



ENB-5.01 - Noise Control Enforcement and Penalties

Administrative Rules Adopted by Bureaus Pursuant to Rule Making Authority (ARB)

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NOISE CONTROL CODE ENFORCEMENT CHAPTER 18.18 - ENFORCEMENT AND PENALTIES

Administrative Rule Adopted by Office of Neighborhood Involvement Pursuant to Rule-Making Authority

ARB-ENB-5.01

AUTHORITY:

Under Section 18.17.010 the Director of the Office of Neighborhood Involvement (ONI) is authorized to adopt administrative rules and supplemental regulations for Title 18 – Noise Control. Such rules and regulations shall be in conformance with the intent and purpose of the Noise Code.

CITATION:

Section 18.18.030 of the Noise Code reads, in part, as follows:

18.18.030 Civil Penalties and Fees

A violation of this Title (Noise Code) may result in assessment of civil penalties or enforcement fees, as provided below:

A. Civil penalties.

1. For each separate violation, a civil penalty of up to \$5,000 may be assessed.
2. In determining the amount of any civil penalty to be assessed, the Director will consider the following:
 - a. The nature and extent of the responsible party's involvement in the violation;
 - b. The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
 - c. Whether the violation was isolated and temporary, or repeated and continuing;

- d. The magnitude and seriousness of the violation;
- e. The City's cost of investigation and remedying the violation;
- f. Any other applicable facts bearing on the nature and seriousness of the violation.

B. Administrative enforcement fees

1. The Director may charge a penalty in the form of a monthly enforcement fee for any violation that meets (specified) conditions.

18.18.050 Review by the Director.

A. If a responsible party has received a written citation as described in (the Noise Code) and the responsible party believes the citation has been issued in error, the responsible party may request that the citation be reviewed by the Director. The responsible party must submit a written request to the Director within 15 days of the date of the citation. The Director's determination will be served on the responsible party by regular mail.

B. A responsible party may appeal the Director's written determination to the Code Hearings Officer in accordance with Chapter 22.10 of the Portland City Code.

RATIONALE:

The Noise Code provides the general framework for a citation based enforcement process for violations of Title 18. The Director is authorized to set fines for each separate violation of the Code up to \$5,000 per day of non-compliance. This rule establishes the citation fine amounts; the manner by which a responsible party may appeal a citation; the manner by which ONI will review appeals; and the imposition of administrative enforcement fees.

NOISE CODE - TITLE 18

ADMINISTRATIVE RULE:

A. Noise Code Citation Process

1. General. The process and fines established in this rule shall be the process followed by the Office of Neighborhood Development (ONI) for citing violations of the Noise Code (Title 18), collecting fines, considering appeals, and imposing administrative enforcement fees.

2. Violations observed. When a violation of the Noise Code is observed, an ONI Noise Inspector may issue a citation to the person or persons responsible for the violation (responsible party). The responsible party may be the noisemaker or the property owner. When no other responsible party can be identified, the property owner is the responsible party.

3. Fines and Corrections. The citation will state the section of the Noise Code violated, the fine imposed and the corrective action required.

4. Corrections not made. If corrections are not made within 30 days, the Directormay impose, in addition to any fines accumulated for the violation, the monthly Administrative Enforcement Fees established in Section 18.18.030.B.

B. Fines

1. General. The following fines are established for violations of the Noise Code. These fines will be assessed as a result of a Noise Code citation/notice of violation. Fines must be paid to and received by the Office of Neighborhood Involvement by the 15th calendar day after the date on the citation, unless the citation is appealed, see Section C, below:

Violation Type	1st Offense	2nd Offense	3rd Offense
1. Residential Violations Sec. 18.18.040	\$150	\$300	\$1,500
2. Construction Violations Sec. 18.18.040	\$300	\$1,000	\$3,000
3. Open Space, Commercial & Industrial Violations Sec. 18.18.040	\$300	\$1,000	\$3,000
4. Violation of Terms of a Noise Variance Sec. 18.18.040	\$200	\$750	\$3,000

Additional violations after a third violation shall be set at the maximum level of \$5,000 per individual violation. Multiple citations can be issued on a given day until the violation is corrected.

2. Per Day Fines. Fines which are established in the above chart as accruing each day shall continue from the date on the citation until such day as the inspector determines that the violation has been corrected. It is the responsibility of the responsible party to call the inspector when the violation is corrected. When the inspector has inspected the site and concurred that the corrections have been made, the inspector will note in the TRACS system the date corrected and the total fines applicable.

3. Fines Double After 30 Days. When a responsible party has failed to pay the citation fines within 30 days of the date on the citation, or within 15

days of the final review of the Director or an appealed citation, the fine(s) indicated on the citation will be doubled.

C. Compliance and Citation Appeal Process

1. General. The responsible party has the option of correcting the violation and paying the fine as stated on the citation, or may appeal the citation.

2. Compliance. Upon correcting a violation, the responsible party must call for an inspection of the property by a Noise Inspector. Even when the violation is corrected, the citation fine is still due. Noise citation violation fines may be paid, in person, at ONI in City Hall, 1221 SW 4th Avenue Portland, Oregon; or by mail to ONI, Noise Compliance Program, Suite 110, 1221 SW 4th Avenue, Portland, OR 97204. Checks should be made payable to "ONI Noise Compliance Program". To assure proper credit, the Serial Number on the face of the Noise Violation Citation should be included on the check and a copy of the citation form should also be returned with the payment.

3. Non Payment of Fines. Where a violation has been corrected and subsequently approved by the Noise Inspector, but the responsible party has neglected to pay the fines, no further noise variances will be issued to that responsible party until such fines are paid.

4. Citation Appeals – Review by the Director. When a responsible party receiving a citation believes that the citation was issued in error, the responsible party may request that the citation be reviewed. The request to review must be submitted in writing within 15 days of the date of the citation. If the citation imposes a per day fine, the fine and the accumulation of daily fines, will be suspended during the ONI review. The initial review will be conducted under the direction of the Director. The Director shall issue a final ONI determination to the responsible party. The final determination will set the final citation fines, if any, due from the responsible party or may amend or void the citation. The final determination will be mailed to the responsible party.

D. Administrative Enforcement Fees.

Whenever a citation is unresolved, either because the violation is not corrected, or where the violation is corrected but the fine remains unpaid, and ONI decides to impose the administrative enforcement fees, ONI will provide written notice to the responsible party that the fees are to be imposed. The Administrative enforcement fees are in addition to any citation fines prescribed for the violation, as stated in Chapter 18.18.030 (B) of the City Code.

When a responsible party has received a notice that administrative enforcement fees are to be imposed, the responsible party may request that the assessment of administrative enforcement fees be reviewed by the Director. The request to review must be made in writing within 15 days of the first notice of assessment of fees. The review process will follow the

same process as specified for review of citation, stated above, however, this review will only address assessment of administrative enforcement fees and will not address the appropriateness of the original citation.

E. Appeals – Codes Hearings Officer.

The responsible party may appeal any final determination of the Director regarding citations or administrative enforcement fees to the Codes Hearings Officer in accordance with Chapter 22.10 of the City Code. Chapter 22.10 requires that these appeals be filed within 10 days of the final determination.

HISTORY:

Adopted by David Lane, Director of Office of Neighborhood Involvement. Effective September 29, 2003.