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New Air Conditioner Noise Law Arises from Dispute Between Neighbors ^[1]

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By:

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Above: The unit that led to the new noise ordinance regarding residential air conditioners.

In March of this year, East Lansing's City Council passed a revised noise ordinance ^[2] which makes it illegal, if a neighbor complains, to run a residential air conditioner exceeding 55 decibels between 10 p.m. and 8 a.m. or 60 decibels during other hours, as measured at the property line.

According to Interim Captain Steve Gonzales, ELPD's media relations officer, only one complaint has been filed since the ordinance revision passed. That noise complaint, filed against Glencairn neighborhood residents Marilyn McEwen and Don Potter on June 4, did not come as a

surprise to them. A copy of the new ordinance had earlier been forwarded to them in Sonora, California, where they live for half of the year and, although that communication wasn't signed, McEwen and Potter knew who it was from.

It represented the culmination of an escalating dispute between their East Lansing household and next-door neighbors Karen Twyman and Rick Boyd. Before Twyman and Boyd petitioned East Lansing's Council to change the law, and Council followed up that request, Twyman and Boyd had tried repeatedly to get McEwen and Potter not to run their air conditioner at night. The noise of the unit, running outside Twyman and Boyd's bedroom, was disturbing their sleep so much they felt they had to find some way to get their neighbors to turn off the unit at night. Ultimately, that meant getting the law changed.

Below: McEwen and Potter's home on the left, Twyman and Boyd's house on the right, with the air conditioner circled.



A dispute between neighbors leads to multiple calls to the police:

The dispute between these two households on East Oakwood Drive started in June of 2016, when, according to McEwen's lawyer Mary Chartier, Twyman began calling McEwen and Potter asking them to turn off their air conditioner at night.

Twyman says that, the previous summer, her neighbors had moved their air conditioner about five feet from the location where it had been installed for decades before, into a new location between their houses, directly outside the wall of Twyman and Boyd's bedroom.

?That summer,? Twyman told ELi in an interview, ?we had some issues with the air conditioner being noisy, but for the most part we just kind of put up with it. I?m not sure why it didn?t bother us as much [then], but we did talk to them about it a couple of times.?

According to phone records provided to ELi, on June 13, 2016, Twyman called her neighbors at 9:51 p.m. and left a message saying that the air conditioner ?really is a serious problem.? She also said that if the air conditioner was keeping her awake, she was going to call to complain, ?even if that is in the night because I really want you to turn it off.?

McEwen, a 78-year-old, two-time cancer survivor, says that since cancer treatments she can?t regulate her body temperature like she used to, and that she depends on that air conditioner to cool the house so she can sleep. (People with some medical conditions like asthma and multiple sclerosis find they need air conditioning for health reasons,) McEwen says she sets her thermostat to 74 degrees and, given that her air conditioner was functioning properly, she refused Twyman?s request to turn it off.

Twyman called again at 11:30 p.m. two nights later and again the following morning to express her frustration over the air conditioner noise and her lack of sleep. Since she was receiving no satisfaction from McEwen and Potter over their habit of running the air conditioner overnight, Twyman decided to consult the East Lansing Police. She says an officer told her that a noise which disturbed her rest could potentially be a violation of the existing noise ordinance.

Before calling the police to report the air conditioner, though, Twyman?s husband Rick Boyd, a pastor at a local church, decided to go over to the neighbors? house to talk to them. But McEwen and Potter did not change their minds about running the unit at night.

Now irritated by the late-night phone calls from Twyman, according to Twyman, McEwen blocked Twyman?s number on her phone. (McEwen denies this.) Communication between the houses switched to written notes. Frustrated, Twyman notified her neighbors in writing of her intent to file a noise complaint with the police if they weren?t able to come to an agreement over the air conditioner noise.

In her letter, Twyman quoted the then-existing East Lansing ordinance generally outlawing noise ?which disturbs the comfort, repose, or peace of others within the city by being plainly audible to persons within any dwelling, hotel, hospital, office or other type of residence other than that from which it originates.? (The full statute actually refers to ?The creation of any other *excessively or unreasonably loud noise* which disturbs the comfort repose, or peace of others?.)

For her part, McEwen was also feeling frustrated, and didn?t believe that her air conditioner was excessively loud. The unit in question had just been installed the previous summer and had been recently serviced. She was told by the technician who tuned it up for her that it was in optimally operating condition.

It?s worth noting a few special circumstances with regard to how these two houses are situated. McEwen has lived in her house for 47 years and says she has had an air conditioner near the northwest corner of her house for decades. When she and her then-husband moved in, the lot next door (where Boyd and Twyman?s house now stands) was vacant, and they were told that

nothing would be built on it because there was not enough space to meet setback requirements.

A house was built on that lot several years later however, with a code variance allowing for less than the legally mandated setback. That means Twyman and Boyd's house is closer to McEwen and Potter's house than would ordinarily be allowed by zoning.

Twyman describes her own house as "a very strange house" built "like a milk carton." It was designed by local architect Bert Seyfarth and is of a modern design very different from other houses in their older East Lansing neighborhood. Twyman and says that when they first moved in, there were no windows on McEwen's side at all. Twyman and Boyd have since added two small windows on that side, but Twyman insists that the air conditioner noise is coming through the wall, and the windows are not the issue.

Below: McEwen and Potter's house on the left, Twyman and Boyd's house on the right.



No one disputes that the houses are very close together, and that the air conditioner is very close to the property line. McEwen admits that, when the current air conditioning unit was installed, it was moved, in her words, "a few feet" closer to Twyman and Boyd's house. But McEwen says that was necessary because her backyard floods since she rerouted her downspouts based on a request from Twyman and Boyd.

Despite repeated entreaties from Twyman and Boyd, McEwen insisted she could not turn her air off conditioner at night because of her own health and was unable to move the unit back to its previous location because of the wet backyard. She was feeling harassed by the middle-of-the-night phone calls and the notes left at her door. Rather than wait for Twyman to call the police with her noise complaint, McEwen called the police to report Twyman for harassment.

As a consequence, a police officer came to Twyman and Boyd's home and explained that their

actions towards their neighbor constituted harassment. They say they were told that if they didn't cease contact with McEwen and Potter, they could be cited for stalking. While at the house, the police officer looked at the air conditioner, which was apparently functioning properly, and told Twyman that no police officer was going to cite a normally-functioning air conditioner for a noise violation.

Twyman says this situation left her feeling "trapped." She told ELi, "I do feel it is important to be able to in your very own home have a sanctuary where you can sleep and not be disturbed by a neighbor's noise." She explains that she was "beginning to experience some insomnia, literally waking in the night with the air conditioner and then being anxious so I couldn't fall back asleep because it was running and then it would stop, and I'd be lying there anxious waiting for it to turn back on again. I had never had sleep problems before, but I was experiencing sleep issues and it was just absolutely miserable."

The law is amended on a 4-0 vote and is aimed specifically at residential air conditioners:

Twyman and Boyd ultimately decided that the air conditioner noise was definitely a problem, and, if it wasn't a citable offense under the City Code, then the Code should be amended to include air conditioners like McEwen's as they might impact next-door neighbors. They contacted Councilmember Erik Altmann to ask his help. He responded and started working on changing the law.

Before Council voted to change the law, Councilmembers discussed the matter a few times in "work sessions" including at the February 21, 2017, discussion-only meeting. For that meeting, Council was provided some abbreviated information about Michigan municipal sound ordinances summarized in a chart prepared by an intern for the City.

It's not clear from the chart, but only two of those ordinances (Lansing and Farmington) actually have specific clauses regarding air conditioners. Farmington's limits placement of air conditioners to behind houses, and Lansing's specifically limits sound levels for air conditioners. The decibel limits specified on the chart Council considered are, in fact, with the single exception of Lansing's, broad city-wide noise limits that regulate *all noise* that might cross property boundaries.

Notably, at the February 2017 work session, East Lansing's Council effectively decided not to hold government or commercial buildings to the same air conditioner noise limit as houses, even if government or commercial properties border residential housing. That's because City Manager George Lahanas pointed out then that commercial air compressors are often louder than residential, and named as an example the one attached to City Hall.

Below: East Lansing's City Hall which has loud air-handling devices near older houses used as residences.



In response to Lahanas's concerns, Mayor Mark Meadows suggested limiting the scope of the new noise rule to cover only R1, R2, and R3 residential districts. The new noise law is unique among East Lansing nuisance violations not only in being limited to residential areas, but also in that it *requires* that a neighbor complain about the noise before a noise citation can be given by police. In East Lansing, failure to comply with the new air conditioning law can rise to the level of a misdemeanor—a criminal offense.

So it isn't the case, as the chart might suggest, that lots of Michigan cities have noise ordinances like East Lansing's new one. Ours is different in fairly significant ways.

Ultimately no one from the public came to speak on the topic of "excessively loud air conditioning and air handling devices" at the public hearing held on the proposed ordinance change during the March 21, 2017, City Council meeting. At that meeting, Council approved the new noise rule by a 4-0 vote, with Councilmember Shanna Draheim absent.

Many East Lansing home air conditioners may now be illegal to operate if a neighbor complains:

It appears from records of the proceedings that City officials assumed they were outlawing the use of *poorly-functioning* residential air conditioners. For example, explaining the wording of the new ordinance, City Attorney Tom Yeadon told Council, "Essentially what this ordinance does is it makes unreasonably loud air conditioners illegal to have on your premises. You have to get

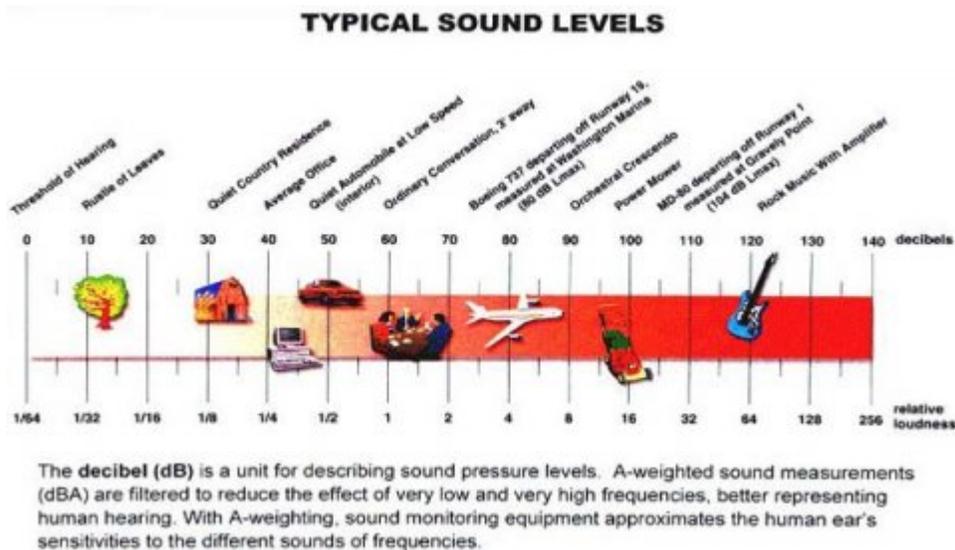
them fixed.?

Similarly, when, during the public hearing, Councilmember Erik Altman suggested favoring a two-tiered day and night system that allowed for louder operation during the day (60 decibels) and quieter at night (55 decibels), he explained, "This gives the owners of a device like this more flexibility, if they don't want to repair or replace it with a new one." He described this two-tier approach as a "win-win."

Just before the vote was called, Mayor Mark Meadows commented, "I want to make sure that we don't have a raft of ordinance violations that we're going to be confronted with here, so I'm just asking that as we enforce this, we be mindful that people have been operating these for a long time, [and] it's going to be expensive to replace an air conditioning unit." He then cast his vote "yes."

But, despite signs that various City officials thought they were effectively outlawing unusually problematic air conditioners, it appears possible that hundreds of properly-functioning air conditioners in East Lansing have now had their operation—especially at night—rendered illegal if a neighbor complains. That's because many residential air conditioners exceed the noise limits when working properly, and many East Lansing neighborhoods have houses built near lot lines.

The decibel scale is logarithmic. That means 60 decibels will be perceived as significantly louder than 50 decibels. Here's a scale chart [4] provided by the Washington Metropolitan Airport Authority to help illustrate sound levels:



Back in February, when East Lansing's Council was debating the ordinance change, Councilmember Shanna Draheim said she preferred a 60-decible level compared to 55. "When I was looking quickly at average air conditioners, they're between 55 and 60 if you get a high-efficiency one," she said, then asking, "so if you happen to get one that is 58, you know, is your neighbor going to be calling?"

When ELi tried to reproduce Draheim's research, however, we found that there were very few

models of air conditioners on the market that were rated at 55-60 decibels or lower. In fact, residential air conditioners running at 60-70 decibels are much more common, unless one purchases the highest-priced units on the market. (We reached out to the author of an online post on the subject [5] from a large air conditioning installation company in Florida and were told that these numbers, from 2015, are still basically accurate.)

So it appears that East Lansing's new ordinance may effectively outlaw many maximally-functioning residential air conditioners, including those recently purchased and installed, if installed near a property owned by a neighbor who wishes to lodge a complaint.

Back when Council was debating this issue in work sessions, in advance of the March 2017 vote, the only member of Council who expressed open opposition to the amendment was Shanna Draheim.

"I really don't think we should be doing this ordinance," she warned her colleagues at the February work session of Council. "I walked my own neighborhood last night to look. The property lines are so tight, and I just think maybe because I'm living in a neighborhood that's having a lot of neighborhood fighting right now over other permit issues [over street parking], I hate to potentially add fuel to the fire."

Draheim lives in the Chesterfield Hills neighborhood, but East Lansing has many other neighborhoods where houses are built very close together, including Glenclair where the dispute described above broke out, Bailey, the Flowerpot, and even newer-built areas like the Hawk Nest subdivision, where Mayor Meadows lives.

Below: East Lansing's City Council (left to right: Meadows, Draheim, Woods, Beier, and Altmann)



What happened after the law changed:

When considering the law, Council heard from Rick Boyd and Karen Twyman, but not from the neighbors with whom they were upset. Marilyn McEwen and Don Potter did not know that their neighbors had brought their concerns to City Council until after the law was changed. "During this time we did not say anything to Marilyn [McEwen] about what we were doing," said Twyman in an interview with ELi. "We had already been told by the police that if we talked to her, we would be cited for stalking."

Once Council passed the law, Twyman mailed a notice about it to McEwen and Potter. After arriving back to their home in East Lansing at the beginning of June 2017, McEwen and Potter found another note from their neighbors slipped under their front door. After a greeting of "Welcome home!" the note went on to say:

"Although your air conditioner is operating loudly past 10 p.m., we will not be making a complaint to the police department tonight because you just arrived home and have not had sufficient time during the day to cool your house. However, we are determined to avoid the sleep problems that we have experienced last summer and fall, and we will make a complaint if your air conditioner disturbs our rest between 10 p.m. and 8 a.m. from now on."

In her interview with ELi, Twyman characterized this note as "just a friendly notice that that is what we are going to do." But McEwen didn't see it as friendly. She saw it as continuing harassment and called the police department again to complain.

Following up on the harassment complaint by McEwen, East Lansing Police Officer Chelsea Morehead did take decibel readings of the air conditioner from Twyman and Boyd's property line. These measured 62.6, 63 and 62.4 decibels. Morehead also took a reading 50 feet away from the unit. This measured at 50.1 decibels.

The City Attorney proceeded to review the complaint. As dictated in the penalties section of the ordinance, McEwen and Potter were served with a warning letter from the City Attorney's office on June 16, 2017. Although Twyman and Boyd have, for the moment, not pushed for further prosecution, they have had police officers out to the property a number of times trying to document the noise.

Twyman says that at some point an officer came out and recorded a level that was over the limit but chose not to pursue a citation because McEwen's son was in residence and apparently was unaware of the noise situation. On another occasion, when an officer arrived, it was impossible to take a reading because of rain noise interference. On another occasion, the air conditioner had cycled off before an officer arrived.

"Ironically, what has become a problem is that it's very difficult to make a complaint and move the ball forward," Twyman told ELi.

According to Chartier, McEwen and Potter's lawyer, if her clients are charged under the new law, they will fight it.

Other cities do not see large numbers of complaints for air conditioning noise:

In an effort to find out how noise citations based on decibel readings are handled in other cities, ELi contacted the Public Information Officer at the City of Lansing, Robert Merritt. (We contacted Lansing in part because East Lansing's new law is based chiefly on Lansing's.) He described Lansing's ordinance as "complaint-driven," similar to East Lansing's, but without the specific wording that mandates a neighbor complain.

If the LPD were to receive a complaint of a loud air conditioner, Merritt said, that complaint would be referred to either the Code Enforcement office or the City Attorney's office for resolution. He was not able to provide specifics regarding enforcement, however, because in the 27 years that he served in the Lansing Police Department, he never had to respond to an air conditioner complaint.

We contacted Lansing's Code Enforcement office as well, and were told by Jim Bennett, who has worked with Lansing's Building and Safety office for 21 years, that they have never responded to a complaint about a loud air conditioner.

Bennett told us, "If we were to get a complaint, we would inspect and issue a correction notice to have the equipment repaired/replaced. If a piece of mechanical equipment is making enough noise to generate a complaint, it likely has some issue like bent fan blades, bad motor bearings, seizing compressor, foreign object lodged in it, etc."

Below: East Lansing Police Interim Captain Steve Gonzalez.



East Lansing Police Interim Captain Gonzalez told us that, before purchasing a decibel reader to deal with the new law, the ELPD consulted with the Ann Arbor Police Department because Ann Arbor has a decibel-based city noise code. (That allows for a maximum of 61 decibels during the day and 55 at night for any noise that might cross a residential property line, and 71 decibels during the day and 61 at night for commercial properties). He said that Ann Arbor Police's decibel reader is used so rarely, that they are still using the one they acquired 20 years ago when the noise ordinance was adopted.

What Councilmembers say now:

Councilmember Shanna Draheim was absent from the March meeting where East Lansing's new noise ordinance passed with 'yes' votes from Councilmembers Mark Meadows, Ruth Beier, Erik Altmann, and Susan Woods. Draheim says she would have voted 'no.'

I did not support the ordinance at the time and still believe it is unnecessary,' Draheim told ELI this past week. 'I worry in general that as a society we are losing our ability to work things out with our neighbors and community members, and we rely too heavily on legislative fixes sometimes.'

Draheim continued: 'That is not to say our city ordinances aren't vital to ensuring a quality of life for all and setting a playing field of rules that try to be fair and consistent. It just means that when we try to create or tweak laws/ordinances for every situation, it can have unintended

consequences. Had I been at the meeting when this was voted on (I had an unavoidable conflict) I would have voted no.?

Questioned by ELi about this new law, both Mayor Meadows and Mayor Pro Tem Beier indicated that Councilmember Altmann was the driving force behind the new ordinance.

In an email response to ELi, Altmann explained his reasoning for pushing for the change: ?I pressed for the ordinance because I view noise as a public-health issue, especially at night if it means people can't sleep. And this is exactly the kind of problem where local government can step in and make a difference in quality of life. And if it?s the right thing to do I don?t know why it should matter that it?s only one complaint.?

Note: After publication, this story was amended to correct McEwen's age and to note that McEwen denies that she blocked Twyman's phone number after repeated calls. It was also amended to note Gonzalez's correct current title.

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