

RE: Proposed Regulation #21 Noise Control Regulation

1. Written comment received from District Attorney's Office and the Bureau of Sanitation and Safety staff – April 13, 2006

Comment Summary: A recent court hearing involved reference to the Health Department's Noise Regulation wherein a defense attorney challenged provisions of the current Noise Control Regulation. Based upon this challenge and input from the District Attorney's Office, Environmental Health proposes changes to language to clarify enforcement responsibilities and help avoid any future confusion that may exist with the current wording. Part 3.2, currently states:

3.2. "The Department shall have primary, but not exclusive, enforcement responsibility for this regulation as it concerns stationary sources. A municipality may have enforcement responsibility for a stationary source operating under an approved special permit. Enforcement responsibility for vehicular sources shall be shared between the Department and appropriate law enforcement agencies;"

Also, Environmental Health staff proposes Part 4.2, which states, "observation of a plainly audible noise at the property line is prima facie evidence of a violation of subsection 4.1 of this regulation," be deleted entirely as its application has been determined to be too broad.

Proposed language for the regulation:

3.2. "The Department and local law enforcement agencies shall have enforcement responsibility for this regulation.

2. Debbie Jacketta - Oral Comment – April 18, 2006

Debbie Jacketta states that she represents Jacketta Sweeping Service and that she is "here about the noise regulation and the banning of parking lot sweeping at night."

Response: This is not a blanket prohibition or a new prohibition to sweeping at night. The regulation currently prohibits commercial power equipment (street sweepers, chain saws, etc.) from operating within residential and commercial-agricultural land use districts between the hours of 10 p.m. and 7 a.m. in the morning. This section does not introduce a new prohibition, but rather allows sweepers into areas previously restricted during the nighttime hours of restriction as long as they are at least 800 feet away from a residential dwelling. Our primary concern is the protection of the residential community.

Debbie Jacketta: "...a lot of times we do arrange the schedules of our sweeping so we can those residential lots in the morning, but, we have trucks out 9 or 10 hours a night and there is no way we can get everything done in a few hours in the morning before the businesses open up or when the least amount of traffic is there. I'll send two trucks out a night and they start at 11 o'clock and we work our schedule so that the lots that are near

homes we are doing last, in the morning. So, usually the customer, we want to help the customers, you know, if I know there is a noise problem we um, and now even if I bid a job and I see there's houses I know that I don't wait for them to call me and say there is a noise problem, I mean we just work it into the schedule."

Response: The hours of restriction are 7 am to 10 pm. Most workplaces are closed or at greatly reduced staff after 5 or 6 pm. Most retail stores do not open until 9 or 10 am. All of these lots need to be periodically re-lined or re-surfaced. Signage directing drivers to park cars in restricted areas temporarily are effective for these purposes. Similar signage can be used to direct parking away from the area targeted for sweeping that day.

Other than employees, the same driver is not likely to be on the site and occupy the same parking space every time cleaning is scheduled. Employee issues are easily addressed. In instances where there is a problem, a backpack blower will move material out from under parked cars to where the sweeper can capture the debris.

As stated by Ms. Jacketta, sweeper companies are able to accommodate the restricted hours. Especially when we are directing the property owner to obtain the services of a sweeper company that will comply with the regulations. The property owner has a vested interest in accommodating the community more than that of the sweeping company. If there truly was no way to get the job done within the allowed hours, the property owner would not be able to find a compliant sweeper company. In each case, they have, and sometimes it has been the original sweeper company.

Debbie Jacketta: "A lot of them are just, there's nobody there, you know, they're in areas where it wouldn't make sense to wait till morning to do it."

Response: We agree. It is the intention of the proposed regulation to allow sweepers, during the restricted hours, into those areas that are more than 800 feet away from a residential dwelling where nobody is present. The current regulation restricts such access.

Debbie Jacketta: "It's, it is my understanding that Salt Lake City sweeps their streets downtown at night, would they be exempt from this? Or, do you know anything about that?"

Response: None of the municipalities would be or have been exempt from the restrictions. However, as the proposed regulation is interpreted, the use of sweepers on any public or private right-of-way would be restricted during the nighttime hours regardless of where they were located, except for those sweepers that operate on I-15, I-80, I-215, Bangerter Highway, and SR201, they are exempted. This is too restrictive and was not intended. Therefore, we would recommend that the phrase "within any public or private right-of-way, or" be deleted from section 4.5.12. This will allow sweepers to be used on any public or private right-of-way which is more than 800 feet away from any residence during the time restriction.

2. Mathew K. Richards - Oral Comment – April 18, 2006

Mr. Richards: “My name is Matthew Richards and I represent the Church of Jesus Christ of Latter Day Saints. I think the specific part of the regulation that we want, that our particular contention with is 4.5.12. We have the same concern and that is that, the, the prohibition that is created by that section would significantly impact the Church’s ability to clean its downtown facilities, the outside areas, there. We’re talking around the Conference Center, we’re talking around Temple Square, we’re talking about the Church Administration block, and the Church Plaza specifically, and then there are other areas that may be affected by, by this as well. ...But it’s, um, because of the size of the properties, it is simply not possible to do it during the daytime hours.

Response: See the previous responses. After further review of the LDS Church’s properties, only the Convention Center and Church Administration Block would be affected by the proposed regulation. Temple Square, the Church Plaza, and many of their other properties would not be affected by the proposed regulation; therefore these areas could be cleaned during the restricted hours.

Mr. Richards :...”in our research of, of noise regulations by other municipalities, we’ve not found any that are as aggressive and as inflexible in argument as the proposed regulation in this instance.”

Response: The proposed regulation sought to clarify this issue. Many municipalities and health departments, including ours, classify sweepers as “commercial power equipment.” Commercial power equipment in the current regulation as well as the proposed is prohibited during the restricted hours. Their search may not have found a municipality that referred specifically to the issue of “parking lot sweepers,” but most throughout the country do address “commercial power equipment ” with restrictions just as we do.

3. Doug Bruno - Oral Comment – April 18, 2006:

Doug Bruno... “My name is Doug Bruno and I represent myself. I’m, I’m a small land owner, I own three duplexes in Midvale. Um, one of the tenants in one of the duplexes is essentially operating a mechanic shop in the garage, uh, they modify Honda’s and put modified mufflers on them which make a lot of noise and I, I, you know, I think there is some language in here that will help us enforce that so that we make the noise, so that we make the noise level be as low as the original designed muffler system.

Response: The proposed regulation does contain revised language that will more adequately address muffler issues.

Doug Bruno : I think there is also some, some language that will help as far as keeping them from working and making loud noises in the garages after 10 o’clock at night. I have had a lot of tenants, who have moved because of the noise, I’m working hard to make it a good neighborhood and I would like to be able to have some control over the noise so that their, their sleep isn’t disrupted.

Response: The proposed regulation currently does not set a time restriction for individuals to work on their automobiles or motorboats within a residential area. We intend to correct this oversight and have made recommendations to address the issue.

5. Unidentified Attendee – Oral Comment - April 18, 2006

Unidentified Attendee: “Yea, so I agree that it should be changed. And I also think that Monday through Friday it should be 10 till 6.”

Response: The current restriction is 10 p.m. until 7 a.m. the following morning. It has now been in existence for over the past 30 years. As we have researched many other noise control regulations and ordinances, we have not come across a noise restriction that ended any later than 10 p.m. nor any earlier than 7 a.m. the morning. We recommend that we continue with the current restricted hours.

6. Mathew K. Richards, of Kirton McConkie, Attorneys At Law, representing the Church of Jesus Christ of Latter Day Saints. – written comment – April 17, 2006

Mr. Richards : “. . . ability to maintain its downtown properties will be severely restricted by the proposed new regulation.” Most of the objections posed in this letter centers around the perceived inability to clean sidewalks and gutters during the “day” between 7 am and 10 pm due to pedestrian traffic.

Response: The restriction in question is not new. The existing regulation prohibits the use of power equipment (which includes sweepers) in all residential and commercial districts during the nighttime restriction- regardless of how far away they are from residences. What is new is allowing sweepers to be used when they are far enough away from residences to meet the general noise restrictions. Over the years we have found sweeper companies to be creative and able to meet the needs of both their clients and the neighbors. We would be glad to assist in the development of a workable schedule but that is less likely to happen if there is no incentive to do so. The complainant believes that, with advance notice, exceptions can be made for specific, special events that may greatly increase foot traffic such as Spring and Fall Conference or the night the holiday lights are first lit each year.

Mr. Richards : “. . . it is a highly trafficked location that hosts not only tourists, but an operating religious house of worship. . . , office buildings, gardens designed specifically to promote peace and quiet for religious contemplation, and particularly in the tourist season, frequent concerts, theater performances and conferences.” The following sentence appears a page or so latter: “However, in any society, and particularly in an urban downtown environment, some noise is necessary.”

Response: Staff believes that the necessary noise is more appropriately generated during daytime hours (7:00 am to 10:00 pm) than during nighttime hours (10:00 pm to 7:00 am.) Is daytime contemplation more important than nighttime sleep to the public’s health?

Mr. Richards : “Nearly every other establishment in the Salt Lake Valley also cleans its premises and parking lots at night for the same reason: Traffic and use prevent day-time cleaning.

Response: Most establishments are not all that close to residential properties. Those that are, and about which we receive complaints, have re-worked their schedules to accommodate their client as well as the residential community adjacent to the work site. Please see staff response to comments by the WorldSweeper organization that discuss specific cases.

Mr. Richards : Two changes are recommended. One removes the phrase “. . . or as to cause a noise disturbance across residential receiving property.” The other is to eliminate the restrictions. The objection to the first is because “. . . the term noise disturbance is broadly and vaguely defined to include any sound ‘that annoys or disturbs a reasonable person(s) with normal sensitivities’.”

Response: This is terminology that is typical of nuisance laws.

Mr. Richards: Remove the curfew restrictions.

Response: Removal of the time restrictions would permit night time operations of equipment whose sound output is well in excess of that of a gas lawnmower or leaf blower. And it would be permitted in residential neighborhoods where you find many grocery stores and most churches. Consider that volume of noise within residential neighborhoods where street sweepers could then operate such equipment at two in the morning.

Mr. Richards : If the director exercises his discretion to create a blanket exemption for municipalities but does not acknowledge the similar need of private enterprises to clean at night, it would both raise questions about the regulation’s true intent and undermine the health considerations motivating the amendment.

Response: Staff has no idea where this is coming from. There is no indication that the Department would consider a request from a municipality for an exemption any more than from a private entity. We certainly have not in the past. We have directed municipalities to change their sweeper schedules in residential areas and they have done so. No exception has been granted Salt Lake City for the operation of their street sweepers. Exceptions are only granted for emergencies, some construction projects, and some civic events. In each case the situation is temporary. Exceptions are not granted for on going, even if intermittent, operations such as street sweeping.

Comment Summary : A 78 dB(A) limit, measures at 50 ft, is reasonable at all times of the day and night.

Response: The regulation has a standard that allows sound sources to be 55 dB(A) during the day and 50 dB(A) at night within a residential area. To meet the night time standard, a piece of equipment that is operating at 78 dB(A) would need to be at least 800 ft from the residence. The source would, however, still be audible.

Comment Summary : It is commonly understood that sound pressure declines about 6 dB (A) every 50 feet.

Response: This is a misunderstanding of one example. Sound pressure levels decline with distance in accordance with the inverse square law. Decibels are measured on a log scale and are reduced by about 6 dB(A) each time the distance is doubled. Our standard for mechanical noise sources is 78 dB(A) measured at 50 ft. So only when the first distance is 50 ft would doubling the distance to 100 ft mean that 50 ft reduced the sound pressure level by 6 dB(A) to 72 dB(A). The next doubling, to 200 ft, would reduce the sound pressure to 66 dB(A). That is, it now takes 200 ft to achieve the 6 dB(A) reduction accomplished by the first doubling of 50 ft. Another doubling to 400 ft would reduce the sound pressure level to 60 dB(A). Then one more doubling to 800 ft would finally bring the sound pressure level to 54 dB(A) which, while in compliance with residential daytime noise limits, is still not in compliance with nighttime limits.

Comment Summary : Not aware of other municipalities that are so inflexible in their restriction of sweepers.

Response: Salt Lake County has had this restriction on the books since the 1970's. Waste haulers are also held to the same restriction and there have been numerous examples of residence concerned when there are attempts to collect trash too early. These are quality of life and public health protections that we are proud to provide our community.

Comment Summary : Believes there should be a balance between the one unidentified complainant and the millions of people who visit Temple Square and other church attractions in the area each year.

Response: While the complainant's identification has not been shared with Mathew Richards, the complainant is not anonymous. The person represents other occupants of his or her building and will appear at the next public hearing. The complainant was concerned that he or she had not been informed of this last public hearing. We are also aware that only 4% of a population that identifies themselves as concerned about an issue are likely to actually complain – and that is if they know to whom they can complain.

7. Ranger Kidwell- Ross, M.A., Editor, WorldSeweeper.com – written comment – April 13, 2006

Comment Summary: Most of the comments regard the benefits of having street and parking lot sweepers do their job versus the consequences of these areas not being cleaned.

Response: We heartily agree that the streets and parking strips of our community need to be cleaned.

Comment Summary: The second paragraph on page 2 of 6 states “Fortunately, most incidences of individual noise problems with sweepers can be straightened out on a case-by-case basis through creative scheduling, operation without warning beacons flashing, powering down in certain areas, etc. A restriction of parking area sweeper operation to daytime hours, however, will create a host of other, largely unanticipated, problems.”

Response: Our experience has indeed been that most incidences of individual noise problems with sweepers can be straightened out on a case-by-case basis through creative scheduling of operations. We have never received a complaint regarding the flashing lights on a sweeper. If powering down had been practiced to begin with we may not have received a complaint. We respond to these situations on a complaint bases only.

Comment Summary: The third paragraph on page 2 of 6 starts with the following statement “Because of health and safety concerns, especially in regard to food debris, it is very important that all pavement surfaces be cleaned by an air sweeper on a regular basis.

Response: This statement indicates that the industry believes it does a better job with air sweeping rather than mechanical brushing. The air sweeping process is the noisier of the two methods.

Comment Summary: The third paragraph on page 2 of 6 continues with the following “Nighttime hours are typically the only time when the absence of parked cars allows this process to be effective. Even if sweeping is done during low traffic times (during the day or early evening), the same areas tend to remain continually unswept. That’s because shoppers and employees always park in the same spots, close to the entrance of the stores or their workplace.

Response: The hours of restriction are 7 am to 10 pm. Most workplaces are closed or at greatly reduced staff after 5 or 6 pm. Most retail stores do not open until 9 or 10 am. All of these lots need to be periodically re-lined or re-surfaced. Signage directing drivers to park cars in restricted areas temporarily are effective. Similar signage can be used to direct parking away from the area targeted for sweeping that day.

Other than employees, the same driver is not likely to be on the site and occupy the same parking space every time cleaning is scheduled. Employee issues are easily addressed. In instances where there is a problem, a backpack blower will move material out from under parked cars to where the sweeper can capture the debris.

Our past experience is that sweeper companies are able to accommodate the restricted hours. Especially when we are directing the property owner to obtain the services of a

sweeper company that will comply with the regulations. The property owner has a vested interest in accommodating the community more than that of the sweeping company. If there truly was no way to get the job done within the allowed hours, the property owner would not be able to find a compliant sweeper company. In each case, they have, and sometimes it has been the original sweeper company.

Comment Summary: The fourth paragraph of page 5 of 6 states that “Fortunately, modern power sweepers operate at a decibel output that is well under OSHA requirements for noise, and one that very few nearby residents find objectionable even when the sweeping is being done at night. Usually it is only during hot summer months, when residents have open bedroom windows, that complaints are registered. By and large, the benefits of conducting regularly scheduled sweeping far outweigh this slight inconvenience to a very small minority of residents.”

Response: OSHA standards are set to protect the hearing of 85% of healthy workers who are awake and on the job, not for preventing health effects associated with stress and disturbed sleep. All of our citizens deserve consideration. These operations occur at any one place several times a week and often “in the middle of the night.” Because of the long summer months in Salt Lake County and the use of evaporative coolers which require windows to be open to operate, this is a major impact on some people.

Comment Summary: The fifth paragraph of page 5 of 6 states “Power sweeper manufacturers are continually doing everything they can to reduce the noise of their equipment. This includes making available noise shields that dampen the sound output of sweepers. Due to the nature of the job being performed, however, a certain amount of noise is inevitable. It takes a powerful column of air to pull debris up from the pavement: If you take a look/listen for yourself, you will find that simply the air movement created by this action makes up a surprisingly high percentage of the sound of a modern sweeper.”

Response: New equipment may be quieter but there is old equipment out there and can we require them to have equipment that is no more than two years old? Acknowledging that air movement is the source of most of the noise acknowledges that the process is inherently noisy. Therefore, a time restriction is the only way to control this noise source.

CONCLUSION

There is agreement with the statement that creative scheduling works. When the residences east of Fashion Place Mall were troubled by the mall’s sweepers, the problem was resolved by the sweepers working the west side of the mall first and moving around to the east side after 7 am. The building itself protected the community from the sweeper when it was on the west side but reflected it into the community when the sweeper was on the east side of the building.

This is not a new prohibition to sweeping at night. The regulation currently prohibits commercial power equipment (street sweepers, chain saws, etc.) from operating during nighttime restricted hours near residences. This section does not introduce a new prohibition, just a clarification that allows street sweepers to operate at night in most areas. There is no restriction on sweepers in most commercial and industrial zones. The restriction is only within a one-block distance of residences.

Staff propose the following changes be made to the proposed regulation in response to public comment received:

Proposed language:

4.5.10(x) Motor Vehicle or Motorboat Repair and Testing. No person shall repair, rebuild, modify, idle, run, accelerate, or test any motor vehicle, motorboat, nor any auxiliary equipment attached to such vehicle or boat:

- a. Between the hours of 10 p.m. and 7 a.m. the following morning within 800 feet of a residential dwelling or within a noise sensitive area; or
- b. ~~As to create a nuisance, cause a noise disturbance across a residential property line or within a noise sensitive area unless the equipment does not equal or exceed the maximum sound pressure levels in Table 1.~~

4.5.12 Parking Lot or Road Sweepers. No person shall operate, nor shall any person cause, allow, permit, or fail to control the operation of any motorized mechanical sweeper, vacuum, or leaf blower ~~within any public or private right-of-way, or~~ within a noise sensitive area; or within 800 feet of a dwelling ~~or so~~ as to cause a noise disturbance across any residential receiving property:

- (i) Between the hours of 10 p.m. and 7 a.m. the following morning; or
- (ii) That emits a sound pressure level that equals or exceeds 78 dB(A) when measured at a distance of 50 feet.