Impact of New York City’s Amended Noise Control Code

Although noise is a reality of modern urban living, it is also considered the leading quality of life issue in New York City. After nearly 40 years, the New York City Noise Control Code (the Code) was amended, effective July 1, 2007 (the Amended Code).

The amendments define unreasonable noise as sound that disturbs the peace or comfort of a reasonable person of normal sensitivities, but recognize that activities necessary for the city’s physical and economic growth will produce higher than desirable noise levels. The Amended Code therefore employs a three-prolonged approach: prohibiting sound that exceeds a decibel-cap; limiting the hours, days and distances at which excessive sound can be heard; and requiring best-practices for temporary noise, such as construction and repair sites.

This column discusses the Amended Code and expands on an earlier column dealing with whether excessive noise breaches the warranty of habitability when it emanates from a co-op or condominium building system, an apartment or from activities outside the building. We also make recommendations to assist boards and managers in responding to noise complaints from occupants.

Before its amendment, the Code was considered inadequate by both residents disturbed by noise and businesses that tried to comply with the Code. The Amended Code adopts a flexible rationale—to “keep New York’s businesses thriving while addressing the number one quality of life complaint in New York”—using practical standards which are easier to enforce and understand.

Construction Sites

The Amended Code reduces construction noise by establishing uniform best practices and mandating adoption of a “noise management plan” by the building owner or contractor. The plan must be posted at the construction site and detail the noise attenuation protection being utilized to mitigate noise typical of construction activities, including pile driving, blasting and the like. The Amended Code thus accepts the reality that construction noise is unavoidable and seeks to mitigate it on a best efforts basis.

The Amended Code also imposes practical regulations and specific limits on commercial music sources. The Code prohibited sound emanating from bars, clubs, and restaurants louder than 45 decibels. This standard failed to address intrusive bass music and vibrations, which the Amended Code corrects and also establishes more flexible enforcement for first offenses to encourage implementation of noise abatement plans.

Circulation Devices

The Code prohibited sound emission from individual units in excess of 45 decibels. However, this permitted excessive noise to be generated because clusters of air conditioning units could cumulatively emit noise far in excess of 45 decibels, which did not violate the Code if no single unit exceeded 45 decibels. The Amended Code reduces the permitted sound level for each unit to 42 decibels but requires that where circulation devices are installed or replaced on a building lot, the cumulative sound from all devices may not exceed 45 decibels.

However, even this provision may not protect all occupants. For example, the Western Union Building houses a large number of heat-generating computers and switching devices cooled by air conditioners which produce excessive noise in the residential neighborhood of Tribeca. But, because there is no way to separately measure the noise output from each air conditioning unit and because the noise condition was created before the effective date of the Amended Code, this condition does not violate the Amended Code.

Enhanced Enforcement

To facilitate enforcement, the Amended Code adds to violations issued by Department of Environmental Protection inspectors using decibel meters, an additional standard for unreasonable noise: “plainly audible” at a specified distance. Summonses for violations may now be issued by police officers who are authorized to determine whether noise from car stereos, loud music, barking animals, car mufflers and the like are “plainly audible.” Decibel testing is no longer required for a violation to issue.

Warranty of Habitability

The statutory warranty of habitability imposes a nonwaivable covenant and duty on all residential landlords to ensure that premises are fit for human habitation, in accord with the uses reasonably intended by the parties, and tenants are not subjected to conditions that are dangerous, hazardous, or detrimental to their life, health or safety. Because of the proprietary lease component of co-op ownership, boards must comply with the warranty of habitability. Conditions that may breach the warranty include: noxious fumes, odors, light, excessive dirt and debris in common areas, water leaks, and second-hand smoke. Courts have also held that unreasonable, excessive, and continuous noise may breach the warranty, relying on expert testimony and sound tests, tempered by the reality of city living in a multiple dwelling.

Noise Attributable to Co-op or Condo

Boards may breach the warranty of habitability by failing to reduce building equipment noise that exceeds the Amended Code’s decibel limit. Violations most likely occur when equipment is located near a residential apartment. In Mira v. Yesid, plaintiff prevailed on a breach of warranty of habitability claim when noise from the co-op’s ventilation system directly above plaintiff’s unit emitted noise and vibrations exceeding the Code’s decibel limit and made her apartment uninhabitable.

Importantly, the Amended Code imposes heightened responsibility on boards to comply with the cumulative noise limitations on the building's
The court held the commercial tenant's activities illegal cabaret show, creating excessive noise that her lease, but stopped paying rent after a month, apartment from below. She thereafter renewed abatement based on noise penetrating her and bar and two months later received a rent tenant leased an apartment above a restaurant and directed the landlord to remediate. Although the court did not determine whether this behavior violated the warranty of habitability, it did find it a nuisance under the Rent Stabilization Code, warranting eviction. Similarly, in Medows v. Stern,19 plaintiffs alleged their downstairs neighbor banged on his ceiling with a baseball bat and broomstick all day and night to harass them and their three-month old son. The court held plaintiffs were third-party beneficiaries of the landlord's obligation to remedy the noise, and the number of similar complaints. See Stiglianese v. Vallone, 168 Misc. 2d 446, 456 (Civ. Ct. Bronx Co. 1991); 174 Misc. 2d 312 (App. Term 1st Dept. 1997), rev’d 255 A.D.2d 167 (1st Dept. 1998).

Recommendations

The Amended Code imposes greater responsibilities on boards to address excessive noise, but also establishes more flexible and clearer standards and enhanced enforcement procedures. When a board has notice or complaints of a noise problem, it must take prompt action. First, management should inspect the condition. If warranted, the board should retain professionals (such as acoustical engineers) to determine whether the noise is excessive and, if so, the board’s professional should develop a remediation plan. Management should maintain records of complaints and measures employed to evaluate and, if appropriate, alleviate the noise problem. Further, the cumulative decibel levels of building equipment and other circulation devices in the building, including apartment air conditioners, should be periodically monitored to ensure that they fall within permissible ranges. In addition, when buildings undertake noisy construction projects, boards should ensure that the general contractor and supervising architect develop, post and adhere to the Amended Code’s mandated Noise Mitigation Plan.

To prevent sound generated by apartment occupants from rising to the level of excessive noise, and to ensure that apartment owners are legally obligated to remedy the same, boards should specifically address noise attenuation obligations and remediation in their proprietary leases, house rules, bylaws and apartment alteration agreements. House Rules typically address quality of life issues and can be adopted by boards without shareholder or unit owner action. Boards may prohibit occupants from making noise that interferes with the rights, comfort, or convenience of other occupants by detailing appropriate hours for playing musical instruments, radio, or television and may provide that a certain percentage of an apartment be carpeted. Boards can also use apartment alteration agreements to minimize noise by requiring compliance with the Amended Code’s regulations, including those that apply to construction sites. Occupants who plan to do construction work may be required to submit Noise Mitigation Plans to the building’s reviewing architect for approval. Installation of mechanical systems should be assessed by an acoustical engineer to determine that they will not create a noisy condition when completed. Also, boards should not permit alterations that change the functions of rooms so as to move a noisy room (such as a kitchen or bathroom) above a bedroom below. These techniques should assist boards in preventing excessive noise from developing and effectively addressing a noise problem if it nonetheless occurs.

6. Id.
7. Id.
8. The telecommunications equipment in this building may not be turned off. Therefore, all air-conditioning units must be running at all times. This eliminates the possibility of turning all but one of the air-conditioning units off in order to test the sound output of the one air-conditioning unit that remains running.
10. See Sieglar and Talel, “Noise and the Warranty of Habitability,” NYLJ, March 1, 2006, at 1 col.1, and cases cited therein. Condominiums are not legally obligated to comply with the warranty of habitability.
14. 37 AD3d 284 (1st Dept 2007).
15. Boards may no longer face additional responsibilities to mitigate noise from construction. The Amended Code authorizes the formation of an advisory committee with responsibility for implementing additional Noise Mitigation Rules including rules regarding the use of perimeter fences with acoustical insulation, portable barriers with acoustical insulation, acoustical blanket insulation, and the testing of exhaust mufflers. Additional mitigation measures may also be adopted for “sensitive receptors” such as hospitals or schools.
16. See e.g., Kaniklidis, 305 A.D2d 546; Bethune Realty Co., 2002 WL 2016882.
19. NYLJ, May 18, 2007 at 27, col. 1 (Sup. Ct. N.Y. Co.)
20. 2006 WL 228399 (N.Y. City Civ. Ct.);
22. 2006 WL 262534 (N.Y.City Civ. Ct.)

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