

41--Are There Objective Standards to Evaluate If Noise Is an Annoyance, Nuisance or Offensive?

Most Declarations prohibit Owners from using their Units in a manner that will annoy or otherwise interfere with the peaceful possession and, enjoyment of other Unit Owners. This is a subjective evaluation and leads to disputes about whether one Owner is too loud or the other is too sensitive. One objective standard for noise can be found in the San Francisco Noise Ordinance. This standard outlines the procedure for measuring noise levels and sets levels that qualify as automatic violations of the city's noise ordinance. These standards can be a model used by an Association to adopt measurable criteria to help a Board evaluate noise complaints.

Subjective Standards

Noise complaints have long been an issue faced by Boards and a common source of conflict between Owners. Unfortunately, different people have different tolerances for noise. Many Associations want to establish some standard that will provide Owners with notice that their conduct is a "nuisance or annoyance." Most Association standards do not specifically speak to noise but instead says Owners should not annoy or otherwise interfere with the peaceful possession, enjoyment or proper use of the property by other Unit Owners. This standard is sufficient to authorize Board action; but without an objective way to measure the harm, the offending Owner will argue that their use of their property does not violate the community standards. Subjective standards make investigations and enforcement difficult, and depend on time, frequency and quality of the sound. Some sounds, like a piano, may bother some residents, yet be welcomed by others.

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Objective Standards

To prevent an Owner's ability to dispute a Board's enforcement action, a Board should consider adopting a measurable standard which will determine when a Unit's use is in violation of the community's noise policy. The community's noise policy will place limits on the amount of noise an Owner may produce in their Unit. A comprehensive policy must consider a number of factors such as how and when the noise level is to be measured, and the normal ambient noise level in the community. A community might also wish to accommodate different noise levels for night-time and day-time. Adopting an already existing standard can help a community avoid potential issues.

You can consider the San Francisco Noise Ordinance.¹ This ordinance prohibits producing excessive noise which can be detected in a neighbor's property.² To measure the noise level, a sound level meter is used in the neighbor's living area. The meter's microphone must be placed at least three feet from the wall and must measure the sound levels at three separate points in the room. The average of these separate measurements is used to determine the noise level.³

A recent client adapted part of the San Francisco standard for their community. They permitted a maximum noise level of 5 decibels over the ambient noise in the home.⁴ This policy was useful in resolving a dispute between two Owners over the sound of a piano. You can buy suitable sound meters for less than \$20 on Amazon. The community purchased the sound level meter and gave it to the Unit Owner to measure the noise levels within the apartment. The meter provided evidence of a violation and the offending Owner agreed to work with the Board to implement sound reduction measures. A hand-held meter is helpful when investigating noise complaints, but if attorneys are involved, you may need to hire a professional acoustical consultant to perform the testing.

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Absent an objective standard and use of a sound meter, Boards can still determine that a sound is a nuisance or annoyance. They must still investigate, which probably means Board Members experience the sound personally, or have multiple people complain. Relying on a single neighbor to find a violation likely does not meet the Board's duty of care to investigate.

¹ *Regulation of Noise*, San Francisco Police Code, art. 29 § 2900, *et seq.*

² *Id.* at § 2909(a) (“No person shall produce or allow to be produced ... a noise level more than five dBA above the local ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise...”)

³ *Id.* at § 2902. (“A person measuring the inside noise level measurements shall take measurements with the microphone at least three feet distant from any wall, and the average measurement of at least three microphone positions throughout the room shall be used to determine the inside noise level measurement.”)

⁴ The City of Seattle has put together a helpful reference which compares dBA levels to common daily experiences. Some illustrations from the chart are:

- 115 dBA – Maximum Vocal Effort – Possible hearing damage in short time period
- 85 dBA – noise of a chain-saw at 10 meters – Sustained listening may result in hearing damage
- 70 dBA – noise level of a main road – Difficult to use a telephone
- 60 dBA – level of a noisy lawn mower at 10 meters – intrusive
- 45 dBA – normal background noise level
- 10 dBA – sound of leaves rustling – just audible

Typical Environment Noises Sound Levels and Human Responses,
www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/p2081596.pdf