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**Chapter 9.40 COMMUNITY NOISE**

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**Article 1. TITLE**

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**9.40.010 Citation and classification.**

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The ordinance codified in this chapter shall be known as the Union City Community Noise Ordinance and is adopted as a health and safety measure and not as part of the zoning ordinance. (Ord. 275-86 § 1, 1986)

**Article 2. DECLARATIONS OF POLICY**

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**9.40.020 Declarations of policy.**

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It is hereby declared to be the policy of the City that the peace, health, safety and welfare of the citizens of Union City require protection from excessive, unnecessary and unreasonable noises from any and all sources in the community. It is the intention of the City Council to control the adverse effect of such noise sources on the citizen under any condition of use, especially those conditions of use which have the most severe impact upon any person. It is the further intention of the City Council that this policy can be implemented most effectively by prohibiting certain defined noise disturbances and by prohibiting certain defined increases in noise levels on specific types of property, all as more specifically set forth in this chapter. (Ord. 275-86 § 1, 1986)

**Article 3. DEFINITIONS**

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**9.40.030 Definitions.**

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For purposes of this chapter, the words and phrases set forth in this article shall have the definitions set forth immediately following such word or phrase within this article.

- A. "Commercial property" means any building, structure, premise or portion thereof primarily used for wholesale, retail, or industrial purposes on which property the user thereof or employees are engaged in work for which it is intended that compensation be received for goods or services.
- B. "Cost effective" means capable of achieving results which would justify the costs required.
- C. "Emergencies" are essential activities necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.
- D. "Local ambient" or "local ambient noise level" means the lowest sound level repeating itself at a certain location during a six-minute period as measured with a precision sound level meter, using slow response and "A" weighting. The local ambient noise level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than 40dBA. If a significant portion of the local ambient is produced by one or more individual identifiable sources which would otherwise be operated continuously during the six-minute measurement period and contributing significantly to the ambient sound level, determination of the local ambient shall be accomplished with these separate identifiable noise sources silent.
- E. "Noise disturbance" means any sound, as judged by any person empowered to enforce this chapter, which sound (1) endangers or injures the safety or health of human beings or animals, or (2) endangers or injures persons of normal sensitivity. The factors which shall be considered in determining whether an objectionable noise is a violation shall include, but not be limited to, the following:
  - a. The relative sound level of the objectionable noise when compared to the local ambient noise level;
  - b. The proximity of the objectionable noise to residential property and to residential sleeping facilities;

- c. The number of persons affected by the objectionable noise;
- d. The day of the week and time of day or night that the objectionable noise occurs;
- e. The duration of the objectionable noise and its tonal, informational or musical content;
- f. Whether the objectionable noise is continuous, recurrent or intermittent;
- g. Whether the nature of the noise is usual or unusual when compared to the local ambient noise level and character of local noise otherwise present;
- h. Whether the objectionable noise is natural or unnatural;
- i. The nature and zoning of the area within which the objectionable noise emanates;
- j. The nature and zoning of any areas affected by the objectionable noise; and
- k. Whether the noise is produced by a commercial or noncommercial activity.

F. "Noise level" means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a precision sound level meter. In order to measure a noise level, the controls of the precision sound level meter should be arranged to the setting approximate to the type of noise being measured.

G. "Residential property" means a parcel of property which is developed and used either in whole or in part for residential purposes.

H. "Sound level" expressed in decibels (dB) is a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Terminology," paragraph 2.9, or successor reference. All references to dB in this chapter utilize the A-level weighting scale, abbreviated dBA, measured as set forth in this section.

I. "Precision sound level meter" means a device for measuring sound level in decibel units within the performance specifications in the American National Standards Institute Standard S.1.4, "Specification for Sound Level Meters", or successor reference.

J. "Property plane" means a vertical plane including the property line which determines the property boundaries in space.

K. "Vehicle" means any device by which any person or property may be propelled, moved or drawn upon a highway or street. (Ord. 275-86 § 1, 1986)

## **Article 4. PROHIBITED ACTS**

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### **9.40.040 Noise disturbance prohibited.**

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No person shall produce, suffer or allow to be produced by any machine, animal or device, or any combination of same, any noise disturbance. (Ord. 275-86 § 1, 1986)

### **9.40.041 Residential property noise limits.**

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No person shall produce, suffer or allow to be produced by any machine, animal or device, or any combination of same, on residential property, a noise level more than ten (10) dBA above the local ambient at any point outside of the property plane. (Ord. 275-86 § 1, 1986)

### **9.40.042 Commercial and industrial property noise limits.**

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No person shall produce, suffer or allow to be produced by any machine or device, or any combination of same, on commercial or industrial property, a noise level more than twelve dBA above the local ambient at any point outside of the property line. (Ord. 275-86 § 1, 1986)

### **9.40.043 Public property noise limits.**

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A. No person shall produce, suffer or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than fifteen dBA above the local ambient at a distance of twenty-five feet or more, unless otherwise provided in this chapter.

B. Sound performances and special events not exceeding eighty dBA measured at a distance of fifty feet are exempt from this chapter when approval therefore has been obtained from the appropriate governmental entity, except as provided elsewhere in this Code.

C. Vehicle horns, or other devices primarily intended to create a loud noise for warning purposes, shall not be used when the vehicle is at rest, or when a situation endangering life, health, or property is not imminent. (Ord. 275-86 § 1, 1986)

#### **9.40.044 Interpretation.**

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The prohibition against noise disturbances and the limits upon residential, commercial and public property noise are separable and independent of each other. An objectionable noise may be found to be a noise disturbance even if that objectionable noise is within the residential, commercial, or public property noise limits set forth in this article, and an objectionable noise may be in violation of any of the above mentioned noise limits even if that objectionable noise is not a noise disturbance. (Ord. 275-86 § 1, 1986)

### **Article 5. SPECIAL PROVISIONS**

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#### **9.40.050 Daytime exceptions.**

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Any noise source which does not produce a noise level exceeding seventy dBA at a distance of twenty-five feet from the noise source under its most noisy condition of use shall be exempt from the provisions of Article 4 between the hours of eight a.m. and eight p.m. daily except Sundays and holidays, when the exemption herein shall apply between ten a.m. and six p.m. (Ord. 275-86 § 1, 1986)

#### **9.40.051 Safety devices.**

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Aural warning devices which are required by law to protect the health, safety and welfare of the community shall not produce a noise level more than three dBA above the standard or minimum level stipulated by law. (Ord. 275-86 § 1, 1986)

#### **9.40.052 Emergencies.**

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Emergencies are exempt from the provisions of this chapter. (Ord. 275-86 § 1, 1986)

#### **9.40.053 Construction.**

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Notwithstanding any other provision of this chapter, between the hours of eight a.m. and eight p.m. daily except Saturday, when the exemption herein shall apply between nine a.m. and eight p.m. and Sundays and holidays, when the exemption herein shall apply between ten a.m. and six p.m., construction, alteration, or repair activities which are authorized by valid City permit shall be allowed if they meet at least one of the following noise limitations:

A. No individual piece of equipment shall produce a noise level exceeding eighty-three dBA at a distance of twenty-five feet. If the device is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close to twenty-five feet from the equipment as possible.

B. The noise level at any point outside the property plane of the project shall not exceed eighty-six dBA. (Ord. 275-86 § 1, 1986)

### **Article 6. EXCEPTION PERMITS**

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#### **9.40.060 Exception permits.**

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If an applicant can show to the City Planning Commission or its designee that a diligent investigation of available noise abatement techniques indicates that immediate compliance with the requirements of this chapter would be impractical or unreasonable, a permit to allow exception from the provisions contained in all or a portion of this chapter may be issued, with appropriate conditions to minimize the public detriment caused by such exceptions. Any such permit shall be of as short duration as possible up to six months, but renewable upon a showing of good cause, and shall be conditioned by a schedule for compliance and details of methods therefore in appropriate cases. Any person aggrieved with the decision of the City Planning Commission or its designee with regard to such an application for exceptions may appeal to the City Council as provided in this chapter. (Ord. 275-86 § 1, 1986)

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## **Article 7. NOISE COMPLAINTS**

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### **9.40.070 Complaints.**

Persons who believe that noise sources constitute a noise disturbance, exceed the limits set forth in Article 4, or both, may file a complaint with the Planning Department stating the location, nature and extent of the noise in question. (Ord. 275-86 § 1, 1986)

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### **9.40.071 Initial processing.**

The Planning Department shall determine the extent of the impact of the noise in question on the neighborhood of the complainant. If the noise does not constitute a noise disturbance, the impact of the noise in question on that neighborhood is not significant, and the noise in question does not constitute a health hazard to the complainant, the Planning Department shall not process the complaint but shall help, if possible, to work out an informal solution to the complaint between the noise source in question and the complainant. In all cases the Planning Department shall provide for the sound measurements indicated by Article 8. (Ord. 275-86 § 1, 1986)

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### **9.40.073 Documentation.**

The provisions of this article shall be satisfied either by the filing of an intent not to process a complaint by the Planning Department with the City Clerk or the execution by a noise source of a promise to implement noise reduction measures required by the Planning Department or the Planning Commission in the time required and performance thereof. (Ord. 275-86 § 1, 1986)

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## **Article 8. NOISE MEASUREMENT CRITERIA**

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### **9.40.080 Measurements.**

Any noise measurement made pursuant to the provisions of this chapter shall be made with a sound level meter using the 'A' weighted network (scale) at slow meter response. Fast meter response shall be used for an impulsive noise. Calibration of the measurement equipment, utilizing an acoustic calibrator, shall be performed immediately prior to recording any noise data. (Ord. 275-86 § 1, 1986)

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### **9.40.081 Location.**

The noise levels may be measured at any point on the affected property. Where practical, the microphone or other receiving device shall be positioned three to five feet above the ground or floor level of the affected property and at least four feet away from reflective surfaces. (Ord. 275-86 § 1, 1986)

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## **Article 9. NOISE REDUCTION**

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### **9.40.090 Inventory and noise reduction report.**

Noise sources that do not comply with the provisions of Article 4 or Article 7 shall provide the Planning Department with:

- A. A noise inventory describing each source of noise in question under its control, the level and duration (in twenty-four-hour periods) of each source; and
- B. The noise reduction plan showing all means of reduction or eliminating noise from each source or at the points of reception and the anticipated time of implementation of such plan. (Ord. 275-86 § 1, 1986)

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#### **9.40.091 Other reports.**

Noise sources shall provide at noise source's expense, reports, prepared by qualified acoustical consultants, selected and approved by the City, and cost estimators, as the Planning Department or Planning Commission may require to ascertain the facts necessary for a decision under this article. (Ord. 275-86 § 1, 1986)

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#### **9.40.092 Hearing.**

Unless a settlement on noise reduction measures is agreed upon by all complainants and noise sources, a hearing shall be set before the Planning Commission to determine which noise reduction measures are cost effective. The Planning Commission shall require the noise source to implement, immediately or on a schedule of events, those actions to reduce noise which are cost effective. (Ord. 275-86 § 1, 1986)

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#### **9.40.093 Compliance.**

To comply with the provisions of this article a noise source must execute an agreement to implement those actions required by the Planning Commission or the City Council pursuant to this Article 9 within the time required and implement them within the time required. (Ord. 275-86 § 1, 1986)

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#### **9.40.094 Time limits.**

All operations responsible for noise which may be reduced by cost effective measures must cease and desist the production of noise constituting a noise disturbance or exceeding the limits set forth in Article 4 within ninety days of the decision rendered by the Planning Commission or City Council pursuant to this article unless the noise source executes the agreement required by Section [9.40.093](#) within said ninety days. Persons failing to comply with said agreement will cease and desist said operations upon order of the Community Development Director or his/her designee. (Amended during 1990 republication; Ord. 275-86 § 1, 1986)

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### **Article 10. APPEALS**

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#### **9.40.101 Appeal to Commission.**

Decisions of the Planning Department rendered pursuant to this chapter may be appealed to the Planning Commission by filing with the Planning Department written notice of such appeal within fifteen days of the Department's decision. (Ord. 275-86 § 1, 1986)

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#### **9.40.102 Appeal to City Council.**

Decisions of the Planning Commission may be appealed to the City Council by filing with the Planning Department written notice of such appeal within fifteen days of the Commission's decision. (Ord. 275-86 § 1, 1986)

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#### **9.40.103 Redetermination.**

The City Council or the Planning Commission shall redetermine the issues appealed. (Ord. 275-86 § 1, 1986)

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### **Article 11. NEW EQUIPMENT**

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**9.40.110 Certification of compliance.**

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Operators of machines or equipment to be installed or altered may, prior to installation or alteration, apply to the Planning Commission for a certification of compliance with Article 9. (Ord. 275-86 § 1, 1986)

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**9.40.111 Compliance.**

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Applicants for the certificate hereunder shall comply with all of the provisions of Article 9 using projections of noise from new machines or equipment. A certificate of compliance hereunder shall satisfy the provisions of Article 9 after operations have commenced; provided, that the equipment is operated in accordance with the application for a certificate of compliance. The Board may refuse to issue the certificate, however, on grounds that data for noise projections is inadequate. (Ord. 275-86 § 1, 1986)

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**Article 12. ENFORCEMENT**

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**9.40.120 Continued compliance.**

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Compliance pursuant to Articles 7 and 9 shall satisfy the provisions of this chapter only as long as there is no increase in noise emissions thereunder. (Ord. 275-86 § 1, 1986)

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**9.40.121 Violations.**

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Any violation of this chapter is an infraction. Each twenty-four-hour day or fraction thereof that such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. (Ord. 275-86 § 1, 1986)

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**9.40.122 Additional remedies.**

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As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter, so as to cause a noise disturbance, shall be deemed and is hereby declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Ord. 275-86 § 1, 1986)

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**9.40.123 Construction.**

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This chapter shall be liberally construed so as to effectuate its purposes. (Ord. 275-86 § 1, 1986)

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**9.40.124 Severability.**

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If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated. (Ord. 275-86 § 1, 1986)

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