

### **Information and procedure with regard to Noise Nuisance Complaints.**

Information with regard to noise that **cannot be measured** in accordance with the stipulations of SANS 10103 ("The measurement and rating of environmental noise with respect to annoyance") and are therefore then addressed in terms of Regulation 9 of the Noise Control Regulation of Gauteng 1999

Regulation 9 of the Noise Control Regulations of Gauteng 1999 (Provincial Gazette, Extraordinary no 75 of August 1999) defines a noise nuisance as **any sound which disturbs or impairs or may disturb or impair the convenience or peace of any person.**

The person, whose convenience or peace is disturbed or impaired by any noise, is therefore entitled to lodge a complaint with this Department.

**The official of the Department investigating the complaint does not evaluate the noise or take sound level measurements (Objective Assessment) in the case of noise nuisances** (sound that cannot be measured in accordance with the stipulations of SANS 10103 and SANS 10328) **but issue a statutory notice** on the person causing the noise nuisance, or allow it to be caused, **on strength of the information provided by the complainant/s, in his/her official complaint supported by sworn statements, only. (Subjective Assessment)**

The complainant/s will be notified in writing that a notice had been served and the complainant shall diarise and keep evidence, if and when the noise nuisance reoccurs.

If the person on whom the Statutory Notice has been served, does not comply with the instructions set out in the notice and the noise nuisance continues, the investigating official must take the matter up with the Control State Prosecutor in order for a J175 (Notice to Appear in Court) to be issued. The only information the Control State Prosecutor will have to evaluate whether the State will be able to successfully bring the matter to it's conclusion in Court, will be the statement of the Complainant that initiated the matter and support statements of subsequent reoccurrences after the Statutory Notice had been served.

Although the Statutory Notice served on the person causing the noise nuisance or allowing it to be caused, is strongly worded and have, in most cases, the desired effect to resolve the matter, it remains the first step in instituting legal action. The complainant must therefore be prepared, once the process is set in motion by the issuing of the Statutory Notice, to avail him/herself as State Witness as he/she will be subpoenaed as such. In fact the complainant will be the only person that can prove the case in front of the magistrate. The investigating official handling (investigating) the complaint will be only part of the system to bring the parties, complainant and accused, in front of the Magistrate. (Subjective assessment) The Magistrate, as presiding officer, will asses whether the sound emanating from the alleged transgressor's premises constitutes a noise nuisance or not, on strength of evidence presented to him during the hearing. The case of the complainant presented by the State by the Prosecutor, using the information from the statement of the complainant, and the counter arguments of the accused represented by his/her legal counsel will therefore apply.

**Seeing that the Court Roll is congested, the Control State Prosecutor is obliged to only issue J175 Notices to Appear in Court and place cases on the Court Roll that have a reasonable chance for successful prosecution.**

Audio visual material (videos) will be accepted as court evidence if it can be authenticated and submitted with the initial statement, as well as with the statements of recurrences of the Noise Nuisance after the Statutory Notice was served. This will greatly enhance the case and in some cases the Control State Prosecutor will insist on it, as in cases of dogs barking, prior to issuing J175 Notices to Appear in Court.

It must be emphasised that if, for some reason or another, the case is lost in Court and the accused is acquitted, he/she will assume that he/she was in the right and can continue

causing the noise nuisance, which will not necessarily be the case, but it will be extremely difficult to bring the same matter to court again.

Note that transgressions of the stipulations of this legislation is a criminal offence and the accused can be fined up to R20 000 or imprisoned for up to 2 years, or both, if found guilty or admit guilt and will then have a criminal record.

**It is therefore critical for the complainant to keep all the above in mind prior the lodging of a complaint and in compiling his/her statement. The investigating official and the State Prosecutor will assist during the Court proceedings, but to have the matter placed on the Court Roll, bring it to a successful conclusion in Court, have the accused found guilty, sentenced and resolve the noise nuisance in this manner, are largely dependent on the complainant him/herself.**

Therefore, if a person wishes to lodge a complaint with this Department with regard to a noise nuisance, it should be in writing and preferably in the form of a statement which must include:

1. Complainants full names and surname.
2. ID number
3. Physical address
4. The exact nature and extent of the complaint with times and dates
5. How the noise negatively impacts on his/her convenience and/or peace
6. The exact physical address of the property from where the noise originates from
7. The contact details of the person causing the noise nuisance or allow it to be caused if possible. (This assists to expedite matters)
8. History of the noise nuisance as well as evidence of efforts to resolve the matter prior to lodging the complaint with the Council.

Bringing the matter to Court must be the last resort.

9. As much evidence and collaboration of other affected parties, if any.
10. The complainant must sign and affirm the statement in front of an authorized person, whom must certify that the deponent acknowledges the content of the statement to be accurate and the truth and considers the prescribed oath or affirmation binding to his/her conscience.

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