Noise Control Act of 1971" P.L.1971, c. 418 (C. 13:1G-1 et seq.) or any rule or regulation promulgated by the Department of Environmental Protection and Energy pursuant to that act, for a municipality to sound an alarm by siren, bell or other appropriate method in order to warn juveniles of the approach or arrival of the curfew hour established by municipal ordinance; providing that the governing body of the municipality has, by ordinance, determined to sound an alarm.

#### **13:1G-4.2. Sirens and other emergency sound emitting devices; minimum distance from schools and playgrounds**

a. A siren or other sound emitting device used to alert fire fighters or other emergency services personnel of a fire or other emergency shall be located no closer than 250 feet from any elementary school or adjacent school yard or playground, except that this prohibition shall not apply to any siren or sound emitting device that is located on the premises of a fire station or other facility operated by a local fire department or force or first aid, rescue or emergency squad.

This subsection shall not apply to sirens or other sound emitting devices placed in service before July 16, 1992, and located in municipalities with a population of less than 25,000 persons and with a population density of more than 2,500 persons per square mile, according to the latest federal decennial census.

Nothing in this subsection shall have the effect of restricting the use of a siren or other sound emitting device to alert the public of an emergency pursuant to the provisions of the emergency management act, P.L. 1942, c. 251 (c. App. A:9-33 et seq.), or any applicable federal laws or regulations pertaining to emergency planning and preparedness.

b. The Commissioner of Environmental Protection and Energy shall promulgate rules and regulations necessary to carry out the purposes of this act pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

#### **13:1G-5. Powers of department**

The department, in addition to its power to make and enforce codes, rules or regulations promulgated by it, and in furtherance of said power, shall also have the power to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of noise.

b. Conduct and supervise Statewide programs of noise control education, including the preparation and distribution of information relating to noise control.

c. Require the registration of persons involved in operations which may result in noise and the filing of reports by them containing information relating to the sources of said noise and such other information as the department shall prescribe. Such registration may be revoked or suspended or renewal withheld, for any violation of this act or of any codes, rules, regulations or orders promulgated hereunder. The department may in accordance with a fee schedule adopted as a rule or regulation establish and charge nonrefundable fees for registration which may be annual or periodic as the department shall determine. The registration fee shall not be less than \$10.00 nor more than \$250.00 based on criteria contained in the fee schedule.

d. Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of noise and ascertaining compliance or noncompliance of any code, rule and regulation of the department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination shall be kept confidential and shall not be admissible in evidence in any court or in any other proceeding except to the extent herein provided. If tests of any type are made for the purpose of determining whether or not a violation has occurred, or for any other purpose in connection with such entry and inspection, a duplicate of the results of the tests shall be furnished promptly to the person suspected of violating the code, rule or regulation.

e. With the approval of the Governor, cooperate with and receive money from the Federal Government, the State Government or any county or municipal government or from private sources for the study and control of noise.

f. Receive or initiate complaints of noise, hold hearings in connection therewith and institute legal proceedings for the prevention of noise and for the recovery of penalties, in accordance with this act.

### **13:1G-6. Motor vehicles; control of noise; codes, rules and regulations**

The department, after consultation with the Director of the Division of Motor Vehicles, shall have the power to formulate, promulgate, amend and repeal codes, rules and regulations establishing standards and requirements for the control of noise from motor vehicles.

### **13:1G-7. Application of code, rule or regulation to motor vehicles**

Any code, rule or regulation establishing standards and requirements for the control of noise from motor vehicles shall be applicable to such classification of motor vehicles as the department shall determine to be necessary to carry out the purpose of this act and shall apply to such motor vehicles not earlier than 180 days following the date of adoption.

### **13:1G-8. Motor vehicles; inspections; compliance with standards of noise control**

Any motor vehicle which is subject to inspection by the Division of Motor Vehicles or any other duly authorized body shall, as a condition of compliance with said inspection, pass such tests as may be required to demonstrate that the motor vehicle compliance with any standards

and requirements for the control of noise established by the New Jersey State Department of Environmental Protection and Energy which are applicable to such motor vehicle.

**13:1G-9. Motor vehicles; operation in violation of noise standards; penalty**

Any person who operates a motor vehicle or owns a motor vehicle which he permits to be operated upon the public highways of this State which generates noise in excess of standards adopted by the department shall be liable to a penalty of not less than \$25.00 nor more than \$1,000.00 which shall be enforced in accordance with the provisions of chapter 5 of Title 39 of the Revised Statutes.

**13:1G-10. Obstruction or interference with performance of duties by department personnel**

No person shall obstruct, hinder or delay, or interfere with by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or refuse to permit such personnel to perform their duties by refusing them, upon proper identification or presentation of a written order of the department, entrance to any premises.

**13:1G-11. Violations; investigation; order to cease; enforcement; corrections by violator; hearings**

Whenever the department has cause to believe that any person is violating any code, rule or regulation promulgated by the department, the department shall cause a prompt investigation to be made in connection therewith.

If upon inspection the department discovers a condition which is in violation of any provision of this act or any code, rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order. The said order shall state the items which are in violation and shall provide a reasonable specified time within which the violation must cease.

The person responsible shall make the corrections necessary to comply with the requirements of this act or code, rule or regulation promulgated pursuant thereto within the time specified in the order.

Nothing herein shall be deemed to prevent the department from prosecuting any violation of this act or any code, rule or regulation promulgated pursuant thereto notwithstanding that such violation is corrected in accordance with its order. The department shall not be prevented from directly prosecuting any violations of this act or any code, rule, or regulation promulgated pursuant thereto, without the necessity of first issuing an order.

Any person aggrieved by an order of the department under this act may, upon application made within 15 days after notice thereof, be entitled to a hearing before the department which shall within 30 days thereafter hold a hearing of which at least 15 days' written notice shall be given to such persons. Within 30 days after such hearing the department shall issue an appropriate order modifying, approving or disapproving its prior order. A copy of such order shall be served upon all interested parties. Pending the determination by the department and upon application therefor the department may stay the operation of such order upon such terms and conditions as it may deem proper.

### **13:1G-12. Hearings; testimony; copies of transcript or record**

The testimony taken at any hearing shall be under oath and recorded stenographically, but the parties shall not be bound by the strict rules of evidence prevailing in the courts of law and equity. True copies of any transcript and of any other record made of or at such hearings shall be furnished to any party thereto upon request and at his expense.

### **13:1G-13. Hearings; hearing officer; powers**

Any hearing required by this act to be held before the department shall be held before the commissioner or a member of the department designated by him, who shall have power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter under investigation in any such hearing. The department, at the request of any respondent to a complaint made by it, or to it, pursuant to this act, shall subpoena and compel the attendance of such witnesses as the respondent may designate and require the production for examination of any books or papers relating to any matter under investigation in any such hearing.

### **13:1G-14. Violations; injunction; penalty; jurisdiction; power to compromise and settle**

If any person violates any of the provisions of this act or any rule, regulation or order promulgated pursuant to the provisions of this act, the department may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

Any person who violates the provisions of this act or any rule, regulation or order promulgated pursuant to this act shall be liable to a penalty of not more than \$3,000.00 for each offense, to be collected in a summary proceeding under the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.), and in any case before a court of competent jurisdiction wherein injunctive relief has been requested, except as provided in section 9 of this act. The Superior Court shall have jurisdiction to enforce said Penalty Enforcement Law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances, including a rebate of any such penalty paid to the extent of 75% thereof where such person satisfies the department within 1 year or such other period as the department may deem reasonable that such violation has been eliminated or removed or that such order or injunction has been met or satisfied as the case may be.

### **13:1G-15. Judicial review**

Review of any final decision or action by the department or review of the validity of any code, rule or regulation of the department shall be in accordance with the rules of court.

### **13:1G-16. Cooperation and agreements with other governmental agencies**

The department shall cooperate with the Departments of Labor, Health, Community Affairs, Transportation, and Agriculture, with the State Division of Motor Vehicles, with the Federal Aviation Administration and with any other appropriate governmental agency while preparing and before promulgating any codes, rules and regulations. The department shall also be

empowered to enter into agreements with the above mentioned agencies to expedite the administration of said codes, rules and regulations and to reduce the number of inspections which any person or premise might be subjected to.

### **13:1G-17. Noise control council**

There is hereby created in the Department of Environmental Protection and Energy a Noise Control Council, which shall consist of 13 members, four of whom shall be the Commissioner of Community Affairs or a member of the Department of Community Affairs designated by him, the Commissioner of Health, or a member of the Department of Health designated by him, the Commissioner of Labor, or a member of the Department of Labor designated by him, and the Director of the Division of Motor Vehicles, or a member of the Division of Motor Vehicles designated by him, all of whom shall serve ex officio, and nine public members, all of whom shall be appointed by the Governor. The public members shall include a medical doctor, an industrialist, an ecologist, a civil engineer and a member of a local governing body.

Of the nine members first to be appointed by the Governor, two shall be appointed for a term of 1 year, two for a term of 2 years, two for a term of 3 years, and three for terms of 4 years beginning on January 1, 1972. Thereafter, all appointments shall be made for terms of 4 years beginning on January 1. All appointed members shall serve after the expiration of their terms until their respective successors are appointed and shall qualify, and any vacancy occurring in the appointed membership of the council, by expiration of term or otherwise, shall be filled in the same manner as the original appointment for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid. The Governor may remove any appointed member of the council for cause after a public hearing.

Members of the council shall serve without compensation, but shall be reimbursed for expenses actually incurred in attending meetings of the council and in the performance of their duties as members thereof.

The council shall elect biannually a chairman and vice-chairman from its own membership, and seven members of the council shall constitute a quorum to transact its business.

### **13:1G-18. Powers and duties of council**

The Noise Control Council shall:

- a. Request from the commissioner information concerning the noise control program.
- b. Consider any matter relating to the preservation and improvement of the noise control program and advise the commissioner thereof.
- c. From time to time, submit to the commissioner any recommendations which it deems necessary for the proper conduct and improvement of the noise control program.
- d. Study the noise control program and make its recommendations thereon to the commissioner.
- e. Study the codes, rules and regulations promulgated by the department in regard to noise control and make its recommendations for their improvement to the commissioner.
- f. Study and investigate the state of the art and the technical capabilities and limitations of noise control and report its findings and recommendations thereon to the commissioner.

g. Study and investigate the need for programs for the long-range technical support of the noise control program and report its findings and recommendations thereon to the commissioner.

h. Hold public hearings at least once a year in regard to existing noise control statutes, codes, rules and regulations and upon the state of the art and technical capabilities and limitations in noise control and report its recommendations thereon to the commissioner.

i. Be empowered to veto the adoption, amendment or repeal of any code, rule or regulation for the control of noise. By majority vote of the whole council, the council may vote its disapproval of any code, rule or regulation or any change therein. The council may exercise its veto at any time before the promulgation by the commissioner of any such code, rule or regulation.

### **13:1G-19. Consultation by commissioner with council on proposed code, rule or regulation**

The commissioner shall consult with the council to afford them an opportunity to express their opinion concerning any proposed code, rule or regulation at least 30 days prior to the public advertisement thereof.

### **13:1G-20. Inapplicability of act to limit powers, duties and functions vested under other laws related to community noise control**

The powers, duties and functions vested in State Government under the provisions of this act shall not be construed to limit in any manner the powers, duties and functions vested therein or in any person under any other provision of law or any civil or criminal remedies now or hereafter available to any person related to community noise control.

### **13:1G-21. Validity of existing civil or criminal remedies; validity of ordinances or resolutions stricter than this act**

No existing civil or criminal remedy now or hereafter available to any person shall be superseded by this act or any code, rules, regulations or orders promulgated pursuant thereto.

No ordinances or resolutions of any governing body of a municipality or county or board of health which establish specific standards for the level or duration of community noise more stringent than this act or any code, rules, regulations or orders promulgated pursuant thereto shall be superseded. Nothing in this act or in any code, rules, regulations or orders promulgated pursuant thereto shall preclude the right of any governing body of a municipality or county board of health, subject to the approval of the department, to adopt ordinances, resolutions or regulations which establish specific standards for the level or duration of community noise more stringent than this act or any code, rules or regulations promulgated pursuant thereto.

#### **13:1G-21.1. Definitions**

As used in this act:

"Handgun" means a pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand.

"Rifle" means a firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

"Shotgun" means a firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

"Skeet shooting" means shooting with a shotgun at a succession of clay pigeons sprung at different angles into the air from a trap.

"Trapshooting" means shooting with a shotgun at a clay pigeon sprung into the air from a trap.

### **13:1G-21.2. Owner of shooting range; limited immunity from civil liability for noise**

Notwithstanding the provisions of section 21 of P.L.1971, c. 418 (C.13:1G-21) to the contrary, an owner of a handgun, rifle, shotgun, skeet shooting or trapshooting range in this State shall be immune from liability where the liability is based upon noise resulting from normal operation of the range in any civil proceeding, or in any proceeding brought pursuant to the "Noise Control Act of 1971," P.L.1971, c. 418 (C.13:1G-1 et seq.).

Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission.

### **13:1G-21.3. Applicability**

This act shall apply only to a handgun, rifle, shotgun, skeet shooting or trapshooting range located in this State which has been maintained continuously in the same location since January 24, 1972.

### **13:1G-22. Construction of act**

This act shall be liberally construed to effectuate the purpose and intent thereof.

### **13:1G-23. Severability**

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.