**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**DEPARTMENT OF GENERAL SERVICES**

# ROOF REPLACEMENT AT PAYNE ELEMENTARY SCHOOL

**Solicitation #: DCAM-12-CS-0077**

**Addendum No. 2**
**Issued: February 6, 2012**

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This Addendum Number 02 is issued by e-mail on February 6, 2012. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

**Item #1**

**Bid Location:** Please note that the location for bid delivery has changed slightly. Bids should be delivered to: **Frank D. Reeves Center, 2000 14th Street, NW, 5th floor, Washington, DC 20009.**

**Item #2**

**Requests for Information:** Below is a list of questions and the Department's responses.

1. Reference DCPS Payne Elementary School re-roof Specifications, Section 01010, Part 1.04, Paragraph C - Hours of Work. This section indicates work is to be done while school is in session from 3:00 PM to 10:30 PM and while out of session from 7:00 AM to 7:00 PM M-Th. Are these hours correct? If so, will a variance be issued to allow work to continue beyond XXXXX PM per existing Sound Ordinances? Can we work on Fridays and weekends? **RESPONSE: The working hours are Monday through Friday 7:00 AM to 8:00 PM. Work on Saturday, Sunday and District of Columbia Holidays can be accommodated with at least two days advanced notice. The contractor shall plan its activities to minimize noise during the hours that school is in session. DC CAS testing occurs April 17 through April 27, and only after hours will be permitted during that time. DCPS Spring Break will be April 2nd through 9th and the last day of school is June 14, 2012. The DCPS School Calendar is attached. When school is not in session (i.e., during spring break and during the summer) the contractor will not be required to minimize noise during school hours. All construction activities must at all times conform to DCRA Municipal Regulations on Maximum Noise Levels which are attached.**
2. Please clarify plumbing scope and specification. **RESPONSE: The attached roof plan shows the locations of new roof drains and the composition of the underlying structure. There will be one new drain added. Concrete deck will need to be cut to allow for a drain identical in size as the existing drains. This will require access to the school and should be scheduled for when class is not in session. New drain line will need to be connected to existing drains. There are two existing drains which have been roofed over in the past. When these drains are exposed during initial**

**tear-off, the contractor will need to determine why the drains were abandoned and to fix or replace the drains and pipes. This will required interior access for the plumber which should be scheduled when class is not in session. <u>Offerors shall include in their bid an allowance of Fifteen Thousand Dollar ($15,000) for the repair or replacement of the two existing drains.</u>**

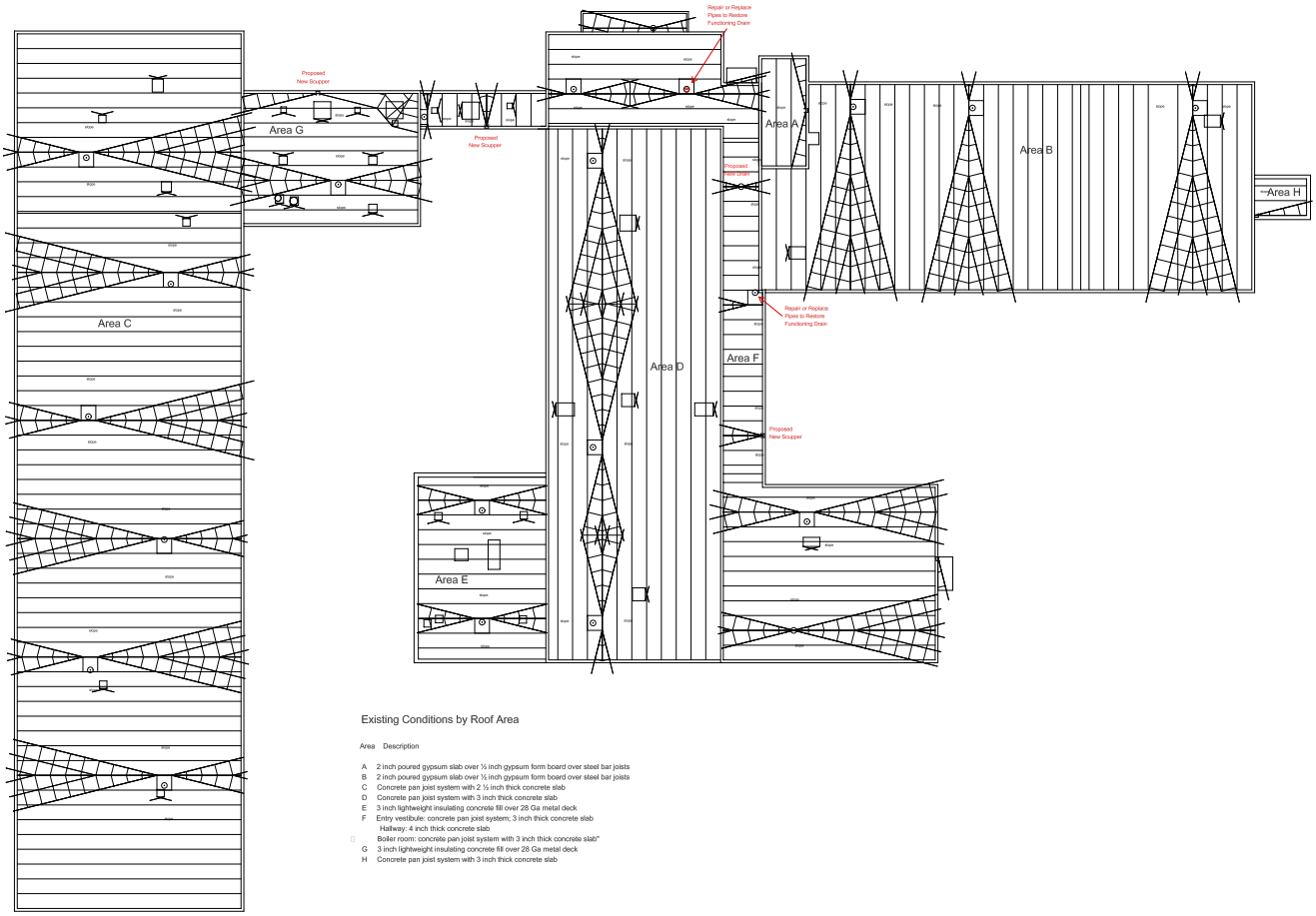
**Item #3**

**Form of Contract:** Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HEREWITH AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

**Item #4**

The bid date remains unchanged. Proposals are due by **February 9, 2012 at 2:00 pm EST**. Proposals that are hand-delivered should be delivered to **Frank D. Reeves Center, 2000 14th Street, NW, 5th Floor, Washington, DC 20009**.

- End of Addendum No. 2 -




## Existing Conditions by Roof Area

| Area | Description |
|---|---|
| A | 2 inch poured gypsum slab over ½ inch gypsum form board over steel bar joists |
| B | 2 inch poured gypsum slab over ½ inch gypsum form board over steel bar joists |
| C | Concrete pan joist system with 2 ½ inch thick concrete slab |
| D | Concrete pan joist system with 3 inch thick concrete slab |
| E | 3 inch lightweight insulating concrete fill over 28 Ga metal deck |
| F | Entry vestibule: concrete pan joist system; 3 inch thick concrete slab |
| | Hallway: 4 inch thick concrete slab |
| | Boiler room: concrete pan joist system with 3 inch thick concrete slab" |
| G | 3 inch lightweight insulating concrete fill over 28 Ga metal deck |
| H | Concrete pan joist system with 3 inch thick concrete slab |

# AIA® Document A105™ – 2007

## *Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project*

**AGREEMENT** made as of the day of February in the year 2010

**BETWEEN** the Owner:

Government of the District of Columbia acting by and through its
Department of General Services
2000 14th Street, NW
Washington, DC 20009

and the Contractor:

TBD

for the following Project:

Payne Elementary School ("Payne ES")
305 15th Street, SE
Washington, DC 20003

*(Paragraphs deleted)*
Roof replacement services at Payne ES (the "Project").

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

**§ 1.1** The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

**.1** this Agreement signed by the Owner and Contractor;

**.2** the Drawings and Performance Specifications attached here to as **Exhibit A**;

*(Table deleted)*

*(Paragraphs deleted)***.3** addenda prepared by the architect as follows:

| Number | Date | Pages |
|---|---|---|

**.4** written orders for changes in the Work issued after execution of this Agreement; and

**.5** other documents, if any, identified as follows:


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## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The period of time available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of the written notice to proceed issued by the Owner to the Contractor. The Contractor shall substantially complete the Work, no later than June 3, 2012, subject to adjustment as provided in Article 10 and Article 11.

*(Paragraphs deleted)*

## ARTICLE 3 CONTRACT SUM

**§ 3.1** Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

[INSERT AMOUNT ( $)]

**§ 3.2** For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

*(Paragraph deleted)*

| Portion of Work | Value |
|---|---|

**§ 3.3** Unit prices, if any, are as follows:

*(Paragraph deleted)*

| Item | Units and Limitations | Price per Unit |
|---|---|---|

**§ 3.4** Allowances included in the Contract Sum, if any, are as follows:

*(Paragraph deleted)*

| Item | Price |
|---|---|

**§ 3.5** The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

*(Paragraph deleted)*

**§ 3.6** The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

**§ 3.7** In addition to the Contract Sum, the Contractor shall be paid an amount equal to ten percent of the Bare Salary paid to employees who are (i) a bona fide resident of the District of Columbia; and (ii) working on the Project. Bare Salary shall mean wages paid to employees for work performed on the job site and excludes the cost of benefits or taxes associated with such employees. Only those employees who are directly employed on the job site shall count toward this calculation. Employees who work in home or regional offices and who support multiple projects shall not be eligible for this incentive. In calculating this incentive payment, the certified payrolls collected and maintained as part of the Davis-Bacon Act shall be used. It is understood that the Contractor shall be entitled to this amount if the Contractor is self-performing the work, but that if the work is being performed by any trade subcontractor, that the incentive payment shall be paid by the Contractor to the trade subcontractor in addition to any amounts due to the trade subcontractor by the Contractor.

## ARTICLE 4 PAYMENT

**§ 4.1** Based on Contractor's Applications for Payment, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

*(Paragraphs deleted)*

**§ 4.1.1** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 4.1.2** Provided that an Application for Payment is received not later than the 25th day of month, the Owner shall make payment to the Contractor not later than the last day of the month following submission or, if that is not a business day, on the following business day. If an Application for Payment is received by the Owner after the

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application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment.

**§ 4.1.3** The Owner shall withhold from each progress payment an amount equal to ten percent (10%).

**§ 4.2** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

*(Paragraph deleted)*

**ARTICLE 5 INSURANCE**

**§ 5.1** The Contractor shall provide Contractor's general liability and other insurance as follows:

*(Table deleted)(Paragraph deleted)*

**§ 5.1.1** The Contractor will be required to maintain the following types of insurance throughout the life of the Contract.

.1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Two Million Dollars ($2,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars ($2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage and must be maintained for a period of at least three (3) years after substantial completion occurs..

.2 Workers' compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

.3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars ($1,000,000) for each occurrence for bodily injury and property damage.

.4 Builder's risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

**§ 5.1.2** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Owner and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Owner.

**§ 5.1.3** All such insurance shall contain a waiver of subrogation against the Owner and the District of Columbia, and their respective agents.

**§ 5.1.4** All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV.

**§ 5.2 BONDS**

*(Paragraphs deleted)*

**§ 5.2.1** Prior to commencing the Work, the Contractor shall provide to the Owner a payment bond and a performance bond, each with a penal sum equal to the full value of the Contract Sum. Such bonds shall remain in full force and effect until Final Completion is achieved, and the Owner shall be able to draw upon such bond regardless of the amount paid by the Owner to the Contractor, even if such amount exceeds the penal value of such bond.

**§ 5.2.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.



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## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### § 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### § 6.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### § 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Any and all documents prepared by the Contractor's architect for use with respect to this Project shall be become property of the Owner.

**§ 6.5** The Owner shall obtain a building permit for the Project and pay for the costs associated with such permit. The Owner shall cooperate with the Contractor in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Contractor under the Contract Documents.

## ARTICLE 7 OWNER

### § 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

*(Paragraphs deleted)*

### § 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### § 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### § 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

**§ 7.4.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 7.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

**§ 7.4.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## ARTICLE 8 CONTRACTOR

### § 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

**§ 8.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

**§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

**§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.3.3 The Contractor shall complete the Project in accordance with the Drawings and Performance Specifications. In the event there is a discrepancy between the Drawings and Performance Specifications, the Contractor shall be required to comply with the more expensive requirement.

§ 8.3.4 In performing the Work, the Contractor shall be required complete the following.

.1 The Contractor shall perform all of the work in first class and workmanlike manner. Any equipment called for in the drawings and specifications shall be new unless otherwise approved by the Owner in advance and in writing.

.2 The Contractor shall provide submittals as indicated in the specifications to the Owner for its review and approval prior to proceeding with the work.

.3 The Contractor's scope of work shall include the installation and provision of such safety barricades and enclosures as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law.

.4 The Contractor shall be required to coordinate its work with school personnel so as to ensure that school activities are not adversely affected.

.5 The Contractor shall be reasonably required by Owner to provide such safety barricades, enclosures and overhead protection as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.

.6 The Contractor shall be responsible for obtaining all job permits and approvals from the District of Columbia Regulatory Agency that are required to perform and complete the installation at no additional cost to the Owner. It is understood, however, that the Owner shall obtain and provide a building permit for the Project.

.7 The Project is being bid on a Design Assist basis. While the Owner believes that the drawings are complete in all material respects the Contractor will be required to verify that the drawings are accurate and coordinate the Project work around the existing building conditions. Contractor should verify existing conditions as noted on the drawings.

.8 The Owner with hold any necessary abatement and hygienist contracts for the abatement of hazardous materials on the Project site. The Contractor will be required to coordinate the abatement efforts with the abatement contractors.

.9 The costs of any necessary security are included in the Contract Sum.

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§ 8.3.5 In performing the Work, the Contractor shall be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

.1 Participate and assist in Project/Planning meetings.

.2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.

.3 Conduct weekly progress meetings following a Contractor generated agenda with the Program Manager.

.4 Provide general safety and signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project.

.5 Prepare payment requests, verify accuracy and forward to Owner for approval and payment.

.7 Assemble close-out documents required.

.8 Provide assistance to the Owner through any applicable warranty periods.

**§ 8.4 LABOR AND MATERIALS**

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§ 8.5 WARRANTY**

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

**§ 8.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

**§ 8.7 PERMITS, FEES AND NOTICES**

§ 8.7.1 The Owner shall obtain and pay for the building permit for the Project. The Contractor shall obtain and pay for any and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The Owner shall cooperate with the Contractor in securing such permits, licenses and inspections, provided however, the Owner shall not be required to pay the fees for such permits, licenses and inspections.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

**§ 8.8 SUBMITTALS**

The Contractor shall promptly review, approve in writing and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.


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**§ 8.9 USE OF SITE**
The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

**§ 8.10 CUTTING AND PATCHING**
The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**§ 8.11 CLEANING UP**
The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

**§ 8.12 INDEMNIFICATION**
To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 9 DESIGN ASSIST**
**§ 9.1** The Owner has caused a duly licensed engineer to prepare a set drawings and specifications that generally describe the Work required to implement the project (the "Preliminary Drawings"). The Contractor understands and agrees that the Preliminary Drawings are intended to describe the general nature of the Work that is required and that the Preliminary Drawings may be incomplete or improperly coordinated. The Contractor further understands and agrees that this project is being purchased on a "design assist" basis and that the Contractor shall be required to: (i) complete or revise the Preliminary Drawings design as necessary in order to implement a fully functioning roof; and (ii) construct and install such work as may be necessary to deliver a fully functional roof system..

**§ 9.2** The Contractor hereby represents and warrants that the Contract Sum set forth herein is sufficient to complete the Work. Without limiting the generality of the foregoing, the Contractor further represents and warrants that the Contract Sum includes adequate amounts to: (i) cover any engineering or other professional services necessary to complete or revise the Preliminary Drawings; and (ii) install items that are not shown on the Preliminary Drawings but which are reasonably inferable form such Preliminary Drawings.

*(Paragraphs deleted)*
**ARTICLE 10 CHANGES IN THE WORK**
**§ 10.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by Change Order.

**§ 10.2** A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

- **.1** a change in the Work;
- **.2** the amount of the adjustment, if any, in the Contract Sum; and
- **.3** the extent of the adjustment, if any, in the Contract Time.

**§ 10.3** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

**ARTICLE 11 TIME**
**§ 11.1** Time limits stated in the Contract Documents are of the essence of the Contract.


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§ 11.2 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or by delay authorized by the Owner pending resolution of disputes pursuant to the Contract Documents, then the Contractor shall be entitled to an equitable adjustment of the Contract Time.

## ARTICLE 12 PAYMENTS AND COMPLETION

### § 12.1 CONTRACT SUM

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 By submitting an Application for Payment, the Contractor warrants to the Owner that title to all Work for which payment is sought will pass to the Owner, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Owner may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss shall remain with the Contractor until Substantial Completion, unless otherwise agreed by the Owner in writing.

### § 12.3 [INTENTIONALLY OMITTED]

### § 12.4 PROGRESS PAYMENTS

§ 12.4.1 The Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 The Owner shall not have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

### § 12.5 SUBSTANTIAL COMPLETION

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. If the Owner's inspection discloses any item which is not substantially complete, the Contractor shall promptly complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine whether the Work is substantially complete. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof.

### § 12.6 FINAL COMPLETION AND FINAL PAYMENT

§ 12.6.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly make final payment to the Contractor.

§ 12.6.2 Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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*(Paragraph deleted)*

**ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

**ARTICLE 14 CORRECTION OF WORK**

**§ 14.1** The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

**§ 14.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. The Contractor shall assign any and all manufacturer or other product warranties to the Owner upon Substantial Completion.

**§ 14.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

**§ 15.2 TESTS AND INSPECTIONS**

**§ 15.2.1** At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 15.2.2** The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

*(Paragraph deleted)*

**§ 15.3 GOVERNING LAW**

*(Paragraph deleted)*

**§ 15.3.1** The Contract shall be governed by the laws of the District of Columbia.

**§ 15.3.2** All federal and District of Columbia laws and regulations, and all Owner procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Owner. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Owner's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

**§ 15.3.3** Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

**§ 15.3.4** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

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**§ 15.3.5** The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

**§ 15.3.6** The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project are attached as Exhibit B. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**§ 15.3.7** Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

**§ 15.3.8** The Owner's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Owner, nor shall it constitute an obligation for which the Owner is obligated to levy or pledge any form of taxation, or for which the Owner has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment as provided in Section 12.4.1 for a period of 60 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### § 16.2 TERMINATION BY THE OWNER FOR CAUSE

**§ 16.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

**§ 16.2.2** When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

**§ 16.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 16.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with


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reasonable overhead and profit on the Work actually executed. In no event shall the Contractor be entitled to recover overhead and profit on Work that was not performed.

## ARTICLE 17 OTHER TERMS AND CONDITIONS

*(Insert any other terms or conditions below.)*

*(Table deleted)*
*(Paragraphs deleted)*

### § 17.1 WRITTEN NOTICE

**§ 17.1.1** All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

| If to the Owner: | If to the Contractor: |
|---|---|
| Brian J. Hanlon<br>Interim Director<br>Department of General Services<br>2000 14th Street, NW<br>Washington, DC 20009 | [TBD] |

This Paragraph shall be read as imposing minimum requirements for distribution of required notices, and not as displacing distribution requirements stated in the Contract with respect to design documents, construction submittals, periodic reports, and other documents.

### § 17.2 LSDBE UTILIZATION

**§ 17.2.1** The Contractor shall ensure that Local, Small and Disadvantages Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Office and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

**§ 17.2.2** The Contractor has developed an LSDBE Utilization Plan that is attached hereto as Exhibit C. The Contractor shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

**§ 17.2.3** Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Owner approves of such removal. The Owner may condition its approval upon the Contractor developing a plan that is, in the Owner's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

### § 17.3 EQUAL EMPLOYMENT OPPORTUNITY AND HIRING OF DISTRICT RESIDENTS

**§ 17.4.1** The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**§ 17.3.2** The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

**§ 17.3.3** Fifty percent (50%) of all apprentices for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

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**§ 17.4 ECONOMIC INCLUSION REPORTING REQUIREMENTS**

**§ 17.4.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Owner a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**§ 17.4.2** The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

**§ 17.4.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**§ 17.4.4** The Contractor shall be responsible for: (i) including the provisions of this Section 17.5. in all subcontracts; (ii) collecting the information required in this Section 17.5 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 17.5.

**§ 17.4.5** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.*

**§ 17.5 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS**

**§ 17.5.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**§ 17.5.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Owner and the required cost submissions in effect on the date of execution of the Owner.

**§ 17.5.3** The Owner, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**§ 17.5.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars ($5,000.00) that directly relate to Project performance.

**§ 17.5.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

**§ 17.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Owner. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**§ 17.5.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**§ 17.6 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS**

**§ 17.6.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage,


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directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Owner shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**§ 17.6.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Owner. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Owner may take any recourse available to it under the law for violations of this anti-kickback provision.

**§ 17.6.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

**§ 17.7 ETHICAL STANDARDS FOR OWNER'S EMPLOYEES AND FORMER EMPLOYEES**

**§ 17.7.1** The Owner expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Owner not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Owner or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Owner or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Owner, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Owner personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**§ 17.8 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS**

**§ 17.8.1** If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Owner or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Owner may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**§ 17.8.2** In the event the Contract is terminated as provided in Section 17.8.1, the Owner shall be entitled:

.1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**§ 17.8.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Owner shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Owner in which he or any officer or employee of the Owner shall be personally interested as well as all agreements made by the Owner in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Owner or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

**§ 17.9 COVENANT AGAINST CONTINGENT FEES PROVISIONS**

**§ 17.9.1** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure

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the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Owner, percentage, brokerage of contingent fee.

**§ 17.10 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS**

**§ 17.10.1** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

.1 Employment, upgrading, or transfer;

.2 Recruitment or recruitment advertising;

.3 Demotion, layoff, or termination;

.4 Rates of pay, or other forms of compensation; and

.5 Selection for training and apprenticeship.

**§ 17.10.2** Unless otherwise permitted by law and directed by the Owner, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this Section concerning non-discrimination and affirmative action.

**§ 17.10.3** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

**§ 17.10.4** The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Owner, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**§ 17.10.5** The Contractor agrees to permit access by the Owner to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

**§ 17.10.6** The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

**§ 17.10.7** The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

**§ 17.11 CONFIDENTIAL INFORMATION**

**§ 17.11.1** In the course of the Contractor's performance of the Work, the Owner may make available to the Contractor information that the Owner designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Owner, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Owner shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.


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**§ 17.12 NO THIRD-PARTY BENEFICIARY RIGHTS.**
**§ 17.12.1** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**§ 17.13 MEDIA RELEASES**
**§ 17.13.1** Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Owner prior to its issuance.

**§ 17.14 CONSTRUCTION.**
**§ 17.14.1** This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**§ 17.15 SURVIVAL**
**§ 17.15.1** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**§ 17.16 NO WAIVER**
**§ 17.16.1** If the Owner waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Owner shall be deemed to constitute the Owner's waiver, which may be effected only by an express written waiver signed by the Owner.

**§ 17.17 HEADINGS/CAPTIONS**
**§ 17.17.1** The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

**§ 17.18 ENTIRE AGREEMENT; MODIFICATION**
**§ 17.18.1** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Owner and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**§ 17.19 SEVERABILITY**
**§ 17.19.1** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

This Agreement entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| *(Printed name, title and address)* | *(Printed name, title and address)* |

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**User Notes:**

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

# DCPS 2011-2012 School Calendar

| February 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| | | 1 | 2 | 3 PD |
| 6 PC | 7 | 8 | 9 | 10 |
| 13 | 14 | 15 | 16 | 17 |
| 20 H | 21 | 22 | 23 | 24 M |
| 27 | 28 | 29 | | |

| March 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| | | | 1 | 2 |
| 5 | 6 | 7 | 8 | 9 |
| 12 | 13 | 14 | 15 | 16 |
| 19 | 20 | 21 | 22 | 23 PD |
| 26 | 27 | 28 | 29 | 30 RD |

| April 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| 2 B | 3 B | 4 B | 5 B | 6 B |
| 9 B | 10 | 11 | 12 | 13 |
| 16 H | 17 T | 18 T | 19 T | 20 T |
| 23 T | 24 RC/T | 25 T | 26 T | 27 T |
| 30 | | | | |

| May 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| | 1 | 2 | 3 | 4 |
| 7 | 8 | 9 | 10 M | 11 |
| 14 | 15 | 16 | 17 | 18 |
| 21 PC | 22 | 23 | 24 | 25 |
| 28 H | 29 | 30 | 31 | |

| June 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| | | | | 1 |
| 4 | 5 | 6 | 7 | 8 |
| 11 | 12 | 13 | 14 L | 15 MU |
| 18 MU | 19 | 20 | 21 | 22 |
| 25 SS | 26 | 27 | 28 | 29 |

| July 2012 | | | | |
|---|---|---|---|---|
| Mon | Tues | Wed | Thurs | Fri |
| 2 | 3 | 4 H | 5 | 6 |
| 9 | 10 | 11 | 12 | 13 |
| 16 | 17 | 18 | 19 | 20 |
| 23 | 24 | 25 | 26 | 27 |
| 30 | 31 | | | |

**FD**: First day of school
**PD**: Professional development for teachers & aides; no school for students
**H**: Holiday - No school for students, teachers, & staff
**O**: New Teacher Orientation

**RD**: Records Day; 12:15 pm dismissal for students
**M**: Term Midpoint
**MU**: Make-up day, if necessary
**PC**: Parent Conference Day; no school for students
**G**: Grades due from teachers

**RD**: Records Day; 12:15 pm dismissal for students
**RC**: Report cards issued
**B**: Break - no school for students & teachers
**T**: DC CAS Testing
**L**: Last day of school

**SS**: First day of Summer School

Version – 8/12/11

# CHAPTER 27 NOISE CONTROL

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## GENERAL PROVISIONS

2700.1 It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life to life, health, and enjoyment of his or her property. It is hereby declared that excessive or unnecessary noises within the District are a menace to the welfare and prosperity of the residents and businesses of the District. It is the declared public policy of the District to reduce the ambient noise level in the District to promote public health, safety, welfare, and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District.

2700.2 It is the intent of the Council of the District of Columbia that D.C. Law 2-53 (the "Act") be liberally construed to carry out its general purpose.

2700.3 Certain noise-producing activities are subject to limitations other than the general decibel limitations pursuant to §2701. The activities set forth in §§2702 through 2704, and §§2800 through 2807 are subject to the noise disturbance standard or other specific limitations and include, among others, the use of musical instruments, loud speakers, amplifiers, or unamplified speech, construction (which is subject to specific decibel limitations), and use of vehicle-mounted loud speakers or amplifiers (which are subject to the noise disturbance standard during permitted hours). All other noise-producing activities are subject to the general decibel limitations set forth in §§2701 and 2810.

2700.4 The agency that administers the noise control program shall conduct programs of public education regarding the following:

(a) The causes, effects, and general methods of abatement and control of noise and vibration;

(b) The actions prohibited by the Act; and

(c) The procedures for reporting violations.

2700.5 The agency that administers the noise control program shall encourage the participation of public interest groups in related public information efforts.

2700.6 The agency that administers the noise control program shall request any other department or agency responsible For any proposed or final standard, regulation, or similar action to consult with it on the advisability of revising the action, if there is reason to believe that the action is not consistent with Chapters 27 and 28 of this subtitle.

2700.7 The agency that administers the noise control program shall establish and publish on or before November 15, 1978, the test procedures to be used for measuring sound levels to determine compliance with Chapters 27 and 28 of this subtitle.

2700.8 The test procedures for measuring sound levels, as required by §2700.7, shall be revised periodically, as necessary.

2700.9 The public shall be given thirty (30) days to comment on all proposed test procedures before they are made final.

2700.10 On or before May 15. 1979, the agency that administers the noise control program shall establish guise assessment guidelines for the evaluation of proposed projects for the capital improvements budget and program.

2700.11 The guidelines required by §2700.10 may be used in the determination of the relative priority of each project in terms of noise impact.

2700.12 The agency that administers the noise control program shall evaluate and report to the Council of the District of Columbia every year on the effectiveness of the noise control program, and shall make recommendations for any legislative or budgetary changes necessary to improve the program.

2700.13 Noise of safety signals, emergency pressure relief valves, and warning or alarm devices shall be exempt (including horns when necessary as a danger warning); Provided, that no person shall knowingly permit the noise to be made or to continue beyond that necessary for the emergency safety purpose, or necessary testing.

2700.14 Unless specifically provided otherwise by the Act, a sound that constitutes a noise disturbance shall be considered a violation of the Act.

2700.15 The Mayor shall consult with the Administrator of the Federal Aviation Administration to recommend changes in airport operations to minimize noise disturbances resulting from the landing and the taking off of planes at the Washington National Airport.

2700.16 The Mayor shall require all departments responsible for a capital improvements budget and program to prepare an analysis of the noise impact of any proposed capital projects in accordance with noise assessment guidelines established by the administering agency pursuant to §§2700.3 through 2700.12 of this chapter.

2700.17 For the purposes of this section, the term "proposed capital projects" includes land acquisition, building construction, highway improvements, and fixed equipment installation. '

2700.18 All contracts signed by the District for capital projects shall contain provisions requiring compliance with the Act:

2700.19 The Mayor shall ensure that any written contract, agreement, purchase order. or other instrument by which the District is committed to the expenditure of monies in return for goods or services shall contain provisions requiring compliance with the Act.

2700.20 Noise levels under the Act may be measured by any official designated by the Mayor or by any person who is a qualified acoustical engineer who holds a certificate of registration as a professional engineer issued by the District. The measurements shall be admissible as evidence in any civil, criminal, or administrative proceeding relating to the enforcement of any provision of the Act.

2700.21 Nothing in this act shall be construed as repealing or limiting the effectiveness of noise limiting provisions contained in the D.C. Harbor Regulations (DCMR Title 19).

2700. 22 Each separate provision of Chapters 28 and 29 of this subtitle shall be considered independent of any other provision of those chapters and, if all or part of any provision, sentence, clause, or section is held illegal, invalid, unconstitutional, or inapplicable. to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of those chapters or their application to other parts or circumstances.

2700.23 It is the legislative intent that the Act would have been enacted if an illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included in the Act, and if the person or circumstances to which all or part of the Act is inapplicable had been specifically exempted from the Act.

**AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved January 26, 1887, 24 Stet. 368, ch. 49, as amended; D.C. Code §1-315 (1992 (Repl. Val.); the §§422(6) and 422(11) of the Distract of Columbia Sell-Government and Governmental Reorganization Act: the District** of **Columbia Nose Control Act of 1977. D.C. Law 2-53; as amended; Mayors Order 79-28 dated February S, 1979.**

**SOURCE: Sections 2, 4, 5, 7, 9,15, 18 of the Distract** of **Columbia Noise Control Act** of **1977, D.C. Law 2-53, 24 DCR 5293 (December 30, 1977); as amended by §2** of **the Nose Control Amendment Act** of **1996, D.C, Law 11-161. 43 OCR 3727, 3728 and 3730 (July 19, 1996).**

**EDITOR'S NOTE: Chapter 30. Noise Control was renumbered Chapter 27.**

## 2701 MAXIMUM SOUND LEVELS

2701.1 Except for person engaged in the noise-producing activities that are subject §§2702 through 2704, and §§2800 through 2807 of this subtitle, no person shall cause, suffer, or permit any sound that emanates from an operation, activity, or noise source under his or her control to exceed the maximum permissible sound level established in the following table as applicable for the time of day or night and the zoning location where the noise originates. For the purposes of this subsection, The source level shall be measured at the property line of the property on which the noise source is located or as close as is practicable if there is an obstruction. Sound levels shall be measured according to the test procedures prescribed by the administering agency established under §2700:

| ZONE | MAXIMUM NOISE LEVEL | |
|---|---|---|
| | Daytime | Nighttime |
| Commercial or light manufacturing zone | 65 dB(A) | 60 dB(A) |
| Industrial zone | 70 dB(.a) | 65 DB(a) |
| Residential, special purpose, or waterfront zone | 60 db(A) | 55 db(A) |

2701.2 For the purposes of this section, the sound level shall be measured at the property line of the property on which the noise source is located, or as close as is practicable if there is an obstruction.

2701.3 Sound levels shall be measured according to the test procedures prescribed by the administering agency established under 82740.3 of this subtitle.

2701.4 If a sound can be measured in a contiguous noise zone that has a more restrictive noise limitation than that from which the noise emanates, the sound level measurement at the zone line shall not exceed that established for the more restrictive zone.

2701.5 If the sound emanates from a source within an area for which the maximum permissible sound level has not been established, the maximum level shall be sixty (60) dB(A).

2701.6 Unless restricted by another section of Chapters 27 and 28 of this subtitle, sounds emanating from a street or highway shall not exceed the most restrictive sound level established for the property bordering the street or highway.

2701.7 Noise emanating from inside a motor vehicle shall be measured at a distance of not less than fifty feet (50 ft.) from the vehicle.

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293 (December 30,1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Low t t-tBt, 43 OCR 3727 (July 19. 1998).**

## 2702 EXEMPTIONS: PRE-EXISTING SOURCES

2702.1 Sounds emanating from pre-existing sources shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that the exemption shall not preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.

2702-2 Pre-existing sources shall be exempt for one hundred and twenty (120) days after May 15, 1978.

2702.3 Any owner or person in control of a pre-existing source that exceeds the maximum permissible sound levels as prescribed in §2701 of this chapter shall, within one hundred and twenty (120) days after May 15, 1978, file with the Mayor a written plan for the Mayor's approval for the reduction of dose sound levels to the maximum permissible levels.

2702.4 Each plan submitted pursuant to §2702.3 shall include a time schedule for the accomplishment of the reduction of noise levels, and shall provide for periodic increments of progress. The Mayor shall treat the plan as a request for a variance as provided in §2706 of this chapter.

**SOURCE: Section 5 of the District of Columbia None Control Act of 1977. D.C. Law 2-53. 24 DCR 5293. 5304 (December 30. 1977).**

## 2703 EXEMPTIONS: VEHICLES USING ONLY RAILS AND TRACKS

2703:1 Sounds emanating from vehicles using only rails and tracks shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that the exemption shall not preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.

2703.2 Vehicles propelled only upon rails and tracks shall be exempt at all times.

2703.3 Railroad cars operated by the Washington Metropolitan Area Transit Authority shall be operated in a manner so as not to emit maximum noise levels in excess of those established in the following table when measured at a distance of one hundred feet (100 ft.) from the center line of the track, or at the nearest property line, whichever is the greater distance from the center line of track.

| ZONE | MAXIMUM NOISE LEVEL |
|---|---|
| Residential, special purpose, or waterfront zone | 75 dB(A) |
| Commercial or light manufacturing zone | 80 dB(A) |
| Industrial zone | 90 dB(A) |

2703.4 In taking a measurement pursuant to §2703.3, the slow meter response of the sound level meter shall be used, and the measurement shall be taken approximately five feet (5 ft.) above grade.

**SOURCE: Section 5** of **the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5305 (December 30, 1977).**

## 2704 EXEMPTIONS: MISCELLANEOUS

2704.1 Sounds emanating from the sources covered in this section shall, to the extent indicated, be exempt 'from the specific noise limitations contained in §2701 of this chapter; Provided, that no exemption shall preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.

2704-2 Individual pieces of construction equipment shall be exempt at all times. They shall be operated so as to comply with the noise limits established in §2802 of this subtitle.

2704.3 Noise of safety signals, emergency pressure relief valves, and warning or alarm devices shall be exempt (including horns when necessary as a danger warning); Provided, that no person knowingly shall permit a noise to be made or to continue beyond that necessary for the emergency safety purpose, or necessary testing.

2704.4 Noise resulting from any authorized emergency vehicle, when responding to an emergency call or acting in a time of emergency, shall be exempt: Provided, that this subsection shall not be construed to permit law enforcement, ambulance, fire, or other emergency or official personnel to make excessive noise in the performance of their duties when the noise clearly is unnecessary.

2704.5 Noise resulting from emergency work shall be exempt at all times.

2704.6 The use or operation of portable power tools, home snow removal equipment, power garden excluding leaf blowers devices, and other powered equipment for minor repairs or minor improvements of real or personal residential property shall be exempt on weekdays (excluding Saturdays) during the daytime and from 9:_00 a.m. to 9:00 p.m. on Saturdays, Sundays, and legal holidays.

2704.7 Motor vehicles and motorcycles shall be exempt at all times. They shall be properly maintained and operated so as to comply with the noise limits established in Chapter 28 of this subtitle.

2704.8 The unamplified voice shall be exempt at all times.

2704.9 Noise resulting from the use of bull-horn amplifiers, permanently installed public address systems, whistles, or other devices, by personnel of the District government, the U.S. government, or other public agencies acting in their official capacities shall be exempt.

2704.10 Church bells or music connected with worship or official church ceremonies shall be exempt.

2704.11 Noise emanating from solid waste compactors shall be exempt at all times until standards are developed and promulgated by the administering agency pursuant to §2704.13.

2704.12 After giving a thirty (30) day notice, and within six (6) months after federal regulations for solid waste compactors are made final, the administering agency shall develop and promulgate standards for solid waste compactors. In developing the standards, the agency shall use the federal regulations for solid waste compactors as a guideline.

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293. 5306 (December 30, 1977); as emended by §2 of the District of Columbia Noise Control Amendment Act of 1977, D.C. Law 9-135, 39 DCR 4079 (June 12, 1992).**

## 2705 VARIANCES AND TEMPORARY EXEMPTIONS

2705.1 The Mayor, upon application by a person, may grant a variance or a temporary exemption from the maximum permissible noise levels or time limitations established in the Act when strict compliance with these provisions would impose an undue hardship on the applicant, on the community, or on other persons. The decision of the Mayor shall be in writing and shall include a statement of the reasons for the action taken.

2705.2 In determining whether or not strict compliance with these provisions would impose an undue hardship, the Mayor shall balance the degree of hardship against the harm that would be caused by the granting of a variance or a temporary exemption. In making this determination, the Mayor shall consider the following:

(a) The location;

(b) The time of day when the noise will occur:

(c) The duration of the noise, its magnitude relative to the maximum permissible noise levels permitted under the Act:

(d) The possible obstruction or interference with vehicular or pedestrian traffic:

(e) The feasibility of bringing the noise into conformity with this act, including economic factors related to the age and useful life of the equipment:

(f) The number of people that would be affected by the granting of a variance or temporary exemption;

(g) The degree of hardship involved if the variance of temporary exemption is not granted: and

(h) Any other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community.

2705.3 A variance or temporary exemption shall be granted only to the extent necessary to ameliorate the undue hardship, consistent with the purpose and intent of this Act.

2705.4 Nothing in this section shall be construed to permit any operation in violation of the Act during the pendency of a request for a variance or a temporary exemption.

2705.5 Nothing in this section and no variance or temporary exemption shall be construed to prevent or limit the application of the emergency procedures established under §2711. of this chapter.

**SOURCE: Section** 7 of **the District** of **Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293. 5319 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1998, D.C. Law 11.181, 43 DCR 3727, 3729 (July 19, 1998).**

## 2706 VARIANCE PROCEDURES

2706.1 Any person seeking a variance shall do so by filing with the Mayor a petition for a variance which shall be accompanied by plans, specifications, and other pertinent data as the Mayor may require, sufficient in scope to allow determination of the noise pollution impact that may result from granting the variance and the hardship involved if it is not granted.

2706.2 If the applicant is required to obtain a building permit (or some other type of permit) from the District government, he or she may include the request for a variance with the application for that permit.

2706.3 The Mayor may, at any time after an applicant files an original application, and before its expiration, require further statements in order to determine the disposition of the petition.

2706.4 Within three (3) months of May 15, 1978, the Mayor shall make available a list of the information to be required under this section.

2706.5 Notice of the variance application shall be given at least thirty (30) days before the . Mayor rules on the request, unless a lesser time is justified for good cause.

2706.6 Notice of the variance application shall be given as follows:

(a) The Mayor shall publish the notice in the D.C. Register;

(b) The applicant shall mail the notice to the owners of all property abutting the property involved in the application; and

(c) The applicant shall mail the notice to the occupants of property situated within two hundred feet (200 ft.) of the property involved in the application.

2706.7 The notice of the variance application shall show the nature of the variance requested and the location for filing an appeal.

2706.8 Within five (5) days after the notice appears in the D.C. Register, the applicant shall file with the Mayor a sworn affidavit demonstrating compliance with this section.

2706.9 Any person may submit comments on the application for a variance within twenty-five (25) days of the published notice, or within the time specified in the notice.

2706.10 The Mayor shall adopt and publish in the D. *C. Register* any additional procedures with regard to Requests for variances.

2706.11 The Mayor may, in his or her discretion, hold a hearing; Provided, that a hearing. shall be held if any person who may be adversely affected by the grant or denial of a variance, including the applicant, files a written request for a hearing within ten (10) days of the notice appearing in the *D.C. Register*.

2706.12 The hearing held pursuant to §2706.11 shall be held in accordance with the contested case provisions of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 *Stat.* 1208; D.C. Code 1-1509 (1991 Repl. Vol.)

2706.13 In granting or denying a variance, the Mayor shall file a written opinion stating the facts and reasons . the final decision.

2706.14 The Mayor may condition the variance and the terms of the variance on factors that he or she deems appropriate, including a schedule of compliance specifying a definite time period within which full compliance with Chapters 27 and 28 of this subtitle and the rules and regulations adopted under the Act shall be achieved.

2706.15 In issuing a variance for construction work, the Mayor may prescribe the conditions, working times, types of construction equipment to be used, and permissible noise emissions as the Mayor considers to be required in the public interest.

2706.16 No variance issued pursuant to this section shall be adopted for a period to exceed One (1) year; Provided, that a renewal may be obtained for additional periods not to exceed two (2) years if the Mayor finds that the variance is justifiable and that the intent and purpose of the Act is not impaired.

2706.17 No renewal shall be granted except pursuant to the filing of an application.

2706.18 An application for the renewal of a variance shall be made at least sixty (60) days prior to the expiration of the variance.

2706.19 Notice and hearing requirements for the renewal of variances shall be the same ' as those applying to

**SOURCE: Section 8 of the Distract of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5320 (December 30. 1977).**

## 2707 TEMPORARY EXEMPTION PROCEDURES

2707.1 A person may apply to the Mayor for a temporary exemption from the maximum permissible noise levels or the time limits established by the Act.

2707.2 If the applicant is required to obtain a building permit from the District government, he or she may include the request for a temporary exemption with the application for that permit.

2707.3 The decision of the Mayor shall be in writing and shall include a statement of the reasons for the action taken.

2707.4 If a temporary exemption is granted, the decision shall include the following information:

(a) The name of the applicant;

(b) The noise level to be permitted;

(c) The period of time during which the exemption shall be in effect: and

(d) Any other conditions or qualifications necessary for the protection of the public under the standards applicable to the granting of a temporary exemption.

2707.5 A temporary exemption shall be granted for as long as is necessary, but shall not exceed forty-five (45) days.

2707.6 A notice of the issuance of a temporary exemption shall be published to the D.C. *Register* and shall be posted by the applicant in a conspicuous sport at the location involved for a period of our (4) consecutive days following- the date of issuance.

2707.7 Any person adversely affected by the issuance or denial of a temporary exemption may, within ten (10 days of the decision, request a hearing on the matter.

2707.8 If the Mayor finds that a sufficient *bona fide* controversy exists regarding the issuance or denial of a temporary exemption, the Mayor may, in his or her discretion, hold a hearing on the matter.

2707.9 The hearing shall be held as soon as practicable.

2707.10 A decision by the Mayor after a hearing shall be final, subject to a *de novo* review by a court of competent jurisdiction.

2707.11 Unless the Mayor orders otherwise, the filing of a request for a hearing shall not affect the issuance of a temporary exemption.

**SOURCE: Section 2 of the Noise Control Amendment Act of 1996**, *D.C. Law 11-161, 43 DCR 3727, 3730 (July* 19. 1996.

**2708 - 2709 [RESERVED]**

**2710 NOTICE OF VIOLATIONS**

2710.1 Whenever the Mayor has reason to believe that a violation of any provision of the Act has occurred, he or she may, in lieu of or in addition to any other enforcement procedure, give notice of the alleged violation to the person or persons responsible, and order the persons to-take corrective measures as are deemed necessary.

2710.2 The notice of an alleged violation shall meet the following requirements:

(a) It shall be in writing;

(b) It shall indicate the section or subsections of Chapters 27 and 28 of this subtitle that have been violated; and

(c) It shall state the nature of the violation (including, if applicable, any dB(A) readings, the date, and the approximate time and place of their recording).

2710.3 The notice of an alleged violation may allow reasonable time for the performance of any act required by the notice.

2710.4 The notice of an alleged violation shall be deemed properly served upon the alleged violator when it is served by one (1) of the following methods:

(a) A copy of the notice is served personally upon the alleged violator, or is left either at the alleged violator's usual place of business or at his or her usual residence with a person over the age of sixteen (16) years who is employed or who resides at that place;

(b) A copy of the notice is left with any agent of the person to be notified, or is left at the office of the agent or with any person employed at the office, if the alleged violator's residence or place of business cannot be found in the District by reasonable search;

(c) A copy is mailed postage prepaid to the last known address of the person to be notified and is not returned by the Postal Service authorities; or

(d) The notice is published on three (3) consecutive days in a daily newspaper published in the District, when one (1) of the following circumstances exists:

(1) No address of the person to be served is known or can, with reasonable diligence, be ascertained; or

(2) Any notice mailed in accordance with §2710.4(c) is returned undelivered by the Postal Service authorities.

2710.5 A notice issued pursuant to this section shall be final unless the person adversely affected requests a hearing within the period specified in the notice of violation, or within fifteen (15) days after the date of service of the notice, whichever is less.

2710.6 Upon receipt of a request for a hearing, the Mayor shall provide the petitioner with an opportunity for a hearing in accordance with the contested case provisions of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Star. 1208; D. C. Code §1-1509 (1981)).

2710:7 A decision sustaining, modifying, or vacating a notice shall be final.

2710.8 If any person fails to comply with a final notice issued pursuant to this section. the Mayor shall institute action as may be necessary to terminate the violation.

2710.9 Any person's failure to comply with a final notice issued pursuant to this section shall constitute a separate violation of the Act.

2710.10 Nothing in this section shall be construed to preclude enforcement of the provisions of the Act by recovery of a penalty pursuant to §2713 of this chapter, injunctive relief, or other appropriate remedy.

**SOURCE: Section 10 of the District of Columbia None Control Act of 1977, r.C. Law 2-53. 2< OCR 5293, 5326 (December 30, 1977).**

## 2711 EMERGENCY PROCEDURES

2711.1 If the Mayor finds that any person is acting in a manner that constitutes a violation of the Act, the Mayor may order the person to cease and desist.

2711.2 Failure to comply with the order shall be a violation of the Act; Provided, that failure to comply with a cease and desist order shall not be an independent violation if a court of competent jurisdiction finds that no violation of the Act had occurred.

2711.3 Any person aggrieved by an emergency order of the Mayor may, within forty-eight (48) hours of the order, request a hearing by the Mayor.

2711.4 Upon receiving a request for a hearing from any person aggrieved by an emergency order, the Mayor shall hold the hearing as soon as is reasonably practical.

2711.5 The hearing regarding an emergency order shall be conducted in accordance with the contested case provisions of the D.C. Administrative Procedure Act (D.C. Code §1-1509 (1991 Repl. Vol.)).

2711.6 A request for a hearing on an emergency order shall not be grounds for noncompliance with any order issued pursuant to this section.

2711.7 After the conclusion of the hearing held pursuant to §§2711.4 and 2711.5, the person shall be notified by the Mayor of the Mayor's decision. This action shall be final; Provided, that an appeal from the action shall not be grounds for noncompliance with any order issued pursuant to this section.

2711.8 Nothing contained in this section shall preclude the Mayor from initiating appropriate action for the recovery of a penalty as is provided in Chapters 27 and 28 of this subtitle, nor shall it preclude the Mayor from seeking any other relief or remedy as is provided by law.

**SOURCE: Section 11 of the District of Columbia Noise Control Act of 1977. D.C. Law 2-53, 24 DCR 5293, 5328 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727, 3730 (July 19, 1998).**

## 2712 INTERFERENCE WITH MEASUREMENT

2712.1 It shall be unlawful for any person to refuse, prevent, or interfere with any lawful physical determination or measurement authorized by the Act; Provided, that the provisions of §2712.2 are complied with.

2712.2 No District government officer or employee shall enter any privately owned premise for the purpose of making a lawful, physical determination or measurement authorized by the Act without permission of the resident or a person in the premise, or without a valid search warrant.

**SOURCE: Section 12 of the District o1 Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5330 (December 30, 1977).**

## 2713 ENFORCEMENT: PENALTIES

2713.1 Any person who is aggrieved by a violation of any provision of the Act may complain to the Metropolitan Police Department which shall enforce the provisions of this Act.

2713.2 Prior to issuing a citation or notice of infraction, the Metropolitan Police Officer or other District government official may give a verbal warning to the violator and allow the violator a reasonable time to cease violating the Act.

2713.3 Any person who violates any provision of the Act shall be punished by a fine not to exceed three hundred dollars (S300) or imprisonment not to exceed ten (10) days, or both. In the event of any violation of or failure to comply with the Act or any section of the Act, each and every day of such violation or failure shall constitute a separate offense, and the penalties described in the Act shall be applicable to each such separate offense.

2713.4 Officers of the Metropolitan Police Department are authorized to enforce the provisions of the Act by issuing a notice of civil infraction for a violation of the Act that constitutes a noise disturbance pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Code §6-2701 *et seq.)*.

2713.5 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of Chapter 27 or 28, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of Chapter 27 or 28 shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

**SOURCE: Section 485 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990, D.C. Law 8-237, 38 DCR 314,318 (January 11, 1991); Section 2 of the Noise Control Amendment Act of 1996, D.C. Law 11-181, 43 DCR 3727, 3731 (July 19, 1996).**

## 2714 - CIVIL ENFORCEMENT

2714.1 Any person may commence a civil action in a court of competent jurisdiction on his or her own behalf for injunctive relief, to enforce a requirement, or to order the Mayor to perform a non-discretionary act against any person (including the District government to the extent permitted by the Eleventh Amendment of the U.S. Constitution) who is alleged to be the following:

(a) In violation of any requirement of the Act;

(b) In violation of any order issued by the Mayor with respect to any requirement of the Act; or

(c) Engaged in any act prohibited by the Act.

2714.2 No action shall be taken under the provisions of this section prior to ten (10) days after the plaintiff' has given notice of the violation to the Mayor, and to any alleged violator of the requirements.

2714.3 No action shall be taken under the provisions of this section if the Mayor has commenced and is diligently prosecuting a civil action in a court of competent jurisdiction in the District of Columbia to require compliance with the Act.

**SOURCE: Section 14 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53. 24 DCR 5293, 5330 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727, 3731 (July 19. 1996).**

## 2799 DEFINITIONS

2799.1 When used in Chapters 27 through 29 of this subtitle, the following words or abbreviations shall have the meaning ascribed unless the context indicates a different meaning. Where technical words are not defined, or where questions of interpretation arise regarding acoustical terminology, the American National Standard Institute (ANSI) definitions shall be used as a guide.

**ANSI** - the American National Standard Institute or its successor bodies.

**Construction** - any site preparation, excavation, assembly. erection, substantial repair, alteration, or similar action (excluding demolition) of public or private rights-of-way, structures, utilities, or similar property.

**Daytime** - the hours from 7:00 a.m. to 9:00 p.m.

**dB(A) - (A-weighted sound level)** - a measure of sound pressure level, in decibels, obtained from a sound-level meter using the A-weighting network or filter as specified in ANSI S1.4-1971 or the latest approved revision of that standard.

**Decibel - (1/10 of a bel)** - a unit (abbreviated "dB") for measuring the magnitude of sound equal to twenty (20) times the logarithm, to the base ten (10), of the ratio of the sound pressure being measured to a reference sound pressure of twenty (20) micropascals.

**Emergency work** - the work necessary to restore property to a safe condition following a public calamity or act of God, or the work required to protect the health and safety of persons.

**Leaf blowers** - any portable device or machine that is gasoline or electric powered and which is designed or intended, by generating a concentrated stream of air to blow, dispel, or make airborne, leaves, grass cuttings, paper, trash, or any other type of unattached debris or material. The term includes those devices or machines that accept vacuum attachments. *(D.C. Law 9-135)*

**Leg - (Equivalent A-Weighted Sound Level)** - the constant sound level that, in a given time period, would convey the same sound energy as the actual, time varying, A-weighted sound. The number in parenthesis immediately following the term "Leg" shall denote the time period in hours.

**Maximum sound level** - the highest level observed on a sound level meter.

**Mayor** - the Mayor of the District of Columbia or his or her designated agent.

**Motorcycle** - any motor vehicle other than a motorized bicycle having either a tandem arrangement of two (2) wheels or a tricycle arrangement of three (3) wheels, and having a seat or saddle for the use of the operator.

**Motor vehicle** - any vehicle propelled either by an internal combustion engine or by electricity or steam. This term does not include motor boats and traction engines used exclusively for drawing vehicles in fields, road rollers, and vehicles propelled only upon rails and tracks.

**Motorized bicycle** - any motor vehicle having the following:.

(a) Either a tandem arrangement of two (Z) wheels equipped with tires that are sixteen inches (16 in.) or more in diameter, or having a tricycle arrangement of three (3) wheels equipped with tires that are sixteen inches (16 in.) or more in diameter, weighing not more than one hundred and twenty (120) pounds;

(b) An automatic transmission; and

A motor or engine that produces not more than one and five-tenths (1.5) brake horsepower (as rated by the Society of Automatic Engineers), with a piston displacement of not more than fifty (50) cubic centimeters, and that is capable of moving the vehicle at a speed of no more than twenty-five miles per hour (25 mph) on level ground when propelled exclusively by the motor or engine.

**Nighttime** - the hours from 9:00 p.m. to 7:00 a.m.

**Noise** - this term shall have the same definition as "sound," in the Act.

**Noise disturbance -** any sound which is loud and raucous or loud and unseemly and unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof, unless the making and continuing of the noise is necessary for the protection or preservation of the health, safety, life, or limb or some person. In making a determination of a noise disturbance, the Mayor shall consider the location, the time of day when the noise is occurring or will occur, the duration of the noise, its magnitude relative to the maximum permissible noise levels permitted under the Act, the possible obstruction or interference with vehicular or pedestrian traffic, the number of people that are or would be affected, and such other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community. A sound shall not be considered a noise disturbance if during noncommercial public speaking in the Central Employment Area (10 DCMR §1107.2 as shown on Comprehensive Plan Map 2, District of Columbia Generalized Land Use Policies Map) or in an area zoned manufacturing or industrial during the daytime, the sound made by the participants engaging in such activity does not exceed eighty (80) dB(A) when measured inside any nearby occupied building or outside fifty feet (50 ft.) from the source of the sound**.** (*D.C. Law-161)*

**Noise level** - this term shall have the same definition as "sound level."

**Noise zones** - shall be defined according to the following three (3) categories, as shown, defined, and bounded on the zoning map:

(a) Residential, special purpose, or waterfront zone - any district listed under chapters 4, 5, and 9 of the D.C. Zoning Regulations. effective May 12, 1958, as amended;

Commercial or commercial-light manufacturing zone - any district listed under chapter 7 of the D.C. Zoning Regulations, effective May 12, 1958, or classified as a "C-M Commercial-light manufacturing" district under Chapter 8 of the Zoning Regulations; and

(c) General industrial zone - any district classified under Chapter 8 of the Zoning Regulations, effective May 12, 1958, but not classified as a "C-M Commercial-light manufacturing" district.

**Person** - an individual, partnership, corporation, trust, association, firm, organization, government, or other entity.

**Pre-existing source** - any noise source either established and in operation or under construction prior to May 15, 1978.

**Real property boundary** - an imaginary line along the ground surface and its vertical extension, which separates the real property owned by one (1) person from that owned by another.

**Sound** - an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of the sound, including duration, intensity, and frequency.

**Sound level** - the weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, such as A, B, or C as specified in the ANSI specifications for sound level meters (ANSI S1.4-1971. or the latest approved revision of ANSI S1.4 standard). If the frequency weighing employed is not indicated, the A-weighing shall apply.

**Sound-level meter** - an instrument to measure the sound pressure level meeting at least either the Type II requirements of the ANSI S 1.4-1971 standard or the latest approved version of the ANSI S1.4 standard. .

**Street or highway** - any road, street, alley, or way in the District of Columbia, open to the use of the public, as a matter of right, for the purposes of vehicular traffic.

**Weekday** - any day except Sunday or a legal holiday.

**Zoning regulations** - the D.C. Zoning Regulations, effective May 12, 1958, as amended (DCMR Title 11).

**SOURCE: Section 2 of the District of Columbia Noise Control Act of 1977, D.C. *Law* 2-53. 24 OCR 5293, 5295 (December 30, 1977); so amended by §2 of the District of Columbia Noise Control Amendment Act of 1977, D.C. *Law* 9-135, 39 OCR 4079 (June 12.1992), and by §2 of the Nose Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727 (July 19, 1996).**

# CHAPTER 28 MAXIMUM NOISE LEVELS

**seen.**


| | |
|---|---|
| 2800 | Musical Instruments, Loudspeakers, Amplifiers, and Unamplified Voices |
| 7801 | Mechanical Equipment |
| 2802 | Construction |
| 2803 | Construction in Residential Zones |
| 2804 | Explosives |
| 2805 | Hawkers, Peddlers, and Vendors |
| 2808 | Trash Collection in and Adjacent to Residential Zones |
| 2807 | Vehicle-Mounted Loud Speakers |
| 2808 | Leaf Blowers |
| 2809 | (Reserved] |
| 2810 | New Motor Vehicles |
| 2811 | Operational Limits for Motor Vehicles |
| 2812 | Alteration of Motor Vehicle Exhaust System |
| 2813 | Motor Vehicle inspection |
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## 2800 MUSICAL INSTRUMENTS, LOUDSPEAKERS, AMPLIFIERS, AND UNAMPLIFIED VOICES

2800.1 Noise resulting from the musical instruments, loudspeakers, amplifiers, and unamplified voices shall not exceed the maximum noise levels contained in this section.

2800 .2 I t shall be unlawful for any person to make, continue, or cause to be made or continued any noise disturbance by the operation, use, or playing of any musical instrument or device, loud speaker, sound amplifier, or other similar device, unamplified voice, for the production or reproduction of sound on private property or public space.

2800.32 Parades and public gatherings conducted pursuant to a permit issued by the Metropolitan Police Department (as provided for in 24 DCMR, Chapter 7) shall be exempt from the noise disturbance limitation.

2800.4 Sounds shall not project outside a place of business at a level that exceeds sixty (60) dB(A) at a distance of not less than one (1) meter from outside the business establishment. Nothing in the Act shall be construed to prohibit the use of musical instruments, amplifiers, or stereo equipment for the sole enjoyment of the listener; Provided, that the sound does not exceed sixty (60) dB(A) or the applicable noise level for the zone from which the sound emanates at a distance of one (1) meter from the source.

2800.5 It shall be unlawful for any person to make, continue or cause to be made Orr continued any noise disturbance as that term is defined in 20 DCMR §2799 created by the operation or use of aloud speaker, sound amplifier, radio, or

musical instrument on public streets, alleys, or thoroughfares in the District of Columbia. Public assembly activities provided for in 20 DCMR §2800.3 and non-commercial public speaking are exempt from the limitations set forth in this section. .

**AUTHORITY: Unless otherwise noted, the authority for this chapter is an Act approved January 26, 1887. 24 Slat 368, ch. 49, as amended; D.C. Code §1-315 (1992 (Repl. Vol.): the §§422(6) and 422(11) of the District of Columbia SsN-0ovemment and Governmental Reorganization Act; the District of Columbia Noise Control Act of 1977. D.C. Law 2-53, as amended; Mayor's Order 79-28 dated February 5. 1979.**

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5308 (December 30, 1977); as amended by §4 of the D.C. Noise Control Act of 1977 Amendment Act of 1986. D.C. Law 8-180, 33 DCR 7660, 7861 (December 21, 1986); and by §2 of the Noise Control Amendment Act of 1996, D.C. Low 11-161 (43 OCR 3727, 3729 (July 19, 1996).**

**EDITOR'S NOTE: Chapter 31 Maximum Noise Levels was renumbered Chapter 26.**

## 2801 MECHANICAL EQUIPMENT

2801.1 Noise resulting from mechanical equipment shall not exceed the maximum noise levels contained in this section.

2801.2 Noise resulting from the use or operation of any air-conditioning, refrigerator, heat pump, fan. swimming pool equipment, or other mechanical equipment, regardless of location, shall be prohibited in excess of sixty (60) dB(A) when measured at the property line or as close to the property line as practical if there is an obstruction.

**SOURCE: Section 5 of the District of Columbia Nose Control Act of 1977, D.C. Law 2-53. 24 DCR 5293, 5309 (December 30, 1977).**

## 2802 CONSTRUCTION

2802.1 From 7:00 a.m. to 7:00 p.m. on any weekday, noise levels resulting from construction or demolition (excluding pile driver devices) shall not exceed a L,(1) of eighty (80) dB(A) unless granted a variance under §2705 of Chapter 27 of this subtitle.

2802.2 From 7:00 p.m. to 7:00 a.m. the maximum noise levels prescribed in §2701 of Chapter 27 of this title shall apply.

2802.3 In cases involving noise from construction or demolition, measurements shall be made twenty-five feet (25 ft.) from the outermost limits of the construction site.

2802.4 No permit for building construction or demolition shall be issued until the permit applicant has assured in writing that the noise emanating from the planned construction will comply with the limitations established by this section.

**SOURCE: Section 5 of the District of Columbia Nose Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5308 (December 30. 1977).**

## 2803 CONSTRUCTION IN RESIDENTIAL ZONES

2803.1 Noise emanating from construction in residential zones shall be prohibited during the hours specified in this section irrespective of its compliance with §2701 of Chapter 27 of this subtitle.;

2803.2 No noise from construction, excluding minor home repairs, shall be permitted within a residential, special purpose, or waterfront zone on any Sunday or legal holiday, or after 7:00 p.m. and before ?:00 a.m. on any weekday.

2803.3 The limitation of §2803.2 shall not apply to the following:

(a) Portable power tools used for minor improvement of real and personal residential property otherwise allowable under this section;

(b) Work performed by public utilities as defined in the Act approved March 4, 1913 (37 Stat. 974; D.C. Code §43-103 (1990 Repl. Vol.)):

(c) Work performed by the Washington Metropolitan Area Transit Authority as defined in D.C. Code §§1-1410 et *seq.* (1992 Repl. Vol.); or

- (d) Work performed by the subcontractors of public utilities and the Washington Metropolitan Area Transit Authority as provided in §§2803.3(b) and2803.3(c).

2803.4 Noise emanating from the sources exempted in §2803.3 shall comply with the maximum noise levels prescribed in §2701 of Chapter 27 of this subtitle.

**SOURCE: Section 5 of the District of Columbia None Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5209 (December 30, 1977).**

## 2804 . EXPLOSIVES

2804.1 Noise emanating from explosives shall be prohibited during the hours specified in this section irrespective of its compliance with §2701 of Chapter 2 7 of this subtitle.

2804.2 No blasting with explosives shall be performed on any Sunday or legal holiday or at nighttime on weekdays, except by special permit as provided in § 1301 of the Second Amendment to the 1972 Building Code of the District of Columbia (Title 12 DCMR).

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5310 (December 30, 1977).**

**EDITOR'S NOTE: The Building Code referred to in this title has been superseded by D.C, Law 8-216, Construction Codes Approval and Amendments Act of 1986. effective March 21, 1987. The construction regulations existing prior to March 21, 1987, remain in effect for projects having reached specified stapes of completion. D.C. Law 6-216 adopted the 1984 National BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes. Effective November 27, 1992 (39 OCR 9665), the 1984 BOCA Codes, and the 1985 D.C. Supplement to the National FOCA Codes were superseded by the adoption of the 1990 BOCA Codes, and the 1992 D.C. Supplement to the BOCA Codes.**

## 2805 HAWKERS, PEDDLERS, AND VENDORS

2805.1 The shouting and crying of hawkers, peddlers, and vendors shall be prohibited at nighttime on any day of the week, irrespective of its compliance with §2701 of Chapter 27 of this subtitle.

2805.2 The limitation of §2805.1 shall not be construed to prohibit selling by outcry of merchandise, food, and beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed entertainment events.

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53. 24 DCR 5293, 5309 (December 30, 1977).**

## 2806 TRASH COLLECTION IN AND ADJACENT TO RESIDENTIAL ZONES

2806..1 ..... ..... Noise emanating from trash collection in any residential, special purpose, or waterfront zone shall be prohibited during the hours specified in this section irrespective of its compliance with §2701 of this subtitle.

2806.2 No person shall operate or permit the operation of any refuse collection vehicle in or within three hundred feet (300 ft.) of any residential, special purpose, or waterfront zone at nighttime on any day of the week. This prohibition shall not apply to vehicles owned by the District government employed for emptying litter receptacles.

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5311 (December 30.1977); as amended by §2 of the Noise Control Amendment Regulation Act of 185, D.C. Law 6-93. 33 DCR 314 (January 17, 1986).**

## 2808. VEHICLE-MOUNTED LOUD SPEAKERS\

2807.1 Noise emanating from vehicle-mounted sound amplifying equipment, instruments, and transmitting devices shall be prohibited during the hours specified in this section irrespective of its compliance with §2701 of Chapter 27 of this subtitle.

2807.2 Vehicle-mounted sound amplifying equipment, instruments, and transmitting devices shall be prohibited in streets or on highways after 9:00 a.m., and between 4:00 p.m. and 6:30 p.m.

2807.3 Vehicle-mounted sound amplifying equipment, instruments, and transmitting devices shall be prohibited in streets or on highways after 9:00 p.m. and before 9:30 a.m. During all other hours their use shall be subject to the limitations of the noise disturbance standards, and the following conditions:

(a) The vehicles are required, where traffic conditions permit, to move at least five miles per hour (5 mph);

(b) When the vehicles are stopped for any cause, no sound shall be amplified or transmitted for more than one (1) minute, so long as the vehicle remains stationary;

© Operators of the vehicles shall not hold sound amplifying equipment, instruments, or transmitting devices by hand while the vehicles are in operation; and

(d) When vehicles are parked in legal off-street locations, the conditions set forth in Sec. 2807 of this chapter shall not apply.

**SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5311 (December 30, 1977); as amended by sec. 2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 42 DCR 3727, 3729 (July 19, 1996).**

## 2808 LEAF BLOWERS

2808.1 Except as provided under sec. 2808.2, no person shall sell, offer for sale, or use, at any time, a leaf blower in the District of Columbia that has an average sound level exceeding seventy (70) dB(A) at a distance of fifty feet (50 ft.) from the leaf blower as measured in accordance with 2808.5 of this section. A leaf blower shall not be used at nighttime, between the hours of 8:30 p.m. and 8:00 a.m. in the District of Columbia.

2808.2 Upon the effective date of the District of Columbia Noise Control Amendment Act of 1992 ("1992 Act"), a person who sells, at retail, a leaf blower in the District of Columbia that exceeds the maximum sound level established in 2808.1 of this section must provide conspicuous notice to the consumer that the leaf blower may not be used in the District.

2808.3 A person who purchased a leaf blower prior to the effective date of the 1902 Act, or who can demonstrate that the leaf blower was manufactured prior to the effective date of the 1992 Act, may use that leaf blower for the next five (5) years, even though its average sound level exceeds the standard established in 2808.1 of this section, if its use is otherwise permitted by the Act.

2808.4 In addition to any other enforcement measure authorized under this act, the Mayor may inspect and, upon request, require a person to produce any leaf blower that is sold, offered for sale, or used, in order to determine compliance with this act. The Mayor shall use, to the extent possible, a manufacturer's written sound level representations, design and use specifications, and approximate manufacture date, as appropriate, as aids to determine compliance. A person who in good faith relies on a manufacturer's written sound level representation is not subject to penalties under 13 for violation of the Act.

2808.5 Compliance with sound level requirements of this Act shall be determined in accordance with a sound measurement testing standard for leaf blowers that has been deemed by the Mayor to be acceptable and adopted by regulation.

**SOURCE: Section 2 of the District of Columbia Noise Control Amendment Act of 1992, D>C> Law 9-135, 39 DCR 4079 (June 12, 1992)**

## 2809 (RESERVED

## 2810 NEW MOTOR VEHICLES

2810.1 No person shall either sell or offer for sale a new motor vehicle or motorcycle that is to be registered for use upon the public highway that exceeds the maximum noise limits designated in the table of §2810.2 when measured at a distance of fifty feet (50 ft.) from the center line of travel in accordance with test procedures (as may be appropriate for the vehicle being tested) as prescribed in this subsection:

(a) Those described by the Society of Automotive Engineers, Inc. (SAE), including SAE Standard J986(a) (for vehicles ten thousand (10,000) GVWR and under), SAE Standard J3 (for motorcycles), and SAE Standard J 184 (for vehicles over ten thousand (10,000) GVWR):

(b) Those recommended by Practice J 184 (for qualifying a sound data acquisition system), and subsequent revisions of the standard: or

(c) A nationally recognized test procedure, such as those promulgated by the EPA. as the administering agency may prescribe in accordance with §§2700.7 through 2700.9 of Chapter 27 of this subtitle.

2810 .2 Each manufacturer, distributor, or importer, or his or her designated agent, shall certify in writing to the Mayor that all motor vehicles or motorcycles sold by him or her in the District comply with the provisions of the following table:

| TYPE OF VEHICLE AND DATE OF MANUFACTURE | MAXIMUM NOISE LEVEL |
|---|---|
| Any motorcycle, other than a motorized bicycle, manufactured after 1976 | 8:3 dB(A)- |
| Any motor vehicle with a gross vehicle rating of more than ten thousand pounds (10.000 lbs.) manufactured on or after January 1. 1978 | 8:3 dB(A) |
| Any motor vehicle with a gross vehicle weight rating of more than ten thousand pounds (10.000 lbs.) manufactured on or after January 1, 1982 | 80 dB (A) |
| Any other motor vehicle weighing ten thousand pounds (10.000 lbs.) or less manufactured on or after January 1, 1976 | 83 dB(A) - |
| Any other motor vehicle weighing ten thousand pounds (10,000 lbs.) or less manufactured after January 1. 1978 | 80 dB(A) |

**SOURCE: Section 6 of the District of Columbia Nose Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5312, (December 30, 1977).**

## 2811 OPERATIONAL LIMITS FOR MOTOR VEHICLES

**2811.1** No person shall operate a motorcycle motor vehicle, or combination of motor vehicles of a type subject to registration under D.C. Code X40-103 (1990 Repl. Vol.) at any time, or under any condition of grade, load, acceleration, or deceleration in a manner that exceeds the maximum noise limits designated m the table of this subsection for the specified speed limits, measured at a distance of fifty feet (50 ft.) from the center line of travel by a sound level meter switched to the A-weighting network, in accordance with such nationally recognized test procedures as the administering agency may prescribe in accordance with §§2700.7 through 2700.9 of Chapter 27 of this subtitle.

| TYPE OF VEHICLE | NOISE LIMIT 35MPH or less | Over 35 MPH | Stationary Run-up |
|---|---|---|---|
| Any motor vehicle with a manufacturer's gross vehicle weight rating of ten thousand pounds (10,000 lbs.) or more, and any combination of vehicles towed by that motor vehicle | 86 dB (A) | 90 dB(A) | 88 dB(a) |
| Any motorcycle | 82 dB(A) | 86 dB(A) | |
| Any other motor vehicle and any combination of vehicles towed by a motor vehicle with a manufacture's gross weight rating of ten thousand pounds (10,000 lbs.) or more | 76 dB(A) | 8'2 d(B)(A) | |

2811.2 Where a test procedure is used for which the noise levels prescribed in the table in §281 l.1 would not be appropriate. the administering agency may establish and publish a table with the appropriate levels which are substantially equivalent to those established in that table.

2811.3 The public shall be provided with at least thirty (30) days to comment on all new standards and procedures before the standards are made final.

2811.4 For the purposes of this section, a motor truck, truck tractor, or bus that is not equipped with an identification plate or marking that bears the manufacturer's gross vehicle weight shall be considered as having a rating of ten thousand pounds (10,000 lbs.) or more if the unladen weight is more than nine thousand pounds (9,000 lbs.).

2811.5 No person shall operate a motor vehicle equipped with an engine speed governor that generates a sound level in excess of eighty-eight (88) dB(A) measured on an open site with a fast meter response at fifty feet (50 ft.) from the longitudinal center line of the vehicle when its engine is accelerated from idle to a wide-open throttle governed speed with the vehicle stationary, transmission in neutral, and clutch engaged.

2811.5 The administering agency may by regulation prescribe correctional factors to the limits prescribed in the table of §2811.1 of this section when measurements are made at a site that contains large reflecting surfaces in cle 3e proximity to the vehicle or noise measuring microphone.

2811.7 A violation of the adjusted levels as provided in $2811.6 shall constitute a violation of this section.

2811.8 In the event that it is impractical to obtain a measurement fifty fret (50 ft.) from the center line of travel, the actual distance shall be measured and one (1) of the correctional factors -in the following table shall be applied to the maximum permissible sound levels prescribed in the table of &2811.1 of this section -

| DISTANCE | CORRECTION | |
|---|---|---|
| | Soft site | Hard site |
| 35 - less than 39 ft. | +3 dB(A) | +5 dB(A) |
| 39 - less than 43 ft. | +2 dB(A) | +4 dB(A) |
| 43 - less than 48 ft. | +l dB(A) | +3 dB(A) |
| 48 - less than 58 ft | 0 dB(A) | +2 dB(A) |
| 58 -less than 70 ft. | -1 dB-A) | -1 dB(A) |
| 70 - less than 83 ft. | -l dB(A) | 0 dB(A) |

2811.9 For the purposes of this section, "soft test site" shall mean any test site having the ground surface covered with grass, another ground cover, or a similar absorption material for one-half (1/2) or more of the distance between the microphone target point and the microphone location point_

2811.10 For the purposes of this section, "hard test site" means any test site having the ground surface covered with concrete, asphalt, packed dirt, gravel, or similar reflective material for more than one-half (1/2) the distance between the microphone target point and the microphone location point.

**SOURCE: Section 6 of the Distract of Columbia Noise Control Act of 1977. D.C. Law 2-53. 24 DCR 5293 5313 (December 30. 1977).**

## 2812 ALTERATION OF MOTOR VEHICLE EXHAUST SYSTEM

2812.1 No person shall modify or alter the exhaust system of a motor vehicle or motorcycle in a manner that will amplify or increase the noise emitted by the vehicle above the level permitted under 2811 of this chapter.

2812 .2 No person shall use or operate a motor vehicle or a motorcycle having an exhaust system that has been modified or altered in a manner that will amplify or increase the noise emitted by the vehicle above the level permitted under 2811of this chapter.

**SOURCE- Section 6 of the District of Columbia Nose Control Act of 1977. D.C- Law 2-53 24 DCR 5293 5317 (December 30. 1977)**

## 2813 MOTOR VEHICLE INSPECTION

2813.1 The Mayor shall conduct a study to determine the advantages and feasibility of requiring a noise inspection as a part of the annual motor vehicle inspection program-

2813.2. The study required by §2813.1 shall be submitted to the Council of the District of Columbia not later than six months (6 mps.) after May 15, 1978, and shall include the following:

(a) An estimate of the cost to the District of requiring a motor vehicle inspection program for noise (computing separately the cost for District-owned motor vehicles in contrast to the cost of all vehicles);

(b) An estimate of the length of time that would be required per vehicle for the test, and the impact this would have on the total inspection program;

(c) The test procedures that would be used;

(d) An estimate of the number of cars that would fail the test, and the appropriate cost to each registrant to bring a car into compliance;

(e) The impact of the program on the repair stations in the District; and

(f) The impact of the program on noise levels in the District.

**SOURCE: Section 6 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53. 24 DCR 5293, 5318 (December 30, 1977).**

## 2899 DEFINITIONS

2899 .1 The meanings ascribed to the definitions appearing in §2 799.1 of Chapter 27 of this subtitle shall apply to the terms in this chapter.

# CHAPTER 29 NOISE MEASURING TEST PROCEDURES

secs.
**2900 General Provisions**
**2901 Equipment**
**2902 Sound Level Meter Calibration**
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## 2900 GENERAL PROVISIONS

2900.1 The purpose of this chapter is to establish standard testing procedures for measuring noise levels as prescribed under the provisions of Chapters 27 and 28 of this subtitle, the D.C. Noise Control Act of 1977 (D.C. Law 2-53, March 23, 1978).

2900.2 The intent of this chapter shall be to do the following:

(a) Specify straight-forward procedures that are applicable to the large majority of expected situations; and

(b) Specify the limits of applicability of those procedures such as situations in which acoustical specialists or specialized equipment may be required to supplement the procedures.

2900.3 The measurement procedures provided in this chapter shall be reviewed periodically with reference to changes in the practice of noise measurement, instrumentation, District code, and legal precedent.

2900.4 The measurement of noise produced by motor vehicles in transit shall be prescribed by District and federal laws. Enforcement by police officers shall be provided by District law.

2900.5 Any situation in which the noise source cannot be demonstrated to increase the total noise at the measurement point by at least four (4) dB(A) over the ambient level shall be considered unmeasurable by the techniques described in this chapter.

2900.6 Any situation in which readings exceed the statutory limits, but are less than the statutory limit plus the grace limit, the noise shall be measured with more specialized or more accurate equipment prior to deciding whether the source is in compliance with the Act.

2900.7 When readings exceed the statutory limits, but are less than the statutory limit plus the grace limit, consultation with qualified professional personnel shall be required.

**AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved January 26.1887, 24 Stat 368, ch. 49, as amended; D.C. Code §1315 (1992 (Rapt. Vol.); the §§422(6) and 422(11) of the District of Columbia Self-0ovemment and Governmental Reorganization Act; the District of Columbia Noise Control Act of 1977, D.C. Law 2-53; as amended; Mayors Order 79-28 dated February 5, 1979:**
**SOURCE: Final Rulemaking published at 26 DCR 1499, 1501, 1505 (September 28, 1979).**

**EDITOR'S NOTE: Chapter 32, Noise Measuring Test Procedures was renumbered Chapter 29.**

## 2901 . EQUIPMENT

2901.1 Sound-level meters and microphones shall meet Type 11 specifications per ANSI S 1.4-1971.

2901.2 Each sound-level meter shall be qualified annually.

2901.3 Each sound-level meter and microphone device shall meet the following specifications:

(a) External calibration devices with a known sound pressure level output at a single known frequency between two hundred (200) Hz and one thousand (1,000) Hz, as specified by the manufacturer;

(b) Windscreen with insertion loss less than five tenths (0.5) dB(A) below eight (8) kHz;

(c) Stopwatch, capable of cumulative operation and accurate to two percent (2%) or better;

(d) Wind speed indicator with at least twenty percent (20%) accuracy at twelve miles per hour (12 mph): and

(e) Earphones with impedance meeting the sound level meter manufacturer's specifications.

**SOURCE: Final Rulemaking published at 26 DCR 1499. 1501 (September 28, 1979).**

## 2902 SOUND LEVEL METER CALIBRATION

2902.1 A battery check shall be performed immediately before and after a series of measurements at each test site.

2902.2 An external calibration shall be made immediately before a series of measurements at each test site and, if necessary, the meter shall be adjusted to read within two tenths (0.2) dB(A) of the level specified by the calibration unit.

2902.3 Measurements may be assumed to be valid if a calibration check after a series of measurements agrees to within five tenths (0.5) dB(A), otherwise measurements shall not be used.

2902.4 Calibration checks also may be made immediately after the series of measurements and at least one (1) time per hour during the measurement series to ensure continuing accuracy of the equipment.

**SOURCE: Final Rulemaking published at 26 OCR 1499, 1501 (September 28, 19791.**

## 2903 EQUIPMENT SETTINGS

2903.1 In measuring impulsive or rapidly fluctuating noise, the following procedures shall be followed:

(a) A windscreen shall be used for all outdoor measurement,,
(b) The "C" scale shall be used on the sound level meter;
(c) The attenuator shall be set so that the measured levels fall between the zero mark and the full scale mark on the meter scale; and
(d) The fast meter response shall be used on the sound level meter.

2903.2 In measuring steady (including intermittent, slowly fluctuating, or quasi-steady) noise, the following procedures shall be followed:

(a) A windscreen shall be used for all outdoor measurements;
(b) The " A" scale shall be used on the sound level meter;
(c) The attenuator shall be set so that the measured levels fall between the zero mark and the full scale mark on the meter scale. At least five (5) seconds shall elapse after the attenuator is changed before measurements are taken; and
(d) The slow meter response shall be used on the sound level meter.

**SOURCE: Final Rulemaking published at 26 OCR 1499, 1502 (September 28, 1979).**

## 2904 MEASUREMENT LOCATIONS

2904.1 Measurements shall be taken at the following locations:

(a) At the property line of the property on which the noise source is located, or as close as practicable if there is an obstruction;

(b) At a distance of one (1) meter from any musical instrument or device, or loud speaker, sound amplifier, or other similar machine or device for the production or reproduction of sound, with exceptions as designated in the Act;

(c) At a distance of twenty five feet (25 ft.) from the outermost limits of a construction site; and

(d) At a distance of fifty feet (50 ft.) from the center line of traffic for motor vehicles.

2904.2 The microphone shall beat least three feet (3 ft.) above the surface while measurements are being taken, except for motor vehicle. stationary tests which shall be determined.

2904.3 The microphone orientation shall be as specified by the manufacturer.

2904.4 Measurements conducted on private property shall be taken with the permission of the owner or the owner's representative, or under the authority of a search warrant or a court order.

2904.5 Outdoor measurements shall not be conducted in the presence of wind speeds greater than twelve miles per hour (12 mph), nor in the presence of precipitation or fog.

**SOURCE: Final Rulemaking published at 26 DCR 1499, 1502 (September 28, 1979).**

## 2905 MEASUREMENT PROCEDURES

2905.1 Unless impracticable, earphones shall be used occasionally while noise measurements are being taken as a periodic check to ensure that the meter is responding properly to the noise source being monitored.

2905.2 In the case of steady (including intermittent, slowly fluctuating, or quasi-steady) noise, a measurement of the ambient noise level shall be required.

2905.3 If the ambient noise level of steady noise is within ten (10) dB(A) of the source sound level, the corrections specified in the table of §2905.7 of this section shall be applied to determine the noise level due solely to the source being investigated, and the source shall be interpolated as necessary.

2905.4 If the ambient level of steady noise is less than three (3) dB(A) from the noise source, no correction may be made and measurements cannot indicate true source noise level.

2905.5 Before citing a violation of a noise limit which may not be exceeded regardless of duration, a two and five tenths (2.5) dB(A) grace shall be allowed to account for all possible meter inaccuracies.

2905.6 Several measurements showing a violation shall be taken with at least twenty (ZO) seconds between each measurement.

2905.7 The following table shall be used for making corrections to measured ambient sound pressure levels:

| Difference (In decibels) between sound pressure level measured with sound source operating and ambient sound pressure level along dB(A) | Correction (in decibels) to be subtracted from sound pressure level measured with sound source operating to obtain sound pressure level due to sound source along dB(A) |
|---|---|
| Less than 4 | Measurement can not be made |
| 4 | 2.2 |
| 5 | 1.7 |
| 6 | 1.3 |
| 7 | 1.0 |
| 8 | 0~8 |
| g | 0.6 |
| 10 | 0.4 |
| more then 10 | 0 |

**SOURCE: Final Rulemaking published at 26 OCR 1499, 1504 (September 26, 1979).**

## 2906 DATA AND REPORTS

2906.1 The operator shall be required to fill out all pertinent information on the noise data form for field measurements.

2906.2 For each set of readings, the following information shall be required;

(a) Date, time, location, operator's name;

(b) Wind speed and direction;

(c) All instrumentation models and identifying numbers;

(d) A sketch of the site, including measurements points, noise sources, buildings, etc.;

(e) Measurement of noise peaks and steady levels to the nearest decibel, and durations;

(f) A description of special techniques employed;

(g) A description of the noise, noting especially if there is an apparent pure tone or impulsive content;

(h) The meter damping used (fast or slow); and

(i) Measurement of ambient and description of ambient if obvious (highway, dogs, etc.).

2906.3 If the ambient level is four to ten (4-10) dB(A) below the level found with the source operating, corrections shall be made to obtain the source noise level. The corrections shall be shown .

**SOURCE: Final Rulemaking published at 26 OCR 1499, 1504 (September 28, 1979).**

**2999 DEFINITIONS**

2999.1 The meanings ascribed to the definitions appearing in §2799.1 of Chapter 27 of this subtitle shall apply to the terms in this chapter.

2999.2 In addition to the definitions cited in Chapter 27, the following words shall have the meaning ascribed:

**Ambient** - the noise remaining when the source being measured is turned off.

**Calibration, external** - the testing under controlled conditions of the sound level monitoring system, by use of a calibration device, whose input sound pressure level and frequency are accurately known, for the purpose of ascertaining the accuracy of the system at the input level and frequency within the meaning of the Act. The system includes a microphone, microphone cable, and sound level meter and its internal components.

**Descriptors, acoustical** - the following descriptors are often used:

**dB(A)** - A-weighted sound level measured in decibels; ,

**$L_d$** - daytime equivalent A-weighted sound level between the hours of 0700 and 2100;

**$L_{dn}$** - day-night average sound level; the twenty-four hour (24) weighted equivalent sound level, with a ten (10 decibel penalty applied to nighttime levels;

**$L_{eq}$**- equivalent A-weighted sound level over a given period of time;

**$L_{eq}(1)$** - the $L_{eq}(1)$ is used in measuring construction noise and is the value of a steady state sound which has the same A-weighted average sound energy as that contained in a time varying sound. In this case, it is the equivalent sound level measured over a one (1) hour period. It is measured best with a statistical noise analyzer;

**$L_n$** - nighttime equivalent A-weighted sound level between the hours of 0700 and 2100;

**$L_{max}$**- maximum A-weighted sound level for a given time interval or event; and

**$L_x$** - x percent sound level, the A-weighted sound level equaled or exceeded x% of time. For example: $L_{10}$: sound level exceeded ten (10%) percent of time (usually the loudest level): $L_{50}$:

sound level exceeded fifty percent (50%) of time; and $L_{90}$.: sound level exceeded ninety percent (90%) of the time (usually the quietest level).

**External Calibration** -the testing under controlled conditions of the sound level monitoring system, by use of a calibration device, whose input sound pressure level and frequently are accurately known for the purpose of ascertaining the- accuracy of the system at the input level and frequency within the meaning of the Act. The system includes a microphone. microphone cable, sound level meter and its internal components). '

**Intermittent noise** - a noise that goes on and off but that is steady while it is on.

**Large reflecting surface** - a surface that may, cause an interference with the noise measurements being taken (a wall, for example).

**Pure tone** - a single frequency that predominates to the extent that it is audible. Pure tones are characterized by the following: a hum, moan, howl, whine, or whistle, depending on their frequency.

**Qualified** - calibrated by an authorized acoustical standards laboratory or an authorized factory representative.

**Quasi-steady noise** - a rapid series of impulses that has the same effect on the sound level meter as a steady noise.

**Qualification** - a comprehensive series of tests (including calibration using the full frequency response of a microphone, plus meter, plus A-weighted network) demonstrating compliance with ANSI specifications in addition to, but not required, calibration within the meaning of the Act.

**Rapidly fluctuating** - continuous noise whose level varies rapidly over a range greater than three (3) dB(A) read on the fast scale during the course of the measurements.

**Slowly fluctuating** - continuous noise whose level varies slowly over a range greater than three (3) dB(A) read on the slow scale during the course of the measurements.

**Steady noise** - a noise whose level varies less than three (3) dB(A) read on the slow scale during the course of the measurements.

**Source of violation** - consists of a single source, or of several distinct sources if all are being operated on the property from which the noise originates.

**SOURCE: Final Rulemaking published at 26 OCR 1499 (September 28. 1979)**