

Chapter 261

Noise

Article I

Unmuffled Engine Retarders and Straight Pipes During Deceleration

§ 261-1 Authority, title and jurisdiction.

This article is passed pursuant to that grant of authority contained in NMSA § 4-37-1, and shall be commonly referred to as the "Doña Ana County Ordinance Prohibiting Use of Unmuffled Retarders and Unmuffled Straight Pipes During Deceleration." This article shall be effective and enforced within the geographical boundaries of Doña Ana County, excluding the territory within the boundaries of duly incorporated municipalities.

§ 261-2 Purpose.

It is the intent of the Board of County Commissioners to protect the enjoyment of life, property and prosperity of the residents of Doña Ana County by eliminating and reducing bothersome noise caused by motor vehicles ~~using being slowed through the use of~~ unmuffled engine brakings.

§ 261-3 Definitions.

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

MOTOR VEHICLE

Any vehicle, which is self-propelled.

PRIVATE ROADWAY

Any road, street, avenue, boulevard, highway, alley or similar place, which is used by the public and is located within the geographical boundaries of Doña Ana County, outside the jurisdiction of incorporated municipalities.

PUBLIC ROADWAY

Any road, street, avenue, boulevard, highway, alley or similar place, which is controlled by a public governmental entity and is located within the geographical boundaries of Doña Ana County, outside the jurisdiction of incorporated municipalities.

RETARDER

Any exhaust and/or engine device used as braking power, to slow down a truck, automobile, motorcycle, or other motor vehicle's rate of speed.

§ 261-4 Prohibition.

No person operating a motor vehicle on a public or private roadway shall use an unamuffled retarder device, down shifting or unamuffled straight pipes where posted, or at any time within a residential area whether posted or not.

§ 261-5 Signage.

~~A. The County Sheriff and County Engineer shall consider traffic safety factors and coordinate the content and location for posting of black on white "Quiet Zone" traffic regulation signs on public roadways in and near populated areas within the County.~~

- B. The County shall coordinate with state and/or federal officials regarding signage deemed necessary on public roadways under the jurisdiction of the state or federal government.

§ 261-6 Traffic citations.

- A. Any uniformed Sheriff's Deputy or other authorized law enforcement officer shall have, in addition to any other authority vested in him, the power to stop a motor vehicle reasonably suspected to be in violation of this article.
- B. A violation of this article shall be cause for issuance of a citation and a complaint to be filed with the Magistrate Court for the County of Doña Ana.

§ 261-7 Penalties for violations.

Any person violating any provision of this article may be punished as set forth in Chapter 1, General Provisions, Article III, General Penalty.

**Article II
Noise Control**

§ 261-8 Short title and declaration of intent.

- A. This article may be cited as the "Noise Control Ordinance."
- B. A substantial body of scientific research has shown that exposure to excessive sound and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is therefore declared to be the intent of the Board of County Commissioners (through this article and through other County regulations) to minimize the exposure to the physiological and psychological dangers of excessive noise, and protect, promote and preserve the public health, safety and welfare. It is the express intent of the Board of County Commissioners to control the level of noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep and repose and an environment free from unnecessary and excessive sound.

§ 261-9 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANSI

American National Standards Institute.

APARTMENT

This term shall be as used in the ~~Unified Development Code Land Use and Zoning Code~~ (Doña Ana County Code, Chapter ~~350-250~~).

APPROVED SOUND-LEVEL METER

An instrument sensitive to pressure fluctuations and meeting the standards of the ANSI S1.4-1983 Type 1 or Type 2 or those of IEC Publication 651 or those of the latest respective revisions thereof.

A-WEIGHTED SOUND PRESSURE LEVEL

The sound pressure level as measured on an approved sound-level meter using the A-weighting network. Instrument response shall be "fast" for motor vehicle measurements and "slow" for all other measurements.

BOARD

The Board of County Commissioners.

DAYTIME

From ~~67:00~~ a.m. (~~06700~~ hours) to 10:00 p.m. (2200) (~~2200 hours~~)(~~Sunday through Thursday~~) and from ~~6:00~~ a.m. (~~0600~~ hours) to ~~12:00~~ a.m. (~~2400~~ hours)(~~Friday and Saturday and holidays~~).

DEPARTMENT

The Doña Ana County Sheriff's Department.

DECIBEL

A unit for measuring the intensity of a sound. It is equal to ten (10) times the logarithm to the base of the ratio of the intensity of the sound to be measured to the intensity of some reference sound, usually the lowest audible not of the same frequency.

EMERGENCY WORK

Work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from an imminent exposure to danger.

EPA

The United States Environmental Protection Agency.

HOLIDAYS

Those days established by the federal government as official holidays.

IEC

The International Electrotechnical Commission.

MOTOR VEHICLE

Every vehicle which is self-propelled, but excluding off-highway construction equipment or unlicensed construction equipment or equipment operated upon rails.

NIGHTTIME

From 10:00 p.m. (2200 hours) to ~~67:00~~ a.m. (~~06700~~ hours). (~~Sunday night/Monday morning through Thursday night/Friday morning~~) and from ~~12:00~~ a.m. (~~2400~~ hours) through ~~6:00~~ a.m. (~~0600~~ hours) ~~Friday night/Saturday morning and Saturday night/Sunday morning~~. On holidays, ~~nighttime runs from 12:00 a.m. (0000) hours until 6:00 (0600) hours and does not commence again until 12:00 a.m. (2400) hours at the end of the twenty-four hour day.~~

NOISE-SENSITIVE PROPERTY

Property that is occupied and contains any of the following: a dwelling unit or units, school, hospital, religious institution, child-care facility, adult-care facility, court or library.

PERSISTENTLY OR CONTINUOUSLY

A ten-minute period during which animal noise is discerned at least once, in each of the ten (10) one-minute intervals therein.

PERSON

A person, firm, association, copartnership, joint venture, corporation, or any other entity, public or private in nature.

REFERENCE PRESSURE

The reference pressure for all sound level measurements shall be 20 micropascals (20 uPa). This shall be further defined as 0 dB(A).

RESIDENTIAL, OFFICE/COMMERCIAL, INDUSTRIAL

These terms shall be as used in the Unified Development Code Land Use and Zoning Chapter (Doña Ana County Code, Chapter 350250).

SAE

The Society of Automotive Engineers.

SHERIFF

The Doña Ana County Sheriff or Sheriff's designated representative.

SOUND AMPLIFYING EQUIPMENT

Any machine or device for the sound amplification of the human voice, music, or any other sound. "Sound amplifying equipment" shall not include horns or warning devices on authorized emergency vehicles or on any motor vehicles that are used only for traffic safety purposes.

§ 261-10 Decibel measurement criteria.

Unless otherwise indicated, any decibel (dB) measurement made pursuant to the provisions of this article shall be based on the reference sound pressure and measured with a sound-level meter using the A-weighting network. In this article, the terms dB and dBA are synonymous unless otherwise stated. Warnings may be issued, after using a handheld device, such as a cell phone with the appropriate software to reasonably measure decibels (dBs).

§ 261-11 Prohibited noise.

- A. Regardless of any other section of this article, it shall be unlawful for any person during nighttime to make, continue or cause to be made any unreasonably loud or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of another person or persons.
- B. Upon a complaint of a violation of Subsection **A** of this section, it shall be prima facie evidence of a violation of this article if any unreasonably loud or unusual noise is audible during nighttime to any person positioned at the boundary of the property immediately adjacent to the property from which the sound emanates or causes a person so positioned to be aware of the vibration accompanying the sound.
- C. General noise limits.

- (1) Except as otherwise provided in this article, no person during nighttime shall make or continue, cause to be made or continued, or allow to be made or continued, any sound exceeding the following limits as measured on any other property receiving the sound:

Actual Land Use or Category of Receiving Property	Maximum dB
Residential/noise sensitive	50
Office/commercial	60
Industrial	70

- (2) Sound projecting from property of one land use category onto property of another land use category having a lower sound-level limit shall not exceed the limits for the property of the land use category onto which it is projected.

- D. Noises originating from sources of any kind engaged in agricultural, ranching or military operations are exempt from the provisions of this article.

§ 261-12 Specific noise limits enumeration.

The following sections of this article shall be an enumeration of specific noises prohibited by this article, but shall not limit the enforcement of § 261-11 of this article. Noises regulated by this article include but are not limited to the following enumerated noises.

§ 261-13 Horns and signaling devices.

The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle on any public street or public place except as a danger warning; the creation by means of any such signaling devices of any unreasonable, loud or harsh sound; the sounding of such devices for any unnecessary and unreasonable period of time other than by accident or mechanical, electrical or other difficulty or failure; and the use of any such signaling device where traffic is held up shall be deemed a violation of this article. The provisions of this section do not apply to an authorized emergency vehicle as defined in NMSA 1978, §§ 66-1-4.1 and 66-7-6.

§ 261-14 Sound amplifying equipment.

- A. No person during nighttime shall practice, play, or conduct live music activities using sound amplifying equipment or operate a radio, television, stereo or other sound amplifying equipment resulting in sound levels exceeding the level set in § 261-11 when measured on any receiving noise-sensitive property or, if an apartment, within any dwelling unit or common area accessible to residents of the apartment, or to conduct such activities or operate any such device so as to be audible within any dwelling unit which is not the source of sound.

- B. During nighttime, such amplified sound shall not be allowed to cause or contribute to exceeding the limits set forth for the receiving property as established in Table 1, § 261-11. Vehicular sound amplification equipment is further subject to the requirements of Subsection C of this section.

- C. Vehicular sound amplification equipment.

- (1) No person during nighttime operating or occupying a motor vehicle on a street, highway, alley, parking lot, off-street parking area or driveway shall operate or allow the operation of any sound amplification equipment from the vehicle in such a manner that the sound is audible anywhere on noise-sensitive property.

D. Outdoor sound amplifiers.

- (1) If any outdoor sound amplifier, loudspeaker system or similar broadcasting device is audible at nighttime at any residence or other noise-sensitive property and is otherwise in violation of this article, then use of the outdoor sound amplifier, loudspeaker system or similar broadcasting device at that facility shall thereafter be prohibited as provided herein. If the user of a facility is determined to have violated any requirement in this subsection on two or more occasions in any twenty-four-month period, then the user of the outdoor sound amplifier, loudspeaker system or similar broadcasting device shall thereafter immediately remove such device from use at that facility. A subsequent user of a facility at which use of an outdoor sound amplifier, loudspeaker system or similar broadcasting device has previously been prohibited pursuant to this subsection may not use such a device at that facility unless and until:
 - (a) The subsequent user establishes to the reasonable satisfaction of the Department that the device can be used in compliance with this section; and
 - (b) The subsequent user is not affiliated by common ownership or control with the user of the facility at the time use of the previous device was prohibited.

§ 261-15 Drums, bells and other musical instruments.

No person shall use any drum, bell or other musical instrument resulting in sound levels exceeding the level set in § 261-11 when measured on any receiving noise-sensitive property or, if an apartment, within any other dwelling unit or common area accessible to residents of the apartment, or to conduct such activities in the nighttime so as to be audible within any dwelling unit which is not the source of sound. At no time shall such sound be allowed to cause or contribute to exceeding the limits set forth for the receiving property as established in Table 1, § 261-11. This section shall not apply to any person who is participating in a school band or duly licensed parade nor does this section apply in the daytime to bells or chimes used by schools or religious institutions.

§ 261-16 Yelling or shouting.

Yelling, shouting or creating other unreasonably loud noises which annoy or disturb the quiet, comfort or repose of any person(s) in any office, dwelling, hotel or residence or of any persons in the vicinity shall be deemed a violation of this article.

§ 261-17 Animals.

No person shall allow an animal in the person's possession or control to persistently or continuously bark, howl or make noise common to its species, or otherwise to disturb the peace and quiet of any person(s) in the County, or otherwise endanger the health and welfare of any person(s) in the County. This provision shall not apply to public zoos and approved and properly zoned animal shelters, animal boarding facilities or other similar approved operations.

§ 261-18 Pounding.

The pounding or hammering on any metal object or thing, except inside a building or in connection with a daytime construction project, shall be deemed a violation of this article.

§ 261-19 Motor vehicles.

- A. The nighttime use of defective mufflers and other exhaust devices that effectively bypass mufflers while any automobile, truck or motorcycle engine is in operation which disturbs the peace and quiet of an area shall be deemed a violation of this article.

- B. All motor vehicles shall have a ninety-day grace period from the effective date of this article to comply with the vehicle noise emission regulations herein.

§ 261-20 Refuse collection.

No person shall collect refuse with a refuse collection vehicle except during daytime.

§ 261-21 Machinery, equipment, fans, and air conditioners.

- A. At nighttime, except for emergency work as defined in this article, no person shall operate or allow the operation of any stationary machinery, equipment, fan, air-conditioning apparatus, or similar permanently installed mechanical device in any manner so as to create noise which exceeds the Table 1 limits specified in § 261-11.
- B. At nighttime, except for emergency work as defined in this article, no person shall operate or allow to be operated outdoors any power equipment, including but not limited to sweepers, power mowers, leaf blowers, rototillers, power saws or other power equipment used to sweep parking areas or other surfaces or perform gardening, property repair or other similar functions so as to create noise which exceeds the Table 1 limits specified in § 261-11.

§ 261-22 Construction, repair, demolition or excavation and grading work.

At nighttime, except for emergency work as defined in this article, construction, repair, demolition or excavation and grading work to commercial or residential buildings, roadways, utility facilities or infrastructure, which work disturbs the comfort or repose of any person(s) or generates noise exceeding the Table 1 limits specified in § 261-11, shall be deemed a violation of this article.

§ 261-23 Administration.

The Sheriff shall be responsible for the administration of this article. Rules, regulations, and test and compliance procedures to implement the provisions of this article shall be promulgated by the Sheriff.

§ 261-24 Penalties and additional remedies.

- A. Any person found to be in violation of this article is subject to the penalties as follows:
- (1) Upon the first or second violation of this article, the offender shall be sentenced to a fine of not less than \$100 nor more than \$300. The minimum fine of \$100 may not be suspended, deferred or taken under advisement. The court may, in its discretion, suspend the remainder of the fine.
 - (2) Upon the third or subsequent violation of this article, the offender shall be sentenced to a fine of not less than \$300, which may not be suspended, deferred or taken under advisement.
- B. Any person found to be in violation of this article shall not be subject to a term of imprisonment.
- C. Where the complaint alleges a violation of this article, any plea of guilty or nolo contendere thereafter entered in satisfaction of the charges shall include at least a plea of guilty or nolo contendere to a violation of this article and no other disposition by plea of guilty or nolo contendere to any other charge shall be authorized.
- D. As an additional remedy to the penalties set forth in this section, the violation of any provision of this article may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.