

**Testimony of Angela Licata**  
**Deputy Commissioner, New York City Department of Environmental Protection**  
**before the**  
**NYC Council Committee on Environmental Protection**  
**concerning**  
**Intros. 186/2014, 745/2015 and 59/2014 Relating to Noise Control and Enforcement**

**Monday, June 27, 2016**  
**City Hall, Committee Room**

Good morning Chair Constantinides and Members. I am Angela Licata, Deputy Commissioner of Sustainability in the New York City Department of Environmental Protection (DEP). I am joined today by Eric Landau, Deputy Commissioner for Public Affairs, as well as other members of our team. Thank you for the opportunity to present testimony on three bills before this committee relating to noise control and enforcement.

As you know, DEP has overall responsibility for the City's water supply and sewer system, including providing drinking water to all 8.5 million in-city New Yorkers and another one million upstate residents, maintaining pressure to fire hydrants, managing storm water, and treating wastewater. In addition, DEP regulates air quality, hazardous waste, and critical quality of life issues, including the subject of these bills, noise.

Intro. 186 of 2014 would not permit notices of violation (NOVs) issued to commercial establishments offering music to cite "unreasonable noise" without including sound meter readings obtained by enforcement personnel that are above the threshold levels for unreasonable noise in the Noise Code.

The Administration supports the intent of this bill, but it raises an issue with enforcement. Both the New York Police Department (NYPD) and DEP enforce violations of the unreasonable noise standard with regard to commercial establishments. Enforcement usually occurs on the street in front of the establishment, but can also be accomplished by taking noise meter readings in a complainant's dwelling.

In response to complaints from the nightlife industry, DEP amended Section 24-218 of the Noise Code in 2005 to define unreasonable noise by decibel levels in most situations. Inspectors take readings with noise meters to support the violation of the unreasonable noise standard. DEP issues violations from the street citing the decibel levels contained in section 24-218(b), which establishes the prescribed decibel limits when a violation is issued under 244. There are, however, a few instances when using decibel levels is not practicable, and on those occasions, such as when ambient noise masks the A-scale music, the meter won't be able to register the noise and therefore there is no detected violation of the standard, even though the noise is clearly unreasonable. It would be beneficial to have the ability to take readings using the C scale, which is in the commercial music section 24-231(c) but was not previously added to the unreasonable noise section in 24-218 during the 2005 Noise Code update. The C scale follows the frequency sensitivity of the human ear at very high noise levels. The C scale includes much more of the low-frequency range of sounds, including bass,

than the A and B scales. Adding this provision to the Noise Code would enable inspectors to use the most appropriate decibel level when the circumstances allow for measurements.

However, some flexibility is necessary and our inspectors must be able to make decisions regarding the practicality of meter readings based on field conditions. For example, it can be impractical to take readings during MARCH initiatives. MARCH, which stands for Multi-Agency Response to City Hotspots, is led by NYPD and may only present an opportunity for the inspector to issue without taking readings when the inspector witnesses noise that is clearly loud and therefore unreasonable. A violation is then written under 244(a) which permits a non-decibel-based standard to be used. DEP will, however, always use decibel levels when taking readings in a complainant's home, in accordance with Section 24-231(a). DEP inspectors are trained in the use of the meters and have them at all times. The meters must be properly calibrated in order to withstand challenge at Environmental Control Board hearings.

Furthermore, police officers who are called on to address noise from commercial establishments also need flexibility so that they will not be hampered in their enforcement efforts because a limited number of officers are sound-device qualified. According to 311, commercial noise complaints, meaning complaints generated as a result of noise emanating from bars, restaurants and clubs, account for approximately 10,733 complaints directed to NYPD so far for this year alone. Officers rely on Section 244, the general unreasonable noise provision, to enforce by standing at the prescribed 15 feet or more from the source of the sound. Section 244(a) refers back to Section 10-108, the Public Safety Code, and permits NYPD as well as DEP to address noise issues that disturb the public peace and comfort without the need to take decibel readings. Officers will first instruct staff at the establishment to turn the music down; if they cannot obtain compliance with their direction, they will write an NOV when the sound is too loud, taking into account the ambient sound level, time of day, the number of complainants, whether neighbors have asked the establishment to lower the sound, and the residential or commercial character of the area. The preference is always to correct the condition without the need for enforcement. We look forward to working with this committee to achieve the shared intent of this bill.

Intro. 745 of 2015 proposes to regulate the operation of electronic sound devices on food vending vehicles by prohibiting food vending vehicles and carts from operating a sound signal device between the hours of 9 p.m. and 9 a.m. DEP supports the greater limitation on the use of these devices during the hours when citizens need as much peace and quiet as possible in order to rest and sleep. DEP received 1,013 complaints in 2016 to date about these vehicles, especially ice-cream trucks parked outside parks, but actually issuing NOVs is difficult. Inspectors will contact a complainant in order to get a time frame when the vehicle is using the sound device while parked in order to witness the violation. But the vendors' schedules vary or they will often turn the device off when they see an inspector's vehicle, so only one NOV was written in 2016. It would also be beneficial to amend this section to enable DEP to issue violations to the operator or registered owner, so that the inspectors are not required to approach the person in the vehicle for license information, as that could potentially become a safety issue for the inspectors.

Intro. 59 of 2014 would regulate the sale and use of gas-powered leaf blowers. This bill would prohibit the use of gas-powered leaf blowers before noon on weekends and State and federal holidays, and would set noise standards for leaf blowers. It would also prohibit the use of gas-powered leaf blowers from May 15 to September 15, and limit noise to a maximum of 65 decibels.

DEP supports the expanded restrictions in this bill on when these devices may be used; however, DEP cannot speak to the availability of alternative devices that will meet the specified 65-decibel limit in the bill, and the effect on the businesses that rely on these machines. Further, we believe that the phrase “not equipped with a functioning muffler” should not be removed from subsection B(3), as our position is that all leaf blowers should be equipped with a muffler, which is in the current law. DEP defers to the Department of Consumer Affairs on the provisions that would prohibit the sale of gas-powered leaf blowers.

Thank you again for the opportunity to present testimony. I would be happy to answer any questions.