

COLORADO REVISED STATUTES – ARTICLE 12 – NOISE ABATEMENT

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25-12-101. Legislative declaration.

The general assembly finds and declares that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in the state of Colorado. Excess noise often has an adverse physiological and psychological effect on human beings, thus contributing to an economic loss to the community. Accordingly, it is the policy of the general assembly to establish statewide standards for noise level limits for various time periods and areas. Noise in excess of the limits provided in this article constitutes a public nuisance.

Source: L. 71: p. 647, § 1. C.R.S. 1963: § 66-35-1.

25-12-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Commercial zone" means:

(a) An area where offices, clinics, and the facilities needed to serve them are located;

(b) An area with local shopping and service establishments located within walking distances of the residents served;

(c) A tourist-oriented area where hotels, motels, and gasoline stations are located;

(d) A large integrated regional shopping center;

(e) A business strip along a main street containing offices, retail businesses, and commercial enterprises;

(f) A central business district; or

(g) A commercially dominated area with multiple-unit dwellings.

(2) "db(A)" means sound levels in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American national standards institute, publication S1. 4 - 1971.

(3) "Decibel" is a unit used to express the magnitude of a change in sound level. The difference in decibels between two sound pressure levels is twenty times the common logarithm of their ratio. In sound pressure measurements sound levels are defined as twenty times the common logarithm of the ratio of that sound pressure level to a reference level of 2×10^{-5} N/m² (Newton's/meter squared). As an example of the effect of the formula, a three-decibel change is a one hundred percent increase or decrease in the sound level, and a ten-decibel change is a one thousand percent increase or decrease in the sound level.

(4) (a) "Industrial zone" means an area in which noise restrictions on industry are necessary to protect the value of adjacent properties for other economic activity but shall not include agricultural, horticultural, or floricultural operations.

(b) Nothing in paragraph (a) of this subsection (4), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(5) "Light industrial and commercial zone" means:

(a) An area containing clean and quiet research laboratories;

(b) An area containing light industrial activities which are clean and quiet;

(c) An area containing warehousing; or

(d) An area in which other activities are conducted where the general environment is free from concentrated industrial activity.

(5.2) "Motorcycle" means a self-propelled vehicle with not more than three wheels in contact with the ground that is designed primarily for use on the public highways.

(5.4) "Motor vehicle" means a self-propelled vehicle with at least four wheels in contact with the ground that is designed primarily for use on the public highways.

(5.6) "Off-highway vehicle" means a self-propelled vehicle with wheels or tracks in contact with the ground that is designed primarily for use off the public highways. "Off-highway vehicle" shall not include the following:

(a) Military vehicles;

(b) Golf carts;

(c) Snowmobiles;

(d) Vehicles designed and used to carry persons with disabilities; and

(e) Vehicles designed and used specifically for agricultural, logging, firefighting, or mining purposes.

(6) "Residential zone" means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings. The zone includes areas where multiple-unit dwellings, high-rise apartment districts, and redevelopment districts are located. A residential zone may include areas containing accommodations for transients such as motels and hotels and residential areas with limited office development, but it may not include retail shopping facilities. "Residential zone" includes hospitals, nursing homes, and similar institutional facilities.

(7) "SAE J1287" means the J1287 stationary sound test or any successor test published by SAE international or any successor organization.

(8) "SAE J2567" means the J2567 stationary sound test or any successor test published by SAE international or any successor organization.

(9) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off the public highways. "Snowmobile" shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

Source: L. 71: p. 647, § 1. C.R.S. 1963: § 66-35-2. L. 73: p. 1406, § 47. L. 86: (2) amended, p. 501, § 121, effective July 1. L. 2005: (4) amended, p. 350, § 8, effective August 8. L. 2008: (5.2), (5.4), (5.6), (7), (8), and (9) added, p. 2101, § 1, effective July 1, 2010.

25-12-103. Maximum permissible noise levels.

(1) Every activity to which this article is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. Sound levels of noise radiating from a property line at a distance of twenty-five feet or more therefrom in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such noise is a public nuisance:

<u>Zone</u>	<u>7:00 a.m. to next 7:00 p.m.</u>	<u>7:00 p.m. to next 7:00 a.m.</u>
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)

(2) In the hours between 7:00 a.m. and the next 7:00 p.m., the noise levels permitted in subsection (1) of this section may be increased by ten db(A) for a period of not to exceed fifteen minutes in any one-hour period.

(3) Periodic, impulsive, or shrill noises shall be considered a public nuisance when such noises are at a sound level of five db(A) less than those listed in subsection (1) of this section.

(4) This article is not intended to apply to the operation of aircraft or to other activities which are subject to federal law with respect to noise control.

(5) Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.

(6) All railroad rights-of-way shall be considered as industrial zones for the purposes of this article, and the operation of trains shall be subject to the maximum permissible noise levels specified for such zone.

(7) This article is not applicable to the use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the specific period of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.

(8) For the purposes of this article, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five miles per hour.

(9) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

(10) This article is not applicable to the use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow. This subsection (10) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

(11) This article is not applicable to the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays. This subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

(12) (a) Notwithstanding subsection (1) of this section, the public utilities commission may determine, while reviewing utility applications for certificates of public convenience and necessity for electric transmission facilities, whether projected noise levels for electric transmission facilities are reasonable. Such determination shall take into account concerns raised by participants in the commission proceeding and the alternatives available to a utility to meet the need for electric transmission facilities. When applying, the utility shall provide notice of its application to all municipalities and counties where the proposed electric transmission facilities will be located. The public utilities commission shall afford the public an opportunity to participate in all proceedings in which permissible noise levels are established according to the "Public Utilities Law", articles 1 to 7 of title 40, C.R.S.

(b) Because of the statewide need for reliable electric service and the public benefit provided by electric transmission facilities, notwithstanding any other provision of law, no municipality or county may adopt an ordinance or resolution setting noise standards for electric transmission facilities that are more restrictive than this subsection (12). The owner or operator of an electric transmission facility shall not be liable in a civil action based upon noise emitted by electric transmission facilities that comply with this subsection (12).

(c) For the purposes of this section:

(I) "Electric transmission facility" means a power line or other facility that transmits electrical current and operates at a voltage level greater than or equal to 44 kilovolts.

(II) "Rights-of-way for electric transmission facilities" means all property rights and interests obtained by the owner or operator of an electric transmission facility for the purpose of constructing, maintaining, or operating the electric transmission facility.

Source: L. 71: p. 648, § 1. C.R.S. 1963: § 66-35-3. L. 82: (10) added, p. 424, § 1, effective March 11. L. 87: (11) added, p. 1154, § 1, effective May 20. L. 2004: (12) added, p. 736, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 2004 act enacting subsection (12), see section 1 of chapter 219, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, § 1533.

Residential development of property is not precluded when noise emanating onto property exceeds limits set forth in this section. *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979).

Trier of fact to determine mode to use in measuring noise. *Davis v. Izaak Walton League of America*, 717 P.2d 984 (Colo. App. 1985).

Applied in *City of Lakewood v. DeRoos*, 631 P.2d 1140 (Colo. App. 1981).

25-12-104. Action to abate.

Whenever there is reason to believe that a nuisance exists, as defined in section 25-12-103, any county or resident of the state may maintain an action in equity in the district court of the judicial district in which the alleged nuisance exists to abate and prevent such nuisance and to perpetually enjoin the person conducting or maintaining the same and the owner, lessee, or agent of the building or place in or upon which such nuisance exists from directly or indirectly maintaining or permitting such nuisance. Notwithstanding any other provision of this section, a county shall not maintain an action pursuant to this section if the alleged nuisance involves a mining operation or the development, extraction, or transportation of construction materials, as those terms are defined in section 34-32.5-103, C.R.S., a commercial activity, the commercial use of property, avalanche control activities, a farming or ranching activity, an activity of a utility, or a mining or oil and gas operation. When proceedings by injunction are instituted, such proceedings shall be conducted under the Colorado rules of civil procedure. The court may stay the effect of any order issued under this section for such time as is reasonably necessary for the defendant to come into compliance with the provisions of this article.

Source: L. 71: p. 649, § 1. C.R.S. 1963: § 66-35-4. L. 2008: Entire section amended, p. 57, § 1, effective August 5.

Cross references: For injunctions, see C.R.C.P. 65.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1534-1537, 1541-1547, 1582-1591.

C.J.S. See 66 C.J.S., Nuisances, §§ 84-86.

Construction and operation of a public highway are not activities which can be abated as a public nuisance. *City of Lakewood v. DeRoos*, 631 P.2d 1140 (Colo. App. 1981).

Applied in *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979).

25-12-105. Violation of injunction - penalty.

Any violation or disobedience of any injunction or order expressly provided for by section 25-12-104 shall be punished as a contempt of court by a fine of not less than one hundred dollars nor more than two thousand dollars. Each day in which an individual is in violation of the injunction established by the court shall constitute a separate offense. The court shall give consideration in any such case to the practical difficulties involved with respect to effecting compliance with the requirements of any order issued by the court.

Source: L. 71: p. 650, § 1. C.R.S. 1963: § 66-35-5.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1541-1547, 1582-1591, 2046, 2056.

C.J.S. See 66 C.J.S., Nuisances, §§ 126-129.

25-12-106. Noise restrictions - sale of new vehicles.

(1) Except for such vehicles as are designed exclusively for racing purposes, no person shall sell or offer for sale a new motor vehicle that produces a maximum noise exceeding the following noise limits, at a distance of fifty feet from the center of the lane of travel, under test procedures established by the department of revenue:

(a) Any motorcycle manufactured on or after July 1, 1971, and before January 1,

1973 - 88 db(A);

(b) Any motorcycle manufactured on or after January 1, 1973 - 86 db(A);

(c) Any motor vehicle with a gross vehicle weight rating of six thousand pounds or more manufactured on or after July 1, 1971, and before January 1, 1973 - 88 db(A);

(d) Any motor vehicle with a gross vehicle weight rating of six thousand pounds or more manufactured on or after January 1, 1973 - 86 db(A);

(e) Any other motor vehicle manufactured on or after January 1, 1968, and before January 1, 1973 - 86 db(A);

(f) Any other motor vehicle manufactured after January 1, 1973 - 84 db(A);

(g) (Deleted by amendment, L. 2008, p. 2102, § 2, effective July 1, 2010.)

(2) Test procedures for compliance with this section shall be established by the department, taking into consideration the test procedures of the society of automotive engineers.

(3) Any person selling or offering for sale a motor vehicle or other vehicle in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars.

Source: L. 71: p. 650, § 1. C.R.S. 1963: § 66-35-6. L. 2008: IP(1) and (1)(g) amended, p. 2102, § 2, effective July 1, 2010. L. 2009: (1)(a) and (1)(b) amended, (HB 09-1026), ch. 281, p. 1259, § 20, effective October 1.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1537-1540.

25-12-107. Powers of local authorities.

(1) Counties or municipalities may adopt resolutions or ordinances prohibiting the operation of motor vehicles within their respective jurisdictions that produce noise in excess of the sound levels in decibels, measured on the "A" scale on a standard sound level meter having characteristics established by the American national standards institute, publication S1.4 - 1971, and measured at a distance of fifty feet from the center of the lane of travel and within the speed limits specified in this section:

(a) Any motor vehicle with a manufacturer's gross vehicle weight rating of six thousand pounds or more, any combination of vehicles towed by such motor vehicle, and any motorcycle other than a low-power scooter:

	Speed limit of 35 mph or less	Speed limit of more than 35 mph but less than 55 mph
(I) Before January 1, 1973	88 db(A)	90 db(A)
(II) On and after January 1, 1973	86 db(A)	90 db(A)

(b) (Deleted by amendment, L. 2008, p. 2102, § 3, effective July 1, 2010.)

(2) The governing board shall adopt resolutions establishing any test procedures deemed necessary.

(3) This section applies to the total noise from a vehicle or combination of vehicles.

(4) For the purpose of this section, a truck, truck tractor, or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and manufacturer's gross vehicle weight rating shall be considered as having a manufacturer's gross vehicle weight rating of six thousand pounds or more if the unladen weight is more than five thousand pounds.

Source: L. 71: p. 651, § 1. C.R.S. 1963: § 66-35-7. L. 73: p. 1406, § 48. L. 2008: IP(1) and (1)(b) amended, p. 2102, § 3, effective July 1, 2010. L. 2009: IP(1)(a) amended, (HB 09-1026), ch. 281, p. 1259, § 21, effective October 1.

ANNOTATION

Am. Jur.2d. See 61C Am. Jur.2d, Pollution Control, §§ 1533, 1537-1540.

25-12-108. Preemption.

Except as provided in sections 25-12-103 (12) and 25-12-110, this article shall not be construed to preempt or limit the authority of any municipality or county to adopt standards that are no less restrictive than the provisions of this article.

Source: L. 71: p. 651, § 1. C.R.S. 1963: § 66-35-8. L. 88: Entire section amended, p. 1116, § 2, effective May 19. L. 2008: Entire section amended, p. 2103, § 4, effective July 1, 2010.

25-12-109. Exception - sport shooting ranges - legislative declaration - definitions.

(1) The general assembly hereby finds, determines, and declares that the imposition of inconsistent, outdated, and unnecessary noise restrictions on qualifying sport shooting ranges that meet specific, designated qualifications work to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the

state. The general assembly further finds, determines, and declares that a need exists for statewide uniformity with respect to exempting qualifying shooting ranges from the enforcement of laws, ordinances, rules, and orders regulating noise. As the gain associated with having a uniform statewide exemption for qualifying sport shooting ranges outweighs any gains associated with enforcing noise regulations against such ranges, the general assembly further declares that the provisions of this section, as enacted, are a matter of statewide concern and preempt any provisions of any law, ordinance, rule, or order to the contrary.

(2) As used in this section, unless the context otherwise requires:

(a) "Local government" means any county, city, city and county, town, or any governmental entity, board, council, or committee operating under the authority of any county, city, city and county, or town.

(b) "Local government official" means any elected, appointed, or employed individual or group of individuals acting on behalf of or exercising the authority of any local government.

(c) "Person" means an individual, proprietorship, partnership, corporation, club, or other legal entity.

(d) "Qualifying sport shooting range" or "qualifying range" means any public or private establishment, whether operating for profit or not for profit, that operates an area for the discharge or other use of firearms or other equipment for silhouette, skeet, trap, black powder, target, self-defense, recreational or competitive shooting, or professional training.

(3) Notwithstanding any other law or municipal or county ordinance, rule, or order regulating noise to the contrary:

(a) A local governmental official may not commence a civil action nor seek a criminal penalty against a qualifying sport shooting range or its owners or operators on the grounds of noise emanating from such range that results from the normal operation or use of the qualifying shooting range except upon a written complaint from a resident of the jurisdiction in which the range is located. The complaint shall state the name and address of the complainant, how long the complainant has resided at the address indicated, the times and dates on which the alleged excessive noise occurred, and such other information as the local government may require. The local government shall not proceed to seek a criminal penalty or pursue a civil action against a qualifying sport shooting range on the basis of such a noise complaint if the complainant established residence within the jurisdiction after January 1, 1985.

(b) No person may bring any suit in law or equity or any other claim for relief against a qualifying sport shooting range located in the vicinity of the person's property or against

the owners or operators of such range on the grounds of noise emanating from the range if:

- (I) The qualifying range was established before the person acquired the property;
- (II) The qualifying range complies with all laws, ordinances, rules, or orders regulating noise that applied to the range and its operation at the time of its construction or initial operation;
- (III) No law, ordinance, rule, or order regulating noise applied to the qualifying range at the time of its construction or initial operation.

Source: L. 98: Entire section added, p. 240, § 1, effective April 13.

25-12-110. Off-highway vehicles.

- (1) An off-highway vehicle operated within the state shall not emit more than the following level of sound when measured using SAE J1287:
 - (a) If manufactured before January 1, 1998 - 99 db(A);
 - (b) If manufactured on or after January 1, 1998 - 96 db(A).
- (2) A snowmobile shall not emit more than the following level of sound when measured using SAE J2567:
 - (a) If manufactured on or after July 1, 1972, and before July 2, 1975 - 90 db(A);
 - (b) If manufactured on or after July 2, 1975 - 88 db(A).
- (3) (a) A person shall not sell or offer to sell a new off-highway vehicle that emits a level of sound in excess of that prohibited by subsection (1) of this section unless the off-highway vehicle complies with federal noise emission standards. A person shall not sell or offer to sell a new snowmobile that emits a level of sound in excess of that prohibited by subsection (2) of this section unless the snowmobile complies with federal noise emission standards.
 - (b) For the purposes of this section, a "new" snowmobile or off-highway vehicle means a snowmobile or off-highway vehicle that has not been transferred on a manufacturer's statement of origin and for which an ownership registration card has not been submitted by the original owner to the manufacturer.
- (4) This section shall not apply to the following:
 - (a) A vehicle designed or modified for and used in closed-circuit, off-highway vehicle competition facilities;

(b) An off-highway vehicle used in an emergency to search for or rescue a person; and

(c) An off-highway vehicle while in use for agricultural purposes.

(5) A person who violates this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(6) No municipality or county may adopt an ordinance or resolution setting noise standards for off-highway vehicles or snowmobiles that are more restrictive than this section.

(7) (a) Nothing in this section shall be construed to modify the authority granted in section 25-12-103.

(b) Nothing in this section shall be construed to authorize the test to produce a less restrictive standard than the J1287 stationary sound test or the J2567 stationary sound test published by SAE international or any successor organization.

(8) The following shall be an affirmative defense to a violation under this section if the off-highway vehicle or snowmobile:

(a) Was manufactured before January 1, 2005;

(b) Complied with federal and state law when purchased;

(c) Has not been modified from the manufacturer's original equipment specifications or to exceed the sound limits imposed by subsection (1) or (2) of this section; and

(d) Does not have a malfunctioning exhaust system.

Source: L. 2008: Entire section added, p. 2103, § 5, effective July 1, 2010.