

**TOWN BOARD OF THE TOWN OF HAMPTON
COUNTY OF WASHINGTON, STATE OF NEW YORK**

TOWN OF HAMPTON NOISE CONTROL ORDINANCE

Now, therefore, be it enacted by the Town Board of the Town of Hampton (the "Town"), as follows:

Section 1. Title.

This Law shall be known and may be cited as the "Town of Hampton Noise Control Ordinance."

Section 2. Declaration of Policy.

It is hereby declared to be the public policy of the Town of Hampton ("the Town") to reduce the ambient noise level in the Town, so as to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the Town, prevent injury to human, plant and animal life and property, foster the convenience and comfort of its inhabitants, and facilitate the enjoyment of the natural attractions of the Town. It is the public policy of the Town that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive or unreasonable noises within the Town affects and is a menace to public health, comfort, convenience, safety, welfare and the prosperity of the people of the Town. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purpose.

Section 3. Interpretation.

This Ordinance shall be liberally construed so as to effectuate the purposes described in this ordinance. Nothing herein shall abridge the powers and responsibilities of any Police Department or law enforcement agency to enforce the provisions of this ordinance. Nothing herein shall be construed to abridge the emergency powers of any Health Department, Board of Health, or the right of such department to engage in any necessary or proper activities.

Section 4. Definitions.

A. All terminology defined herein which relates to the nature of sound and the mechanical detection and recording of sound is in conformance with the terminology of the American National Standards Institute (ANSI) or its successor body.

B. As used in this ordinance, the following terms shall have the meanings indicated:

AGRICULTURAL EQUIPMENT -- Necessary equipment used to conduct an agriculture farm operation.

AGRICULTURAL FARM OPERATION -- Any management of any land for agriculture; raising of cows, pigs, horses, poultry and other livestock, horticulture or orchards, including the sale of products grown or raised directly on such land, and, including the construction, alteration maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.

AMBIENT NOISE - The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

A-WEIGHTED SOUND LEVEL - The sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated "dBA."

COMMERCIAL AREA - A group of commercial properties and the abutting public right-of-way and public spaces.

COMMERCIAL PROPERTY - Any premises, property, or facility involving traffic in goods or furnishings of services for sale or profit, including but not limited to:

- (1) Dining and/or drinking establishments;
- (2) Banking and other financial institutions;
- (3) Establishments for providing retail services;
- (4) Establishments for providing wholesale services;
- (5) Establishments for recreation and entertainment;
- (6) Office buildings;
- (7) Transportation;
- (8) Warehouses;
- (9) Hotels and/or motels.

CONSTRUCTION - Any activity necessary or incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private highways, roads, premises, parks, utility lanes or other property, including but not limited to related activities such as land clearing, grading, earthmoving, excavating, blasting, filling and landscaping, but not including agriculture.

"dBA" - The abbreviation designating the unit of sound level as measured by a sound level meter using the A-weighting, also known as "dBA." All references to "decibel" or "db" shall be presumed to mean "dBA" unless otherwise specified.

DECIBEL - The practical unit of measurement for sound pressure level. The number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals), abbreviated "dB."

DEMOLITION - Any dismantling, intentional destruction, or removal of buildings or structures.

EMERGENCY - Any occurrence or circumstances involving actual or imminent physical or property damage which demands immediate action.

EMERGENCY WARNING DEVICE - Any sound signal device that is to warn of an emergency.

EMERGENCY WORK - Any work or action necessary to deliver essential services, including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging of waterways or abating life-threatening conditions.

FREQUENCY - The number of sound pressure oscillations per second, expressed in hertz, abbreviated "Hz."

L_{eq} – This represents the average sound level of a varying sound taken over a specified period of time. L_{eq} is the equivalent continuous sound which contains the same sound energy as the time varying sound being measured.

L_{max} – The highest value displayed on a sound meter during a noise measurement period with the meter set on FAST response.

MOTOR VEHICLE - Any vehicle that is propelled or drawn on land by an engine or motor.

MUFFLER - A device or system for abating the sound of escaping gasses of an internal combustion engine.

MULTI-DWELLING UNIT BUILDING - Any building wherein there are two (2) or more dwelling units.

NOISE - Any sounds of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the Town.

NOISE DISTURBANCE - Any sound which:

- (1) Endangers or injures the safety or health of humans or animals; or
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

PERSON - Any individual, association, partnership, corporation or other entity and includes any officer, employee, department or agency of the above.

PLAINLY AUDIBLE - Any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not

determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

PUBLIC RIGHT OF WAY - Any street, avenue, boulevard, road, highway, sidewalk, alley, or boardwalk, that is leased, owned or controlled by a governmental entity, no matter how designated.

PUBLIC SPACE - Any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

REAL PROPERTY LINE -- Either:

- (1) The imaginary line, including its vertical extension, that separates one parcel of real property from another; or
- (2) The vertical and horizontal boundaries of a dwelling unit that is one in a multi dwelling unit building.

RESIDENTIAL AREA - A group of residential properties and the abutting public rights-of-way and public spaces.

RESIDENTIAL PROPERTY - Property used for human habitation.

SOUND - An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL - The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute (ANSI) specifications for sound level meters. If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER -- Any instrument, including a microphone, amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specific manner and which complies with standards established by the American National Standards Institute (ANSI) specifications for sound level meters, which complies with Type I or Type II standards.

SOUND PRESSURE LEVEL - The level of a sound measured in dB units with a sound level meter which has a uniform ("flat") response over the band of frequencies measured.

SOUND REPRODUCTION DEVICE - Any device that is designed to be used or is actually used for the production or reproduction of sound, including but not limited to any amplified musical instrument, radio, television, tape recorder, phonograph, loudspeaker, public-address system or any other sound-amplifying device.

SOUND SOURCE - Any person, animal, device, operation, process, activity, or phenomenon which emits or causes sound.

UNREASONABLE NOISE - Any sound which is defined in sections 5, 6 or 7 herein as unreasonable.

VIBRATION - An oscillatory motion of solid bodies of deterministic or random natures described by displacement, velocity or acceleration with respect to a given reference point.

Section 5. Unreasonable Noise Prohibited.

No person shall make, cause, allow, or permit to be made any unreasonable noise within the geographical boundaries of the Town or within those areas over which the Town has jurisdiction except as otherwise provided herein. The standards to be considered in determining whether an unreasonable noise exists include, but are not limited to, the following:

- A. The volume of the noise;
- B. The frequency of the noise;
- C. Whether the noise is unusual and incongruous with the surrounding environment;
- D. The volume and frequency of the ambient noise, if any;
- E. The proximity of the noise source to any residential, educational, medical, religious or judicial facility;
- F. The use, nature and character of the immediate area where, the noise source exists;
- G. The time of day or night the noise occurs; and
- H. The duration of the noise.

Section 6. Specific Acts Considered to be Unreasonable Noise.

In addition to the general prohibitions set forth in Section 5 hereof, any of the following acts and causes thereof which either annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities are declared to be in violation of this ordinance and to constitute unreasonable noise:

- A. Sound-reproduction systems: operating, playing or permitting the operation or playing of any radio, phonograph, tape player, compact disc player, digital music player, television, receiver or similar device that reproduces or amplifies sound in such a manner as to create a noise disturbance for any person other than the operator of the device.

B. Loudspeakers and public-address systems: using or operating any loudspeaker, public-address system or similar device between the hours of 8:00 p.m. and 9:00 a.m. of the following day such that the sound therefrom creates a noise disturbance across a residential real property line.

C. Animals and birds: owning, possessing or harboring any animal or bird that frequently or for continued duration makes or creates a noise disturbance across a residential real property line. A noise disturbance is created by a dog barking continually for ten (10) minutes or intermittently for thirty (30) minutes.

D. Loading and unloading: loading, unloading, opening, closing or other handling of boxes, crates, containers, bales, cans, drums, refuse or similar objects or the pumped loading or unloading of materials in liquid, gaseous, powder or pellet form between the hours of 10:00 p.m. and 7:00 a.m. the following day when the sound therefrom creates a noise disturbance across a residential real property line.

E. Motor vehicles:

- (1) operating or permitting the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle for a period of longer than five (5) minutes in any sixty (60) minute period while the vehicle is stationary for reasons other than traffic congestion or emergency work on a public right of way or public space within one hundred fifty (150) feet of a residential area;
- (2) operating or permitting the operation of any motor vehicle so out of repair or in such a condition as to create a noise disturbance or that is otherwise not in compliance with the provisions of any state or federal law, including but not limited to §§ 375 and 386 of the New York State Vehicle and Traffic Law;
- (3) spinning or squealing the tires of any motor vehicle; or
- (4) allowing noise from a motor vehicle alarm to continue in excess of fifteen (15) minutes' duration after it has been activated.

F. Construction, repair and demolition: operating or permitting the operation of any tool or equipment used in construction, repair, demolition or excavation between the hours of 6:00 p.m. and 7:00 a.m. the following day or at any time on weekends or legal holidays. Such operation does not constitute a violation if the tool or equipment is used in an emergency situation or if the tool or equipment is equipped with a functioning muffler or if the operator is issued a variance pursuant to section 11 of this ordinance.

G. Sound devices on public transportation: operating, playing or permitting the operation or playing of any radio, phonograph, tape player, compact disc player, television receiver or similar device on or in any method of public transportation in such a manner that the sound from such device is audible to any other person.

H. Miscellaneous sound producers: creating or emitting a noise which constitutes a noise disturbance by any manner, including but not limited to a horn, siren, whistle, yell, shout, bell, musical instrument, tool, engine, etc.

Section 7. Prima facie evidence of noise disturbance.

The following shall be considered prima facie evidence of noise disturbance:

A. Any 30 minute Leq measurement taken at a residential property, arising from another residential property, above 55 dBA during the time period commencing at 7 a.m. and ending at 10 p.m.

B. A regular or periodic Lmax measurement taken at a residential property, arising from another residential property above 65 dBA during the time period commencing at 7 a.m. and ending at 10 p.m.

C. A 30 minute Leq measurement taken at a residential property, arising from another residential property, above 45 dBA during the time period commencing at 10:00 p.m. and ending at 7:00 a.m.

D. A regular or periodic Lmax measurement taken at a residential property, arising from another residential property above 55 dBA during the time period commencing at 7 am and ending at 10 pm.

E. A 30 minute Leq measurement taken at a residential property, arising from a commercial or industrial property, above 60 dBA during the time period commencing at 7 a.m. and ending at 10 p.m.

F. A regular or periodic Lmax measurement taken at a residential property, arising from a commercial or industrial property above 75 dBA during the time period commencing at 7 a.m. and ending at 10 p.m.

G. A 30 minute Leq measurement taken at a residential property, arising from a commercial or industrial property, above 45 dBA during the time period commencing at 10:00 p.m. and ending at 7:00 a.m.

H. A regular or periodic Lmax measurement taken at a residential property, arising from a commercial or industrial property above 55 dBA during the time period commencing at 7 am and ending at 10 pm.

I. A 1 minute Leq measurement of a sound reproductive device level in or from a motor vehicle exceeding 50 dBA as measured from the nearest curb or edge of the roadway or be plainly audible more than 25 feet in any direction from the motor vehicle from which the sound emanates.

Section 8. Exceptions.

Regardless of the decibel limits or the time of day or night, the provisions of this Ordinance shall not apply to:

- A. Sound and vibration emitted for the purpose of alerting people in an emergency.
- B. Sound and vibration emitted in the performance of correcting an emergency.
- C. Sounds created by bells or chimes of a church, synagogue or other house of worship, when a part of a religious observance or service.
- D. Sounds created by any government agency by the use of emergency warning devices.
- E. Sound from agricultural equipment when operated as part of an agricultural operation.
- F. Sounds from domestic power tools, or lawn and garden equipment when operated with a muffler.
- G. Sound from snow blowers, snow throwers, and snow plows when operated with a muffler for the purpose of snow removal.
- H. Sound from a burglar alarm of any building or residence, provided such burglar alarm shall terminate its operation within fifteen minutes after it has been activated.
- I. Sound generated by Town sponsored concerts and events designed to promote the health, safety or welfare of the citizens of the Town.

Section 9. Enforcement and Administration.

A. The noise control requirements established by this Ordinance shall be administered and enforced jointly by Town Enforcement Officers, officials authorized by the Town Board, and at all times by any police officer as defined by the NYS Criminal Procedure Law. An alleged violation of the provisions of this Ordinance may be established upon the verbal or written complaint of at least one person or as personally observed by such Town Enforcement Officers, officials authorized by the Town Board, and at all times by any police officer as defined by the NYS Criminal Procedure Law. Town Enforcement Officers, officials authorized by the Town Board, and at all times by any police officer as defined by the NYS Criminal Procedure Law, may issue an order requiring abatement of any source of sound alleged to be in violation of this Ordinance. Such abatement must be made within a reasonable time period and according to the conditions prescribed by the officer. Violation of any provision of this Ordinance or of an abatement order shall be cause for a summons to be issued.

B. Outdoor sound level readings used for the enforcement of this Ordinance shall be performed, and documented in accordance with the requirements contained herein. The ASTM E-1014 - STANDARD GUIDE OF MEASUREMENT OF OUTDOOR A WEIGHTED SOUND LEVELS, as the same may be amended, establishing the general procedures for conducting outdoor sound level readings may be relied upon as guidance.

1. The noise meter shall be a Type I or Type II logging, integrating sound level meter that measures A-weighted decibels (DBA). It shall be capable of taking Leq measurements for a user selectable time period. It shall have a user selectable Fast and Slow response. It shall have a response range from 30 to 120 dBA.
2. The meter shall be a CEL 246 or equivalent.
3. The meter shall be calibrated before and after each reading. The calibrator shall be sent in for professional re-calibration at least every 12 months.
4. If the after-reading calibration is more than 1 dB different from the before-reading calibration, the readings shall be discarded and redone. If the meter calibration drifts more than 1.5 dB in 24 hours the meter shall be send in for service.
5. The wind speed shall not be greater than 10 mph for outdoor readings. In general a wind screen shall be used on the microphone.
6. Noise monitoring shall not be conducted during rain, snow, or periods of excessive humidity.
7. A fixed tripod shall be used to take meter readings. The microphone shall be mounted about 4 to 5 feet above the ground and either oriented towards the noise sources or 45 degrees upward (pointing towards the source). Follow meter instructions for specific direction, as microphone types vary.
8. The meter shall be set up on or near the property line of the source property in question or at the receptor location.
9. The meter shall not be placed within 30 feet of a large reflecting surface (wall, fence, or barrier).
10. The operator shall try to find a location where the primary noise source is the noise in question. Accurate readings cannot be obtained if there are other sources that are within 10 dB of the source being measured, such as a road noise, machinery noise, or insect noise. If ambient readings indicate that these other sources are at least 10 dB less than the source being measured, they can be ignored.
11. The operator shall stand well clear of the meter during the test and shall not engage in conversation that might impact the readings.

12. The operator shall record the starting and endings times of each measurement and note any interfering noises that occurred during the tests. Short duration interfering noises will not generally impact Leq.

Section 10. Penalties

A. Any person who violates any provision of this ordinance shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to penalties in the following manner:

- (1) Upon a first conviction, by a fine not less than \$50 and not more than \$250 or by imprisonment for a period not to exceed seven days, or by both such fine and imprisonment.
- (2) Upon a second conviction, by a fine not less than \$100 and not more than \$1,000 or by imprisonment for a period not to exceed 10 days, or by both such fine and imprisonment.
- (3) Upon a third or subsequent conviction, by a fine not less than \$250 and not more than \$3,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment.

B. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct violation.

Section 11. Variances

11-1. Application for special variance.

A. The Town Board shall have the authority to grant special variances for limited times and purposes of this ordinance.

B. Any person who owns or operates any stationary noise source may file an application with the Town Enforcement Officer for a special variance from any of the provisions of this Ordinance. The application shall consist of a letter signed by the applicant and shall contain information, including but not limited to:

- (1) The name and address of the applicant;
- (2) The nature and location of the noise source for which such application is made;
- (3) The reason for which the permit of variance is requested, including the hardship that will result to the applicant or the public if the permit of variance is not granted;
- (4) The nature and intensity of noise that will occur during the period of the variance;
- (5) The section or sections of this ordinance for which the permit of variance shall apply;

- (6) A description of interim noise control measures to be taken by the applicant to minimize noise and the impact occurring therefrom;
- (7) A specific schedule of noise control measures;
- (8) A presentation of adequate proof that noise levels occurring during the period of the variance will not constitute a danger to public health;
- (9) A presentation of adequate proof that compliance with this ordinance would impose an arbitrary or unreasonable hardship upon the applicant without equal or greater benefit to the public;
- (10) The names and addresses of all owners of contiguous land within 500 feet of the premises. The applicant in like manner shall give notice of the application by certified mail, return receipt requested, to all property owners surrounding the sound source site within a radius of 500 feet from the borders of said site; and
- (11) A filing fee of \$25.

C. The applicant's failure to supply the required information required by this article shall be cause for rejection of the application.

11-2. Public hearing and decision.

Upon prior reasonable public notice the Town Board shall hold a hearing on the special variance application. The Town Board, upon reviewing all input from the hearing and obtaining any additional data or information as deemed necessary, shall then pass upon the application by resolution. The decision shall be transmitted to the Town Enforcement Officer, who will advise the applicant of such decision by transmitting a copy of the special variance application to the applicant, with the decision and conditions, if any, imposed by the Town Board attached.

11-3. Applicant to obtain other necessary permits.

This Ordinance does not preclude the necessity of the applicant to obtain the approval or permit required by any other agency before proceeding with the action approved under the approved special variance. No action may be initiated by the applicant until such time that other permits, as may be required, are issued.

11-4. Variance to be available for inspection.

The applicant or the applicant's agent shall have readily available the approved special variance at the location or site for which the variance has been issued and shall show the same to any agent of the Town whenever requested.

11-5. Activity open to inspection.

Activity conducted under the special variance shall be open to inspection at any time by any agent of the Town.

11-6. Revocation of Variance.

The permit of a special variance may be revoked by the Town Board if:

- A. There is a violation of one (1) or more conditions of the variance;
- B. There is a material misrepresentation of fact in the permit application; or
- C. There is a material change in any of the circumstances relied upon by the Town Board in granting the variance.

11-7. Powers and duties of Town Board.

- A. In determining whether to grant or deny the application, the Town Board shall balance the hardship to the applicant, the community and other persons of not granting the variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on the property affected and any other adverse impacts of granting the special variance.
- B. In connection with this section the Town Board shall cause the taking of sound level readings in the event that there shall be any dispute as to the sound levels prevailing or to prevail at the sound source site.
- C. The Town Board shall have the power to impose restrictions, conditions and the recording of covenants upon any sound source site, including time limits on permitted activity in the event that it shall grant any variance hereunder.

Section 12. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this Ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 13. Effective Date.

This Ordinance shall take effect ten (10) days after publication and posting, or immediately upon personal service as provided by Section 133 of the Town Law.