

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF ADOPTION OF
COMMERCIAL MUSIC NOISE MITIGATION RULES**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 of the New York City Charter and Section 24-231 of the Administrative Code of the City of New York, and after a duly advertised public hearing held on June 25, 2007 after first publication in the *City Record* on May 25, 2007, that the Department of Environmental Protection has promulgated the following rules concerning commercial music noise mitigation.

Statement of Basis and Purpose

On December 29, 2005, Mayor Bloomberg signed Local Law 113 for the year 2005. The law amended the Administrative Code of the City of New York in relation to the Noise Control Code. Specifically, the law established standards and procedures to reduce noise from construction and commercial music, and established sound level standards and procedures for specific noise sources. The law also mandated the adoption of rules in section 24-231 of the Administrative Code. Pursuant to that section, these rules set forth the requirements for avoiding imposition of a penalty for a first violation of subdivision a of section 24-231 of the Code as well as the procedure to obtain a variance from the decibel limits in such Code for commercial music establishments and enterprises. The rules also set forth the requirements and standards to become an approved noise consultant. Finally, Chapter 32 of Title 15 of the Rules of the City of New York is amended to provide the procedure for removal of a noise consultant from the approved noise consultant list. The rules are authorized by section 1043 of the Charter of the City of New York as well as section 24-231 of the Administrative Code of the City of New York.

The text of the rules follow. Deleted material is in [brackets]. New material is underlined.

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 29 to read as follows:

CHAPTER 29

COMMERCIAL MUSIC NOISE MITIGATION RULES

§29-100 Definitions

§29-101 Noise Consultants

§29-102 Certification to the Department

§29-103 Application for a variance from the decibel limits for commercial music establishments and enterprises

§29-100 Definitions

As used in this Chapter, the following terms shall have the following meanings:

- a. “Board” shall mean the New York City Environmental Control Board.
- b. “Code” shall mean the New York City Administrative Code.
- c. “Commissioner” shall mean the Commissioner of the Department of Environmental Protection.
- d. “Department” shall mean the New York City Department of Environmental Protection.
- e. “Noise Consultant” shall mean any person on the “Approved Noise Consultants” list maintained by DEP whose appearance on such list was obtained in accordance with §29-101 of this chapter.

§29-101 Noise Consultants

a. DEP shall maintain an “Approved Noise Consultants” list in order to effectively carry out the requirements of §24-231 and §24-206 (as amended by Local Law No. 113 of 2005) of the Code and this chapter. The following persons are eligible to appear on such list, provided that they submit in detail their experience, qualifications, and references to DEP and request that their names be included on such list:

- (1) A licensed New York State professional engineer possessing at least two years of experience measuring sound levels utilizing the ANSI standards. At least one year of such experience shall have been performed within the City of New York, and such experience shall include developing or proposing sound mitigation measures for buildings and noise-producing equipment.
- (2) A person possessing a Bachelor of Science degree or a Bachelor of Engineering degree from an accredited college or university with at least four years of experience measuring sound levels utilizing the ANSI standards. Two of such four years of experience shall have been performed within the City of New York, and such experience shall include developing or proposing sound mitigation measures for buildings and noise-producing equipment.
- (3) A person possessing ten years of experience measuring sound levels utilizing the ANSI standards. Five years of such experience shall have been performed within the City of New York, and such experience shall include developing or proposing sound mitigation measures for buildings and noise-producing equipment.

b. A person may be removed from the “Approved Noise Consultants” list for cause. If it is determined that a Noise Consultant provided false, misleading or materially incorrect information to DEP in the course of providing reports as specified in this chapter, or providing test results under §24-206 of the Code, as amended by Local Law No. 113 of 2005, such person shall be removed from such list after a hearing before an administrative law judge. The burden of proof in such hearing shall be on DEP to establish a cause for removal from the list based on a preponderance of the evidence.

§29-102 Certification to the Department

a. Pursuant to paragraph 1 of subdivision b of §24-231 of the Code, the Commissioner shall recommend to the Board that there be no civil penalty imposed for a first violation of subdivision a of §24-231 of such Code provided that, within 30 days after the issuance of such violation or, if applicable, within the time granted by the Commissioner pursuant to paragraph two of such subdivision of the Code, the respondent admits liability for the violation, and files a certification with the Department in the form and manner and containing the information and documentation prescribed in subdivision b of this section.

b. The certification referenced in subdivision a of this section shall be made by a Noise Consultant, retained by the owner of the subject commercial music establishment or enterprise and acceptable to the Department. Such Noise Consultant shall certify a written report to the Department that shall include the following information and documentation:

- (1) A certification that the commercial music establishment is in compliance with the sound levels set forth in subdivision a of §24-231 of the Code at the establishment's maximum decibel musical performance level.
- (2) A description of all permanent improvements and modifications made at such commercial music establishment to achieve compliance with such sound levels, including but not limited to, the installation of appropriate sound insulation, isolators, suspension mounting and/or sound mitigation devices or materials, and diagrams of such work, together with copies of all bills and receipts for such work, and;
- (3) All sound level measurements taken at a location within the two closest receiving properties abutting the establishment and/or in a location specified by the Department. Should there be difficulty gaining entry to any abutting location, DEP shall be informed and DEP will set an alternate location. All such measurements shall be performed by a Noise Consultant. Such measurements shall be in accordance with the ANSI standards in §24-231 of the Code, and shall be taken using an ANSI meter operating in the A and/or C weighted scales and/or third octave bands.
- (4) A description of the method by which the maximum allowable amplified sound level in the A and/or C weighted scales and/or third octave bands shall be permanently set within the commercial music establishment.

c. The report referenced in subdivision b of this section shall be submitted to the Department within six weeks of the date of violation. The respondent may ask DEP to grant an adjournment for an additional 30 days to submit such report upon a showing of substantial hardship due to site conditions or limitations.

d. If the Commissioner accepts the certified report referenced in subdivisions a, b, and c of this section, he or she shall recommend to the Board that no civil penalty be imposed for the violation. Such violation may nevertheless serve as a predicate for purposes of imposing penalties for subsequent violations of §24-231 of the Code.

§29-103 Application for a variance from the decibel limits for commercial music establishments and enterprises

an ANSI compliant meter operating in the A and/or C weighted scales and/or third octave bands.

iv. A description of the method by which the maximum allowable amplified sound level shall be permanently set within the subject commercial music establishment or enterprise. The sound levels shall be measured in the A and/or C weighted scales and/or third octave bands.

(4) An application for a variance must also include competent evidence, in a form acceptable to the Department, that 51% of the outstanding shares as of the date of such application are held by the same person or persons who owned the entity as of the date of enactment of the Noise Code, December 29, 2005. If the subject entity is a corporation, such evidence shall include, at a minimum, corporate records, certified in a manner acceptable to the Department, demonstrating that at least 51% of the voting securities of such entity were owned as of the date of such application by the same person or persons owning at least 51% of such voting securities as of December 29, 2005.

c. The Department shall afford all documents submitted such confidentiality as may be provided by applicable law.

d. Variance limitations.

(1) A variance granted under this section to an applicant/owner of a commercial music establishment or enterprise shall be a one-time variance only.

(2) A variance granted under this section shall only be applicable to the business for which it is issued, and shall not be transferable to a new owner in accordance with subdivision d of §24-231 of the Code and paragraph (4) of subdivision b of this section. Any change in ownership, as defined in paragraph (4) of subdivision b of this section, of a commercial establishment or enterprise, shall automatically void the variance. A change in the size or location of the commercial establishment or enterprise, or a change in the type of business shall also negate the variance.

(3) A change in the size or location of the music establishment or enterprise from its original size or original location prior to the enactment of §24-231 of the Code shall negate any right of the establishment to apply for a variance.

(4) In granting a variance, the Commissioner may impose such terms and conditions as he or she deems necessary to carry out the intent of §24-231 of the Code to minimize noise emissions from the location. Violation of the conditions of any variance shall be deemed to be a violation of subdivision d of §24-231 of the Code.

e. A violation of the terms of the variance by the establishment shall

constitute violation of §24-231 of the Code, where applicable, and shall result in the immediate cancellation of the variance.

§2. Section 32-01 of Chapter 32 of Title 15 of the Rules of the City of New York is amended to read as follows:

§32-01 Conduct of Adjudicatory Hearings by the Department of Environmental Protection.

Pursuant to the New York City Charter, §§1041, 1046-1048, the Department of Environmental Protection has determined that the following adjudications shall continue to be conducted by the Department:

(a) Revocation or Suspension of Asbestos Control Program Certification, pursuant to Administrative Code §24-146.1(d)(5).

(b) Revocation or Removal of a Noise Consultant from the “Approved Noise Consultants” list, pursuant to Administrative Code §24-206(b)(i-ii) and §29-101 of Chapter 29 of this Title.

(c) Appeal of Commissioner's Order issued pursuant to the Hazardous Substances Emergency Response Law, Administrative Code §24-610(a)(4).

[(c)] (d) Appeal to Commissioner of a Stop Work Order issued pursuant to Administrative Code §24-146.1(h)

[(d)] (e) Appeal of Permit or Certificate Denial, requested pursuant to Administrative Code §24-133.

[(e)] (f) Appeal of Commissioner's Noise Sensitive Zone designation, requested pursuant to Administrative Code §24-229(b).

[(f)] (g) Appeal of Commissioner's Environmental Rating, requested pursuant to Administrative Code §24-154(b).

(h) Appeal of Revocation or Removal from the “Approved Noise Consultants” list, pursuant to Administrative Code §24-133 and §29-101 of Chapter 29 of this Title.