

COA Temporary Ordinance

City of Austin Code §9-2-3(A)(3)

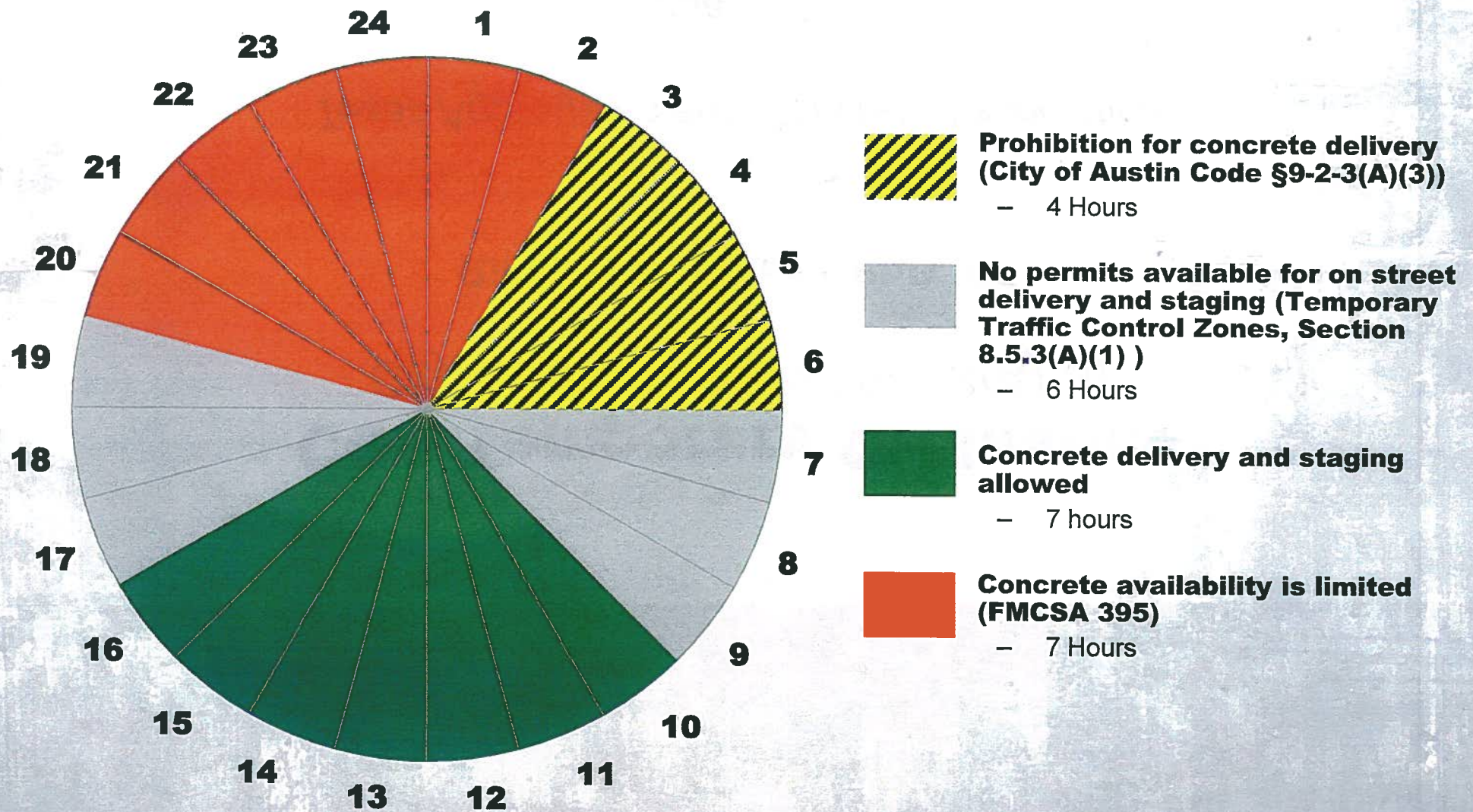
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President & CEO

Texas Aggregates and Concrete Association

January 2015

Impact to Available Hours for Supply



No Permits Available

Transportation Criteria Manual, Temporary Traffic Control Zones, Section 8.5.3(A)(1)

Daily lane closures on arterial roadways shall not be permitted during the hours of 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. Monday through Friday, except in emergencies as defined in Section 8.5.2-C1 or situations where it can be demonstrated that traffic flow or safety will not be adversely affected.

FMCSA Limits

- **No driver can:**

- Work more than 15 hrs in a 24 hr period;
- Must have a continuous 8 hrs off in a 24 hr period;
- 70 hours in a 7 day period

Normal Operating Procedures

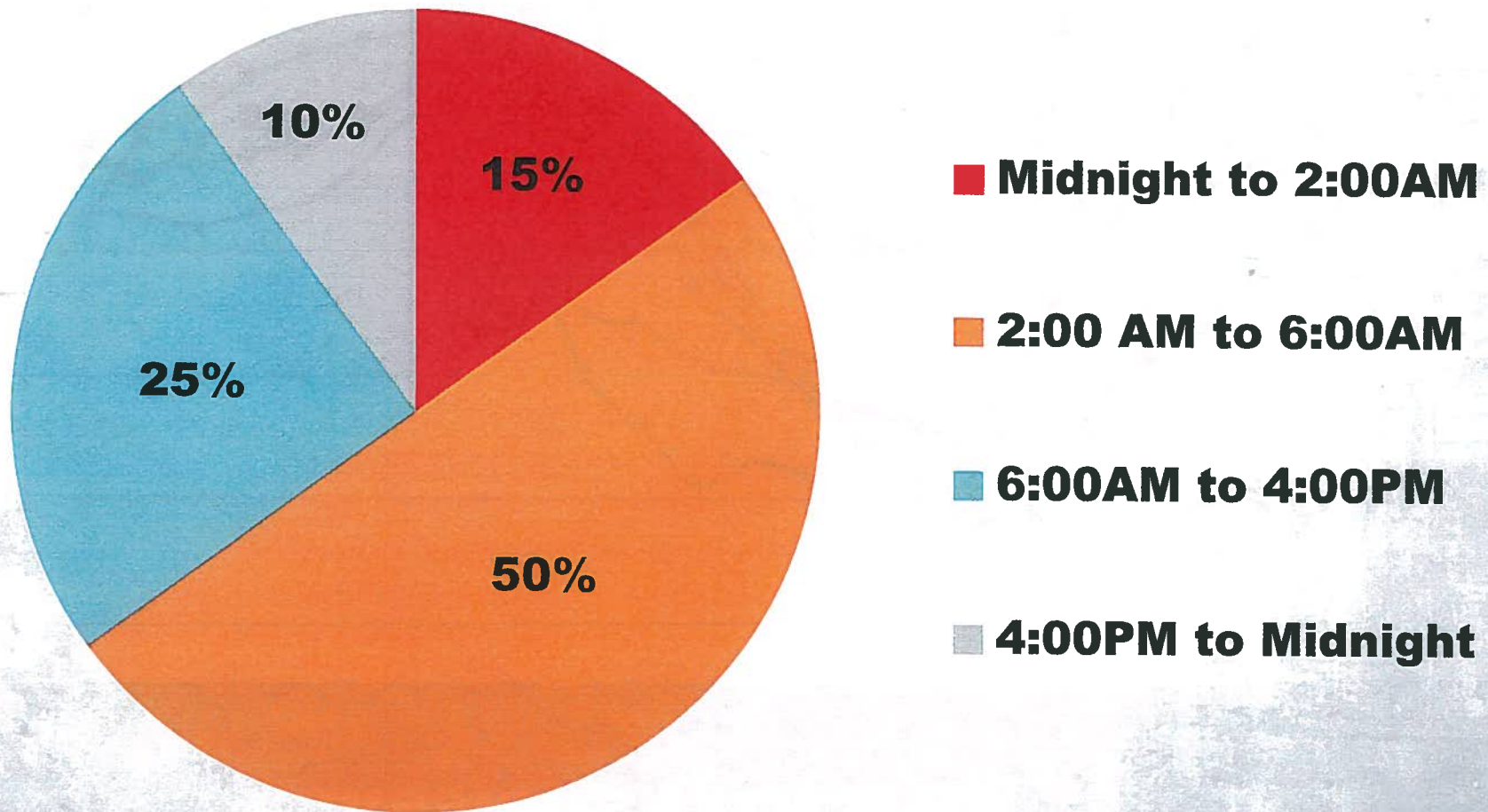
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
2:00 AM start																								
6:00 AM start																								

Change to Operating Procedures to comply with City of Austin Code §9-2-3(A)(3)

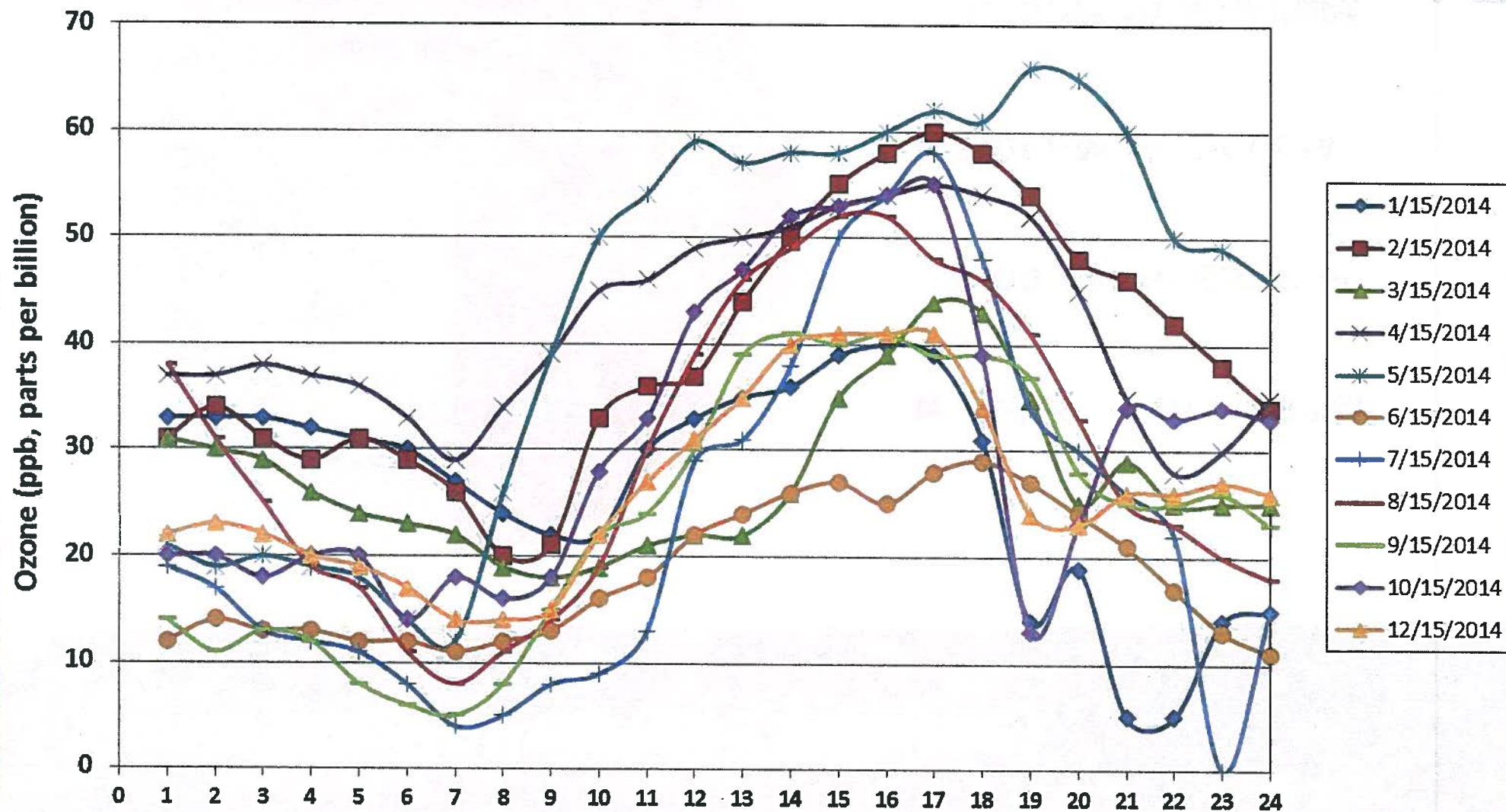
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
11:00AM start																								

- There are only so many trucks for available use
- Plant operations are not 24 hrs

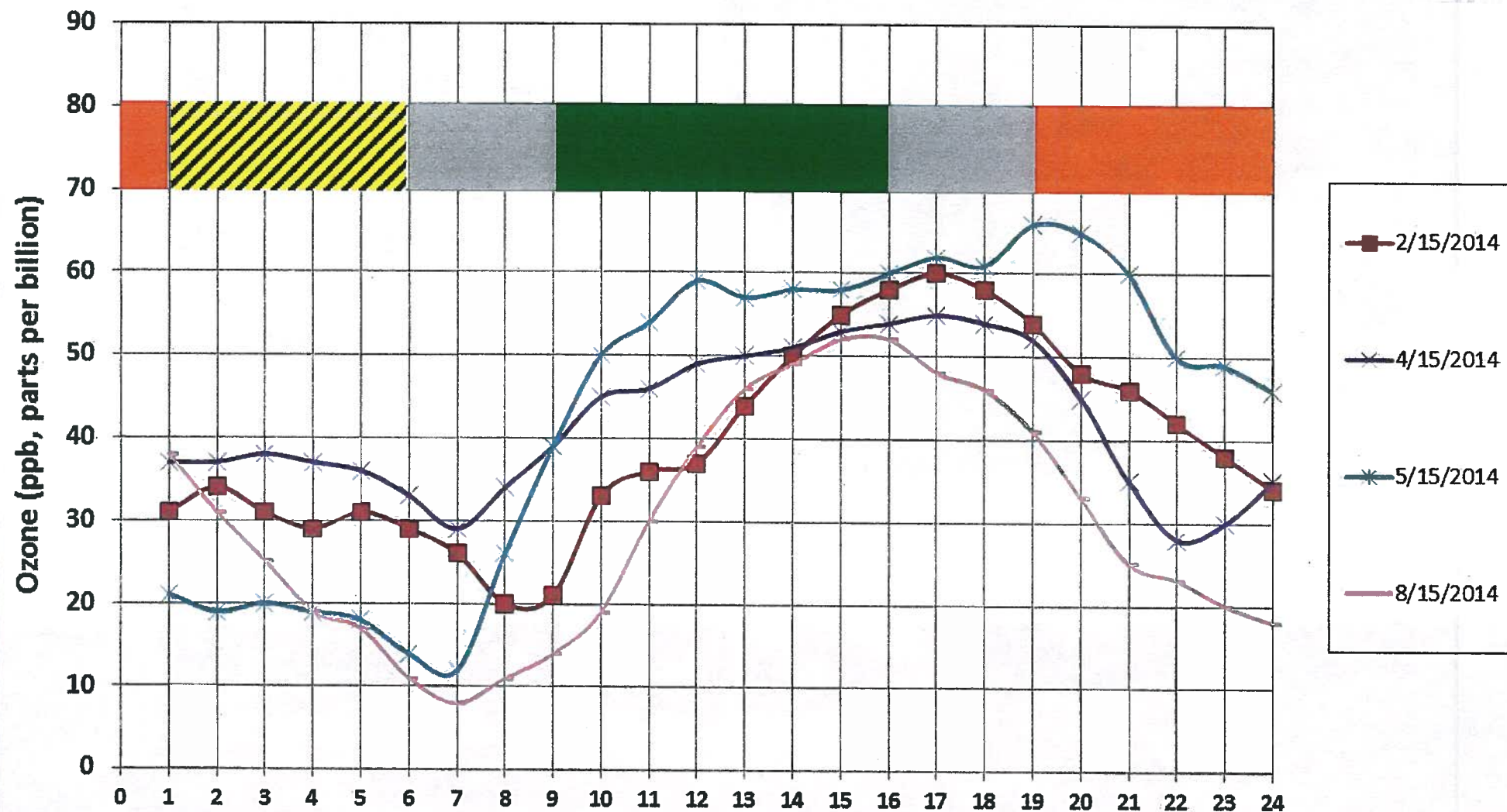
Concrete Deliveries (Volume)



Ozone Emissions (TCEQ)¹



Ozone per hr¹ vs. concrete delivery



Case Example: JW Marriott

- **60,000 yd³**
- **15 months**
- **Decks 350 yd³
twice a week**
- **Garage slabs 250
yd³ to 500 yd³
once a week**



Case Example: JW Marriott

- **Single deck is 350 yd³ (twice a week)**
 - 40 trucks per deck, 80 yd³/hr
 - 75 decks in total, 4.5 hrs/deck
 - With a 4 hr “special circumstance” window for delivery
 - None of these placements are “special circumstance”
 - Placements would be cut in half, doubling the actual number of days, and increase of 75 day(s) min to project schedule;
 - Placements would occur during the day as the ordinance does not allow for 4+ hr time for delivery, an additional 40 tucks per day in downtown Austin.

Case Example: JW Marriott

- **Garage slabs 250 yd³ to 500 yd³ (once a week)**
 - 27 to 60 trucks, 80 yd³/hr
 - 20 pours in total, 3.5 to 6.5 hrs per placement
 - With a 4 hr “special circumstance” window for delivery
 - None of these placements are “special circumstance”
 - 10 placements would shift to daytime, and double in time because of congestion, adding 20 day(s) min to project schedule;
 - Placements would occur during the day as the ordinance does not allow for 4+ hr time for delivery, an additional 55 tucks per day in downtown Austin.

Case Example: JW Marriott

- **If JW Marriott were constructed under this ordinance:**
 - Minimum of 95 day delay;
 - \$10,000 day operating cost = \$950,000 in additional cost;
 - Does not account of ancillary costs
 - Additional 40 to 55 trucks in downtown during daytime for each concrete placement;
 - Increase in congestion, decrease in safety, and limiting downtown commerce

Other City Ordinances²

City	Prohibition	Summary
Austin	YES	Specific prohibition in §9-2-3(A)(3) for <u>concrete installation</u> between 7:00 p.m. and 6:00 a.m., except with permit issued under §9-2-21.
Houston	NO	Concrete can be installed 24 hours so long as it does not exceed the following decibel limit at the property line where the sound is received.
Dallas	NO	The Director of Public Works may issue a permit for after-hours <u>construction</u> adjacent to residential property.
San Antonio	NO	<u>Construction activity</u> cannot exceed 80 dbA at any time or when such acts are done in a manner to constitute a nuisance between 10:00 p.m. and 6:00 a.m. Monday – Thursday or between 11:00 p.m. and 6:00 a.m.
Ft. Worth	NO	The prohibition against <u>construction</u> after 8:00 p.m. applies only to an "occupied residential structure."

City of Austin Code §9-2-3(A)(3)

- **In its current form (limitation by hours) will:**
 - Create more traffic congestion in downtown Austin;
 - Increase ozone emissions;
 - Delay downtown construction projects;
 - Increase costs/rent, for downtown projects
 - Decrease the safety of concrete finishers working on downtown construction projects;
 - Reduce job availability for low wage workers (laborers and drivers)
 - Decrease downtown commerce via limited access to businesses

Why is COA Code §9-2-4 not applicable?

“The decibel limit for “sound equipment” is 85, measured at the property line until 2:00 a.m., and “audible at the property line” between 2:00 a.m. and 10:00 a.m. ”

- **This already exists as an enforceable action for sleep disruption due to sound.**
- **Why could this not be expanded to handle construction?**
- **Why not use other cities as a model for sound limits and property line limits?**

Solution(s) Goal

- **Should focus on the actual problem(s)**

- Noise
- Light
- Hours

...and not the activities that cause them

- **Approach each as a discrete problem**

- So as not to risk incremental solutions

- **Focus on performance standards**

- Measureable, enforceable, and non-prohibitive for the business community to apply a variety of solutions

Proposal for new language³

Option	Summary
1	Eliminate the time prohibition, include existing mitigation plan
2	Eliminate the time prohibition for concrete construction, add <u>existing</u> decibel limit for all construction between 2:00AM and 6:00AM at <u>worksite</u>
2a	Eliminate the time prohibition for concrete construction, add <u>existing</u> decibel limit for all construction between 2:00AM and 6:00AM at <u>residential property line</u> .
2b	Eliminate the time prohibition for concrete construction, add <u>specific</u> decibel limit for all construction between 2:00AM and 6:00AM at <u>worksite property line</u> .
2c	Eliminate the time prohibition for concrete construction, add <u>specific</u> decibel limit for all construction between 2:00AM and 6:00AM at <u>residential property line</u> .

Questions

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References

1. TCEQ Air Quality Maps, Austin Northwest C3/A322 Data by Site by Date, EPA Parameter 44201 in parts per billion, http://www.tceq.state.tx.us/cgi-bin/compliance/monops/daily_summary.pl
2. Attached summary provided to Texas Aggregates and Concrete Association by C. Rupprath and R. Moss, WINSTEAD, PC.
3. Attached optional ordinance language provided by Texas Aggregates and Concrete Association.

DRAFT DOCUMENT – FOR DISCUSSION PURPOSES ONLY

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
Austin	§9-2-3(A)(3) General Restrictions. A person may not operate a machine that separates, gathers, grades, loads, or unloads sand, rock, or gravel within 600 feet of a residence, church, hospital, hotel, or motel between 7:00 p.m. and 6:00 a.m., except for the installation of concrete as authorized under Section 9-2-15 (<i>Permit for Concrete Installation During Non-Peak Hour Periods</i>).	§9-2-21 Permit for Concrete Installation During Non-Peak Hour Periods [Pre Ord. 20141120-056] (A) Subject to the limitations in subsections (B) and (C), the director may issue a permit authorizing applicant to deliver, finish, place or pour concrete during the non-peak period of 7:00 p.m. to 6:00 a.m. at property that is located within: (1) the Central Business District (CBD) base zoning district; and (2) 600 feet of a residence, church, hospital, hotel, or motel. (B) The director may issue a permit under subsection (A) only if the director determines that the delivery, finishing, placement, or pouring of concrete during non-peak hour periods is in the interest of public health, safety, or welfare or is justified by urgent necessity. (C) A permit issued under this section must state the duration during which the authorized activity may occur, which may not exceed 72 hours. (D) In addition to information required by <u>Section 9-2-12 (Application Requirements)</u> an application to deliver, finish, place, or pour concrete during non-peak hour periods under <u>Section 9-2-22 (Restrictions on Permit)</u>	There is a specific prohibition in §9-2-3(A)(3) for concrete installation between 7:00 p.m. and 6:00 a.m., except with permit issued under §9-2-21. **Ord. 20141120-056 requires a sound and light mitigation plan for all permit applicants and prohibits delivery, placement and pouring from 2:00 a.m. until 6:00 a.m. except under “special circumstances” of limited duration or for projects for which an application for a building permit has been submitted prior to December 1, 2014. This ordinance also expands the permissible districts to include the Downtown Density Bonus area and the Public (P) zoning district. The temporary ordinance expires March 31, 2015.

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
		<p>must include:</p> <p>(1) the name, address, and telephone number of the applicant;</p> <p>(2) the address or a description of the location of the property where the work will be performed; and</p> <p>(3) the amount of time, up to 72 hours, needed to complete the work and the reason why the work cannot be completed during normal business hours.</p>	
Houston	<p>§30-5 Maximum Permissible Sound Levels.</p> <p>It is unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound at any location beyond the property lines of the property on which the sound is being generated that dB(A) level listed below for the property on which the sound is received:</p> <p>(1) <i>Residential property:</i></p> <p>a. 65 dB(A) during daytime hours. [8:00 a.m. – 10:00 p.m.]</p> <p>b. 58 dB(A) during nighttime hours. [10:01 p.m. – 7:59 a.m.]</p> <p>(2) <i>Nonresidential property:</i> 68 dB(A) at all times.</p>	<p>§30-8 Sound Amplification Permit (not applicable to construction noise)</p> <p>§30-16(5) It is a defense to a violation of this ordinance if the sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00 a.m. and 8:00 p.m., which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound is being received.</p>	<p>There is no specific prohibition against concrete installation or construction. Subject to §§30-2 through 30-4, concrete can be installed 24 hours so long as it does not exceed the following decibel limit at the property line where the sound is received: 85 dB(A) between 7:00 a.m. and 8:00 p.m. measured at a residential property line; 65 dB(A) between 8:01 p.m. and 10:00 p.m. beyond the residential property line on which the sound is generated; 58 dB(A) from 10:01 p.m. and 6:59 a.m. beyond the residential property line on which the sound is generated; and 68 dB(A) between 8:01 p.m. and 6:59 a.m. on the nonresidential property line on which the sound is generated.</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in the ordinance is prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of the ordinance.		"Residential Property" means any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.
Dallas	<p>§30-2(h) Loud and Disturbing Noises and Vibrations Presumed Offensive.</p> <p>The following loud and disturbing noises and vibrations are presumed to be offensive to the ordinary sensibilities of the inhabitants of the city:</p> <p>Any construction activity related to the erection, excavation, demolition, alteration, or repair of any building on or adjacent to a residential use, as defined in the Dallas Development Code, other than between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 7:00 p.m. on Saturdays and legal holidays, except that the director of public works may issue a written permit to exceed these hours in the case of urgent necessity in the interest of public safety or for other reasons determined by the</p>	<p>See §30-2(h): The Director of Public Works may issue a permit for after-hours construction adjacent to residential property.</p>	<p>Presumed that construction activities between 7:00 p.m. and 7:00 a.m., Monday through Friday, and 7:00 p.m. and 8:00 a.m. on Saturdays and legal holidays are offensive. However, construction activity is only presumed offensive if on or adjacent to "residential use" as defined in the Development Code. §51-4.209 lists "residential uses" and limits the type of district that a residential use may be located in by right. Additionally, permits to exceed the hours are granted by Public Works Department per the ordinance and confirmed by chart included as back-up to Ord. 20141120-056.</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	director of public works to be necessary for the public health, safety, or welfare.		
San Antonio	<p>§21-52 Noise Nuisance Enumeration .</p> <p>(a) The following acts are declared to be "noise nuisances," and are unlawful when such acts are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration, so as to annoy, to distress, or to disturb the quiet, comfort, or repose of a person of reasonable nervous sensibilities, within the vicinity or hearing thereof, or so as to endanger or injure the safety or health of humans or animals, or so as to interfere with the physical well-being of humans or animals, or so as to endanger or injure personal or real property:</p> <p>(6) The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration or repair work:</p> <p>a. Other than during the daytime [6:00 a.m. – 10:00 p.m. Su-Th; 6:00 a.m. -11:00</p>	<p>See §21-52(a)(6)c: This prohibition shall not apply in cases of urgent necessity in the interest of public safety, or in cases of public convenience, including city sponsored or co-sponsored fiestas, parades, and public events.</p>	<p>Construction activity cannot exceed 80 db(A) at any time or when such acts are done in a manner to constitute a nuisance between 10:00 p.m. and 6:00 a.m. Monday – Thursday or between 11:00 p.m. and 6:00 a.m. Friday and Saturday. However, these limitations do not apply in cases if urgent necessity, public safety, or public convenience.</p> <p>Note that in the chart included as back-up to Ord. 20141120-056, the qualifications "when such acts...", are omitted. Thus, it is not a prohibition per se and there should be some enforcement discretion.</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	p.m. F-Sa; or b. At any time such that the sound level at or across a real property boundary exceeds 80dB(A).		
Fort Worth	<p>§23-8 Noise (d) <i>Noise prohibited.</i> (1) In addition to the other noise restrictions in section 23-8, no person shall make, cause, suffer, allow or permit unreasonable noise in such a manner, or with such volume, intensity or duration, so as to disturb a reasonable person of ordinary sensibilities. A decibel level shall not be required for the enforcement of this subsection.</p> <p>(2) The subsection is intended to apply to, but is not limited to, unreasonable noises in the form of:</p> <p>c. <i>Construction work.</i> Noise created by construction work within three hundred (300) feet of an occupied residential structure involving the erection, excavation, demolition, alteration, or repair of any building, structure, or flatwork is prohibited as follows:</p> <p>Before 7:00 a.m. or after 8:00 p.m. Monday—Friday. Before 9:00 a.m. or after 8:00 p.m. Saturday—Sunday</p>	<p>The following overnight noise levels are permitted up to the decibel limit stated below:</p> <p>§23-8(c)(1) <i>Maximum sound levels.</i> During the times and in the zoning districts (except for activities originating in industrial zoning districts) set out below, the activities that create a sound pressure level on the complainant's bounding real property line that exceeds the maximum allowable sound level (dBA) below are declared to be public nuisances:</p> <p>**All residential (one-, two- and multifamily) zoning districts: 7:00 a.m. to 10:00 p.m. = 70 dBA.; 10:00 p.m. to 7:00 a.m. = 60 dBA.</p> <p>**All non-residential and mixed-use zoning districts (excluding industrial zoning districts) outside "H" Central Business District and "TU" Trinity Uptown: 7:00 a.m. to 10:00 p.m. = 80 dBA; 10:00 p.m. to 7:00 a.m. = 70 dBA.</p> <p>**"H" Central Business District, "TU" Trinity Uptown, and West 7th Village: Sunday—</p>	<p>The prohibition against construction after 8:00 p.m. applies only to an "occupied residential structure." "Residential" is defined in this section means "property zoned for residential use in accordance with the city's zoning ordinance." The general noise ordinance has different restrictions for residential zoning districts, non-residential and mixed-use and the Central Business District, Trinity Uptown and West 7th Village. IT is not clear whether this would apply to residential structures similar to those in Austin's CBD or other mixed-use areas.</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
		<p>Thursday 7:00 a.m. to 10:00 p.m. = 80 dBA; 10:00 p.m. to 7:00 a.m. = 70 dBA.</p> <p>Friday—Saturday 7:00 a.m. to 2:00 a.m. = 80 dBA; 2:00 a.m. to 7:00 a.m. = 70 dBA.</p> <p>**ALL zoning where ambient noise level exceeds the prescribed maximum level: 7:00 a.m. to 10:00 p.m. = Existing ambient (dBA) + 3 dBA. 10:00 p.m. to 7:00 a.m. = Existing ambient (dBA).</p>	
Chicago	<p>§8-32-140 Construction, repair or demolition equipment.</p> <p>(a) No person shall use or cause the use of any mechanical equipment or tool operated by fuel or electric power in building, construction, repair or demolition operations between the hours of 8:00 p.m. and 8:00 a.m. within 600 feet of any residential building or hospital.</p>	<p>See §8-32-140(b): The limitation of subsection (a) does not apply to any construction, demolition or repair work of an emergency nature or to work on public improvements authorized by a governmental body or agency.</p>	<p>Appears to prohibit pouring and installation between 8:00 p.m. and 8:00 a.m. if within 600 feet of a residential structure, unless it falls within exception in (b).</p>
Los Angeles	<p>§41.40. Noise Due to Construction, Excavation Work – When Prohibited.</p> <p>(a) No person shall, between the hours of 9:00 P.M. and 7:00 A.M. of the following day, perform any construction or repair work of any kind upon, or any excavating for, any building or structure,</p>	<p>See §41.40(b): The provisions of Subsection (a) shall not apply to any person who performs the construction, repair or excavation work involved pursuant to the express written permission of the Board of Police Commissioners through its Executive Director. The Executive Director, on behalf</p>	<p>As listed in §41.40(b) and confirmed by the chart included as back-up to Ord. 20141120-056, if written permission is granted by Board of Police commissioners, construction work may be performed after hours.</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	where any of the foregoing entails the use of any power driven drill, riveting machine excavator or any other machine, tool, device or equipment which makes loud noises to the disturbance of persons occupying sleeping quarters in any dwelling hotel or apartment or other place of residence. In addition, the operation, repair or servicing of construction equipment and the job-site delivering of construction materials in such areas shall be prohibited during the hours specified.	of the Board, may grant this permission, upon application in writing, where the work proposed to be done is in the public interest, or where hardship or injustice, or unreasonable delay would result from its interruption during the hours mentioned above, or where the building or structure involved is devoted or intended to be devoted to a use immediately related to public defense. The provisions do not in any event apply to construction, repair or excavation work done within any district zoned for manufacturing or industrial uses. (k) Noise Variance Application Fee. Any application to the Board for a noise variance under Subsection (b) shall be accompanied by payment of an application fee of \$248.00.	
Boston	§16-26-4 Regulation of Construction Hours. No erection, demolition, alteration, or repair of any building and excavation in regard thereto, except between the hours of 7:00 a.m. and 6:00 p.m., on weekdays or except in the interest of public safety or welfare, upon the issuance of and pursuant to a permit from the Commissioner, Inspectional Services Department, which permit may be renewed for one or more periods of not exceeding one week each.	See §16-26-4: Commissioner can grant permit for construction during hours between 6:00 p.m. and 7:00 a.m.	As listed in §16-26-4 and confirmed by the chart included as back-up to Ord. 20141120-056, after hours permits can be obtained.

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
Nashville	<p>See §11.12.070(G) - Excessive noise. Commercial noise.</p> <p>1. No person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment, vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any other business or commercial activity between the hours of 9:00 p.m. and 6:00 a.m. which would emit, cause to be emitted, or permit the emission of any noise in excess of 70 Db(A) as measured from a point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface.</p> <p>2. For business or commercial facilities located within the DTC and CF zoning districts, no person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment, vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any</p>	None.	<p>Based on the article below, "commercial noise" does not encompass construction noise, and there is no current ordinance governing construction noise.</p> <p>http://www.wsmv.com/story/27740055/council-member-proposes-construction-noise-ordinance</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	other business or commercial activity between the hours of 9:00 p.m. and 6:00 a.m. which would emit, cause to be emitted, or permit the emission of any noise in excess of 85 Db(A) as measured from a point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface.		
Portland	<p>§18.10.060 Construction Activities and Equipment.</p> <p>A. Maximum sound levels: No person shall operate any equipment or appurtenances thereto in commercial construction activities which exceeds 85 dBA, when measured at 50 feet (15.2 meters) from the source. This standard shall not apply to trucks (see Section 18.10.020), pile drivers, pavement breakers, scrapers, concrete saws and rock drills.</p> <p>B. Night, weekend, and legal holidays limitation: From 6:00 p.m. to 7:00 a.m. the following morning, and 6:00 p.m. Saturday to 7:00 a.m. the following</p>	<p>See §18.10.060.B allowing after hours construction so long as noise levels comply with 18.10.010.</p> <p>§18.10.010. Land Use Zones. - Except as specifically provided for elsewhere in this Title, no person shall cause or permit sound to intrude into the property of another person which exceeds the limits set forth below. For purposes of this Section, “day hours” shall be between 7 a.m. and 10 p.m., and “night hours” shall be between 10 p.m. and 7 a.m.</p> <p>A. The sound levels established are as set forth in Figure 1 before any adjustments are applied:</p>	<p>There is no prohibition on overnight concrete installation. Construction activities are limited to the levels in 18.10.010 on nights, weekends, etc. A person may also obtain a variance to exceed the limits in 18.10.010 for after-hours work.</p> <p>http://www.portlandoregon.gov/oni/article/475617</p>

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary																									
	Monday, and on legal holidays, the permissible sound levels of Section 18.10.010 shall apply to all construction activities except by variance or for reasons of emergency. The exempted equipment of Section 18.10.060 A is not exempted during these hours. For purposes of this Subsection, construction activities on a public road within a zone shall be considered as taking place on private property within that zone.	<p style="text-align: center;">FIGURE 1 PERMISSIBLE SOUND LEVELS (7 am-10 pm, otherwise minus 5 dBA)</p> <p style="text-align: center;">Zone Categories of Receiver (measured at property line)</p> <table><tr><th></th><th>Residential</th><th>Open Space</th><th>Commercial</th><th>Industrial</th></tr><tr><th>Residential</th><td>55</td><td>55</td><td>60</td><td>65</td></tr><tr><th>Open Space</th><td>55</td><td>55</td><td>60</td><td>65</td></tr><tr><th>Commercial</th><td>60</td><td>60</td><td>70</td><td>70</td></tr><tr><th>Industrial</th><td>65</td><td>65</td><td>70</td><td>75</td></tr></table> <p>B. Adjustments to Figure 1.</p> <p>1. During the night hours, the sound levels of Figure 1 shall be reduced 5 dBA.</p> <p>2. During all hours, the sound levels of Figure 1 shall be decreased 5 dBA for narrow band or steady sound (apply 1 only).</p> <p>3. The adjustments provided herein are cumulative.</p>		Residential	Open Space	Commercial	Industrial	Residential	55	55	60	65	Open Space	55	55	60	65	Commercial	60	60	70	70	Industrial	65	65	70	75	
	Residential	Open Space	Commercial	Industrial																								
Residential	55	55	60	65																								
Open Space	55	55	60	65																								
Commercial	60	60	70	70																								
Industrial	65	65	70	75																								
Atlanta	<p>§74-134. Specific Prohibited Acts.</p> <p>(a) It is unlawful, and a violation of this Code, for any person to cause, allow, or permit any of the following acts unless a temporary variance has been obtained:</p> <p>(4)Operating or permitting the operation of any power tools or other motorized equipment used in</p>	<p>§74-139. Conditions for permits for temporary variance; notice of approval or denial; hearings and appeals.</p> <p>(a) Any person who owns the real property from which a noise source emanates or operates any noise source may, with the permission of the owner, apply to the NCA for a temporary variance from one or more of the</p>	Construction is prohibited from 7:00 p.m. and 7:00 a.m. However, a person can apply for a temporary variance, which can be in effect up to 14 days. The permit can be renewed by filing a new application. An extension of 14 days may be granted without a second hearing if there have been no complaints received by the NCA. If complaints have																									

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
	construction, drilling, earthmoving, excavating, or demolition work between 7:00 p.m. and 7:00 a.m. the following day on a weekday or between 7:00 p.m. and 9:00 a.m. on a weekend day or legal holiday, except for emergency work or by permit for temporary variance pursuant to section 74-139.	provisions of this article, unless such noise source is specifically exempted according to the provisions of section 74-138. Applications for a permit of temporary variance shall supply information including, but not limited to: (1) The nature and location of the noise source; (2) The reason for which the permit of temporary variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of temporary variance is not granted; (3) The level of noise that will occur during the period of the temporary variance; (4) The section or sections of this article for which the permit of temporary variance shall apply; (5) A description of interim noise control measures to be taken for the applicant to minimize noise and the impacts occurring from the noise for which the variance is sought; (6) A specific schedule of the noise control measures that shall be taken to bring the source into compliance with this article within a reasonable time; and (7) An affidavit stating that notice has	been received, a new application and hearing shall be required.

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
		<p>been provided to the office of planning for transmission to the NPU where the variance is to be operational and that the notice required by the NCA shall be posted within three business days.</p> <p>(d) No temporary variance shall be approved unless the applicant presents adequate proof that:</p> <p>(1) Noise levels occurring during the period of the temporary variance will not constitute a danger to public health; and</p> <p>(2) Compliance with the article would impose an unreasonable hardship on the applicant without some benefit to the public that will result from the completion of the activity requiring the variance.</p> <p>(3) That the required notice has been posted at the site where the temporary variance is sought that a request for temporary variance has been requested and the date on which the application has been submitted. Proof of the posting of such notice shall be by affidavit signed by the applicant.</p> <p>(e) In making the determination of granting a temporary variance after having made a finding that adequate proof was provided by the applicant as required in this article, the NCA shall</p>	

City	Sound Ordinance /Prohibition	Permitted Exceptions	Summary
		consider the following factors: (1) The character and degree of interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused; (2) The level of interference to the peaceful enjoyment of adjoining property or the public right-of-way above that which is allowed under this article if the temporary variance is denied; and (3) The ability of the applicant to apply the best practical noise control measures. (4) Any comments received from persons residing or operating businesses located within 500 feet of any property line at the site where the variance is requested.	

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OPTION #1 (ELIMINATE TIME PROHIBITION, INCLUDE EXISTING MITIGATION PLAN)

***Note, these changes are shown as compared to the permanent ordinance that will be in place when the 120-day ordinance expires.*

§ 9-2-21 - PERMIT FOR CONCRETE INSTALLATION DURING NON-PEAK HOUR PERIODS.

(A) Subject to the limitations in Subsections ~~[subsections]~~ (B) and (C) of this section, the director may issue a permit authorizing an applicant to deliver, finish, place, or pour concrete during the non-peak hour period of 7:00 p.m. to 6:00 a.m. at property that is located within:

- (1) the Downtown Density Bonus area identified in Section 25-2-586(B) (Downtown Density Bonus Program) and one of the following zoning districts:
 - (a) the Central Business District (CBD) base zoning district; ~~or [and]~~
 - (b) the Public (P) zoning district; and
- (2) 600 feet of a residence, church, hospital, hotel, or motel.

(B) The director may issue a permit under subsection (A) of this section only if the director determines that the delivery, finishing, placement, or pouring of concrete during non-peak hour periods is in the interest of public health, safety, or welfare or is justified by urgent necessity.

(C) A permit issued under this section must state the duration during which the authorized activity may occur, which may not exceed 72 hours.

(D) In addition to information required by Section 9-2-12 (Application Requirements) an application to deliver, finish, place, or pour concrete during non-peak hour periods under Section 9-2-22 (Restrictions on Permit) must include:

- (1) the name, address, and telephone number of the applicant;
- (2) the address or a description of the location of the property where the work will be performed; and
- (3) the amount of time, up to 72 hours, needed to complete the work and the reason why the work cannot be completed during normal business hours.

(E) To mitigate possible impacts and minimize disruptions to adjacent residential and commercial uses, the director shall require a permit applicant to:

- (1) contact adjacent property owners located next door or across the street, and representatives of property owners or residents within 600 feet, to inform them when the non-peak pour will occur and the duration of the project;
- (2) provide 24-hour contact information for the individual with primary responsibility for the project to adjacent property owners located next door or across the street, to representatives of property owners or residents within 600 feet, and to city staff; and
- (3) provide a sound and light mitigation plan, which must:
 - (a) identify where concrete trucks will queue to ensure minimal disruption to adjacent residences and businesses;
 - (b) locate the concrete pump and, if necessary, relocate it to a location that will minimize disruption to adjacent residential uses;
 - (c) shield after-hour lighting associated with the concrete installation from adjacent residential uses; and
 - (d) require such other actions as the director determines are reasonably necessary to protect public health, safety, and welfare and to ensure reasonable expectations of a sound environment that does not preclude sleep.

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OPTION #2 (APPLY § 9-2-4 DECIBEL LIMIT AT WORK SITE BETWEEN 2:00 AM AND 6:00 AM)

***Note, these changes are shown as compared to the permanent ordinance that will be in place when the 120-day ordinance expires. Changes to the applicable property (DBU and P zones) are not included but may be added when the new ordinance is adopted.*

§ 9-2-1 - DEFINITIONS.

"Concrete Installation Machine" means a machine that separates, gathers, grades, loads, or unloads sand, rock, or gravel.

§ 9-2-21 - PERMIT FOR CONCRETE INSTALLATION DURING NON-PEAK HOUR PERIODS.

(A) Subject to the limitations in subsections (B) and (C) of this section, the director may issue a permit authorizing an applicant to deliver, finish, place, or pour concrete during the non-peak hour period of 7:00 p.m. to 6:00 a.m. at property that is located within:

- (1) the Central Business District (CBD) base zoning district; and
- (2) 600 feet of a residence, church, hospital, hotel, or motel.

(B) The director may issue a permit under subsection (A) of this section only if the director determines that the delivery, finishing, placement, or pouring of concrete during non-peak hour periods is in the interest of public health, safety, or welfare or is justified by urgent necessity.

(C) A permit issued under this section must state the duration during which the authorized activity may occur, which may not exceed 72 hours.

(D) In addition to information required by Section 9-2-12 (Application Requirements) an application to deliver, finish, place, or pour concrete during non-peak hour periods under Section 9-2-22 (Restrictions on Permit) must include:

- (1) the name, address, and telephone number of the applicant;
- (2) the address or a description of the location of the property where the work will be performed; and
- (3) the amount of time, up to 72 hours, needed to complete the work and the reason why the work cannot be completed during normal business hours.

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(E) In no event shall a permit issued under this section authorize a person to operate a Concrete Installation Machine between 2:00 a.m. and 6:00 a.m. that produces sound that is audible at the property line of the work site except in special circumstances of limited duration.

OPTION #2A (APPLY § 9-2-4 DECIBEL LIMIT AT RESIDENTIAL PROPERTY LINE BETWEEN 2:00 AM AND 6:00 AM):

(E) In no event shall a permit issued under this section authorize a person to operate a Concrete Installation Machine between 2:00 a.m. and 6:00 a.m. that produces sound that is audible at the property line of a building containing a residence, church, hospital, hotel, or motel, except in special circumstances of limited duration.

OPTION #2B (APPLY SPECIFIC DECIBEL LIMIT AT WORK SITE PROPERTY LINE BETWEEN 2:00 AM AND 6:00 AM):

(E) In no event shall a permit issued under this section authorize a person to operate a Concrete Installation Machine between 2:00 a.m. and 6:00 a.m. in excess of [] decibels, as measured at the property line of the work site except in special circumstances of limited duration.

OPTION #2C (APPLY SPECIFIC DECIBEL LIMIT AT RESIDENTIAL PROPERTY LINE BETWEEN 2:00 AM AND 6:00 AM):

(E) In no event shall a permit issued under this section authorize a person to operate a Concrete Installation Machine between 2:00 a.m. and 6:00 a.m. in excess of [] decibels, as measured at the property line of a building containing a residence, church, hospital, hotel, or motel, except in special circumstances of limited duration.

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OPTION #3 (EQUAL APPLICABILITY TO ALL CONSTRUCTION ACTIVITY)

§ 9-2-1 - DEFINITIONS.

"Construction Activity" means any commercial or individual activity designed to build, construct, demolish, erect, any portion of a building, residence, municipal, civil, or other structure, object, or item.

§ 9-2-3 - GENERAL RESTRICTIONS.

(A) A person may not:

(3) conduct Construction Activity ~~that separates, gathers, grades, loads, or unloads sand, rock, or gravel within 600 feet of a residence, church, hospital, hotel, or motel in excess of the decibel limits prescribed by this chapter between 7:00 p.m. and 6:00 a.m., except for the installation of concrete as authorized under Section 9-2-15 (Permit for Concrete Installation During Non-Peak Hour Periods);~~

§ 9-2-4 - RESTRICTION ON DECIBEL LEVEL.

A person may not operate sound equipment at a business or conduct Construction Activity at a work site that produces sound:

- (1) in excess of 85 decibels between 10:00 a.m. and 2:00 a.m., as measured at the property line of the business or work site; or
- (2) is audible at the property line of the business or work site between 2:00 a.m. and 10:00 a.m.

Other conforming changes to eliminate references to permit.

***Consider that, currently, there is no limit on decibels from 6:00 am and 7:00 pm. This option imposes a decibel limit at that time and would implement a subjective "audible" standard between 2:00 a.m. and 10:00 a.m. Thus, while it avoids an outright prohibition and subjects all noise to the same limitations, it may not be the preferable method.*

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