

Donald A. Drisdell
City Solicitor

Nancy E. Glowa
Deputy City Solicitor

Arthur J. Goldberg
First Assistant
City Solicitor



Assistant City Solicitors

Vali Buland
Paul S. Kawai
Elizabeth A. Shaw
Samuel A. Aylesworth
Amy L. Witts

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

October 21, 2009

Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Awaiting Report Item No. 09-106, Motorcycle Noise

Dear Mr. Healy:

In response to City Council Order No. O-11 dated September 14, 2009 now identified as Awaiting Report Item No. 09-106, I am providing copies of two earlier responses to the City Council relating to motorcycle noise: a letter dated June 10, 2009 from Commissioner Haas, and a letter from me dated October 17, 2007.

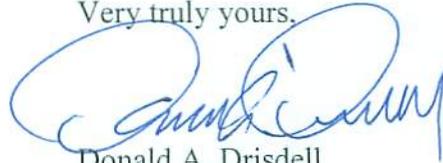
The referenced City Council Order requests that this office draft an ordinance to curb motorcycle noise in the city. As noted in the attached letters, state law and the City's Noise Ordinance already regulate loud exhaust noise from motorcycles. Boston and a few other municipalities have adopted a so-called "EPA Label" ordinance which prohibits the use of a motorcycle manufactured after 1982 without the factory installed EPA exhaust system label which certifies compliance with the EPA noise limit at the time of manufacture. I do not at this time recommend adoption of a similar ordinance in Cambridge for the following reasons.

I have been advised that there is a pending legal challenge to the Boston ordinance and I think it is advisable to await the outcome of such litigation prior to attempting to draft such an ordinance. In addition, information received from communities that have adopted such ordinances calls into question the effectiveness of such an approach. Apparently, post-manufacture modifications of motorcycle mufflers for the purpose of increasing noise can be accomplished without removal of the EPA label, undermining the effectiveness of such an approach to the problem. The labels are not always readily visible and may be located beneath a muffler, leading to safety concerns on the part of police

officers involved in the stop of such a vehicle, particularly at night, if they would be required to search the vehicle for such a label.

Given that existing state laws and local ordinance provisions already prohibit loud exhaust noise from motorcycles, and the current legal challenge to an EPA Label type ordinance, as well as questions as to the effectiveness of such an ordinance, I think that a focus on enforcement of existing laws, as referenced in Commissioner Haas' June 10, 2009 letter is the best manner in which to proceed with regard to this problem.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Donald A. Drisdell". The signature is stylized and cursive, with a large initial "D" and "A".

Donald A. Drisdell
City Solicitor



Robert C. Haas
Police Commissioner

City of Cambridge Police Department

TELEPHONE
(617) 349-3300

FAX
(617) 349-3320

WEB
www.cambridgepolice.org

Robert W. Healy
City Manager

June 10, 2009

Robert W. Healy
City Manager

Re: City Council Order No. 4, dated April 13, 2009

Dear Sir:

As requested, I am responding to City Council Order No. 4, dated April 13, 2009 regarding the enforcement of relevant laws that prohibit loud exhaust noise from motorcycles and motor vehicles. The Council cites noise from loud motorcycles and vehicle mufflers and loud car radios as disruptive to residents in the warmer weather.

Massachusetts law provides the enforcement tools necessary for police officers to address motor vehicles and motorcycles that have altered or modified muffler or exhaust systems and are emitting excessive and unnecessary noise in violation of M.G.L. c. 90, § 16. It prohibits the operation of any motor vehicle, including motorcycles, on a public way with a muffler that has been modified, or an exhaust system which has been modified in a manner which will amplify or increase the noise emitted by the exhaust. The statute also prohibits any device which makes harsh, objectionable or unreasonable noise. M.G.L. c. 90, § 16 provides in part:

No person shall operate a motor vehicle, nor shall any owner of such vehicle permit it to be operated upon any way...unless such vehicle is equipped with a muffler to prevent excessive or unnecessary noise, which muffler is in good working order and in constant operation, and complies with such minimum standards for construction and performance as the registrar may prescribe and, No person shall use a muffler cut-out or by pass: No person shall operate a motor vehicle on any way with a muffler from which the baffle plates, screen or other original parts have been removed and not replaced and, No person shall modify any exhaust system "in a manner which will amplify or increase the noise emitted by the exhaust".

ENFORCEMENT ACTION UNDER M.G.L. c. 90, § 16

Though there are several regulations that officers may apply to the enforcement of harsh and objectionable noises emitted from motor vehicles with an altered exhaust or muffler, enforcement under M.G.L. c. 90, § 16 does not require mandated equipment and procedures to precisely measure sound

levels. According to *Newburyport Police Department v. Godin*, 05-MV-16 Mass. App. Div. (2005), "police do not need to use sound meters in order to determine that a motorcycle violates §16; the harsh and objectionable standard can be proven by the testimony of an officer or citizen with special expertise. The penalty for violating this section is a CMVI of \$50.00.

M.G.L. c.90, § 7U provides that no person may operate a motorcycle so as to exceed a set measurable standard of 82 decibels when operated within a speed zone of 45 mph or less. Allowable noise levels for motorcycles are also specifically set out in state regulations 540 C.M.R 3.02. Enforcement of this section requires the use of specific mandate equipment by a certified police officer. The penalty for violating this section is a CMVI of \$35.00.

ENFORCEMENT ACTION UNDER M.G.L. c. 90, § 7U:

Officers would be justified in stopping a motorcycle if they had reason to believe that it was in violation of these established sound levels. But, in proving the violation, the officer will need to have the motorcycle tested in accordance with the extremely detailed and complex procedures set forth in 540 C.M.R.3.03. The Code of Massachusetts Regulations is very complex and, it does mandate specific equipment and procedures to be used in testing motorcycle sound levels. If the rider refuses to submit to the set test procedure, officers may pursue under M.G.L. c. 90, § 9, an RMV revocation of the motorcycle registration for improper equipment.

Under Article 8, Section 8.16.080 of the city's Ordinance. (Non-measured noise disturbances). Radios, phonographs, etc., the using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker or public address system, unless used by the City of Cambridge, or other machine or device for the producing or reproducing of sound in such a manner as to be plainly audible at a distance of fifty (50) from the building, structure VEHICLE or dwelling unit in which it is located. The penalty for violating this section is a \$300.00 fine to issued to the violator on a City of Cambridge Ordinance Violation Form.

The Department will initiate Roll Call Training to all officers relative to their authority to address all complaints relative to loud and objectionable noises emitting from car radios and vehicles with loud exhaust systems.

If you need additional information please let me know.

Sincerely,



Robert C. Haas
Police Commissioner

RCH/bk

Donald A. Drisdell
City Solicitor

Nancy E. Glowa
Deputy City Solicitor

Arthur J. Goldberg
First Assistant
City Solicitor



Assistant City Solicitors

Vali Buland
Paul S. Kawai
Elizabeth A. Shaw
Samuel A. Aylesworth
Amy L. Witts

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

October 17, 2007

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Prohibiting modification of motorcycle mufflers;
Awaiting report item 07-100; Policy order O-37 from meeting of 7/30/07

Dear Mr. Healy:

The above-referenced City Council order asks that the City Manager confer with the Law Department to consider drafting an ordinance similar to one passed this summer in Denver, Colorado that prohibits the modification of motorcycle mufflers in order to make them louder than is allowed by law. I have reviewed the Denver ordinance and existing Massachusetts state law.

The Denver ordinance (Section 36-8 of the Denver Municipal Code) states the maximum allowable sound level for motorcycles, which is set by federal law at 82 decibels. It then prohibits the operation of a motorcycle without a muffler bearing the federal EPA labeling certification, or one that does not comply with the maximum allowable sound level. Denver police are authorized to enforce the ordinance.

Existing Massachusetts law accomplishes virtually the same thing. G.L.c.90, §7U provides that no person may operate a motorcycle so as to exceed 82 decibels when operated within a speed zone of 45 mph or less. Allowable noise levels for motorcycles used in the state are also specifically set out in state regulation at 540 C.M.R. 3.02. Also, G.L.c.90, §16 provides in part:

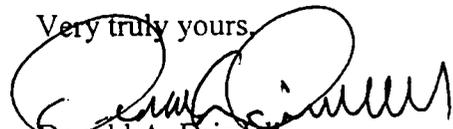
No person shall operate a motor vehicle, nor shall any owner of such vehicle permit it to be operated upon any way...unless such motor vehicle is equipped with a muffler to prevent excessive or unnecessary noise, which muffler is in good working order and in constant operation, and complies with such minimum standards for construction and performance as the registrar may

prescribe. No person shall use a muffler cut-out or by-pass. No person shall operate a motor vehicle on any way which motor vehicle is equipped (1) with a muffler from which the baffle plates, screens or other original internal parts have been removed and not replaced; or (2) with an exhaust system which has been modified in a manner which will amplify or increase the noise emitted by the exhaust.

Existing state motor vehicle laws are enforceable locally by the Cambridge Police Department pursuant to G.L.c.90C, §2.

Because existing state law already provides for local enforcement of laws prohibiting noisy motorcycles (similarly to the Denver ordinance), there does not appear to be a need for further local legislation.

Very truly yours,



Donald A. Driscoll