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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Tusten

Local Law No. __ of 2019 (Proposed)

A local law to amend the Code to add Chapter 200 entitled, "Noise"

BE IT ENACTED by the Town Board of the Town of Tusten as follows:

Section 1. Legislative Intent and Purpose.

The purpose of this chapter is to prohibit and/or regulate, in a manner consistent with the health, welfare and safety of the citizens of this Town, breaches of the peace and unreasonably loud and disturbing noises. This law is adopted pursuant to the Municipal Home Rule Law and the exercise of the Town's police powers.

Section 2. A new Chapter ____ of the Town Code, entitled, "Noise", is hereby added to the Town Code to read as follows:

1. Definitions.

A-WEIGHTED - The sound-pressure level in decibels as measured on a sound-level meter using the A-weighting network. The level so read is designated "dB(A)."

CONSTRUCTION - Any activity necessary or incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, public or private highways, roads, premises, parks, utility lines or other property, including but not limited to the related activity such as line clearing, grading, earthmoving excavation, blasting, filling and landscaping, but not including clearing, grading and earthmoving excavation in connection with agricultural activities in a certified agricultural district.

DECIBEL - The unit for measuring the volume of a sound, based upon the pressure level of a sound. For the purpose of this Chapter, the standard reference pressure stated herein will be used to assure a consistent and standard reference for measuring sound. The sound-pressure level measured in decibels is equal to 20 times the logarithm to the base 10 of the ratio of the effective pressure of the sound measured. "dB" is the abbreviation for decibel.

DECIBEL LEVELS OF COMMON SOUNDS (approximate) -

Decibel dB(A) Type of Sound

40	quiet residential area; babbling brook
50	light traffic
60	normal conversation; laughter
70	freeway traffic; vacuum cleaner at 10 feet
78	washing machine/dishwasher
80	avg. city traffic
85	heavy traffic; noisy restaurant
88	motorcycle
90	lawnmower; truck; shouted conversation
100	riding a motorcycle; snowmobile; train
110	rock band; table saw; car horn; jackhammer
115	emergency vehicle siren
120	thunderclap
130	nearby jet takeoff

L10 - the noise level just exceeded for 10% of the measurement period, when using the A-weighted network.

SOUND LEVEL - The quantity in decibels measured by a sound-level meter satisfying the requirements of American National Standards Institute's specifications for sound-level meters. Sound level is the frequency-weighted sound-pressure level obtained with the standardized dynamic characteristics "fast" and "slow" and weighting (a), (b) or (c); unless otherwise indicated, the A-weighting slow response shall apply.

SOUND-LEVEL METER - An instrument, which includes but is not limited to a microphone, amplifier, rms detector, integrator or time average or output meter that measures sound-pressure fluctuations. The output meter reads sound-pressure level when properly calibrated and the instrument is of a Type 2 or better as specified in American National Standards Institute Publication S1.4-1971 or its successor publication. The manufacturer's published indication of compliance with such specifications shall comply.

UNREASONABLE NOISE - Any excessive, unnecessary or unusual loud sound or any sound or noise that either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities or which causes injury to animal life or damage to a property or business. Standards to be considered in determining whether said noise is unreasonable in a given situation include, but are not limited to, the following:

- A. The sound level of the noise.
- B. The intensity of the noise.
- C. Whether the nature of the noise is usual or unusual for the vicinity in which it occurs
- D. Whether the origin of the noise is usual or unusual.
- E. The sound level and intensity of the background noise, if any.
- F. The proximity of the noise to residential sleeping facilities and other sensitive locations such as daycare facilities and schools.
- G. The nature and zoning district of the areas within which the noise emanates.
- H. The time of the day or night the noise occurs.

- I. The time duration of the noise.
- J. Whether the sound source is temporary.
- K. Whether the noise is continuous or impulsive.

2. Applicability

This Chapter shall apply to all sound created in the Town, except as provided in Section 3 below.

3. Exceptions

The following sounds and noises are deemed beyond the scope and intent of the Town to regulate and are not subject to regulations in this Chapter.

- A. Any sound created by a government agency to alert the public to an emergency or warn of a dangerous condition, including any warning device, alarm, siren, horn or whistle used by emergency vehicles.
- B. Sounds produced by generators, pumps, or other related emergency equipment necessarily related to storm recovery or other emergency conditions during the period of the emergency or outage, as well as sounds created by the lawful testing of such equipment.
- C. Sounds produced by snow, ice or tree removal equipment when used during an emergency or weather event.
- D. Any sound within limits set by and under the jurisdiction of the federal Occupational Safety and Health Act or any other state or federal act preempting local regulation.
- E. Sound generated by or produced in association with a special event that has received a special waiver pursuant to Section 7.
- F. Sounds associated with the operations of a farm located in a certified agricultural district regulated under the Agriculture and Markets Law.
- G. Sounds associated with the performance of municipal-type activities (e.g., police, fire, and refuse collection; water and sewer line repairs; road and bridge repair and maintenance; and installation, repair and replacement of utilities).
- H. Sounds connected with: sporting events of any public or private school; a Town sponsored event; or a special event allowed by a permit that is issued by the town board.
- I. Sound from landscaping and yard maintenance activity between 7:00 a.m. and 9:00 p.m. on weekdays and between 7:00 a.m. and 9:00 p.m. on weekends is exempt from the provisions of this section, provided all motorized equipment used in such activity is equipped with functioning mufflers.

4. Unreasonable Noise Prohibited

No person shall make, cause, allow, or permit a sound level exceeding the limitations in this Chapter within the geographical boundaries of the Town of Tusten or within those areas over which the Town has jurisdiction, including waters and beaches. Nor shall any person intentionally or recklessly cause public inconvenience, annoyance or alarm by making or causing unreasonable noise unless otherwise permitted by the terms and conditions of this Chapter.

It shall be considered evidence that a noise is unreasonable and in violation of this Chapter when the average of the measured sound level of a particular activity or property is in excess of the standards hereinafter set forth.

- A. During the hours of 6:00 a.m. to 9:00 p.m., measured sound levels during the measurement period at a property line shall not exceed an average of 65 dB(A) or an L10 in excess of 60 dB(A).
- B. During the hours of 9:00 p.m. to 6:00 a.m., measured sound levels during the measurement period at a property line shall not exceed an average of 55 dB(A) or an L10 in excess of 50 dB(A).
- C. Construction Noise. Notwithstanding the provision of Subsections A and B above, no person shall conduct or permit to be conducted construction activities exceeding the following limitations.
 - i. During the hours of 6:00 a.m. to 9:00 p.m., sound levels from a construction site shall not exceed an L10 of 70 dB(A) when measured at a distance of 400 feet from the edge of the property where the construction site is located.
 - ii. During the hours of 9:00 p.m. to 6:00 a.m., noise sound levels shall not exceed an L10 of 55 dB(A)'s when measured at a distance of 400 feet from the edge of the property where the construction site is located.

5. Specific prohibitions.

The following acts and the causing thereof, which are representative and not exhaustive, are considered unreasonable noise and shall constitute violations of this Chapter.

- A. Sound reproduction. No person shall use, operate or permit to be used or operated any radio, radio receiving set, musical instrument, phonograph, jukebox or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants by creating noise in violation of this chapter across a real property boundary line which exceeds the sound level thresholds set in Section 4 on private property or which exceeds the sound thresholds in Section 5F if in a public place such as a street, sidewalk or park.
- B. Animals. No person shall own, harbor or possess any animal (including birds) that continuously or intermittently creates an unreasonable noise across a real property boundary line. For example, a dog that continuously barks for a ten-minute period or intermittently for 30 minutes within a one-hour period is considered unreasonable.
- C. Alarms. No person shall maintain an alarm system in a building/residence or motor vehicle unless said alarm system is capable of and shall automatically cease its operation within a fifteen-minute period from the time of activation.
- D. Motor vehicles. All motor vehicles operated within the Town shall be subject to the noise standards and decibel levels as set forth in the regulations of the State of New York Vehicle and Traffic Law. No person shall operate a motor vehicle in such a manner as to create unreasonable noise by the spinning or squealing of tires on said vehicle or in such a manner to at any time create the sound-pressure level emitted by said vehicle to exceed the limitations set forth in the New York Vehicle and Traffic Law (§§ 386 and 1162; See also Title 6, Chapter IV, Subchapter E of the NYCRR). No sound amplifying devices on or within motor vehicles shall emit noise in excess of the noise levels specified in this Chapter.
- E. Outdoor equipment; power tools. No person shall use or operate or permit the use or operation of any powered tools or equipment, including but not limited to saws, sanders, drills, grinders, lawn or garden tools, lawn mowers, tractors and leaf blowers, when used outdoors during the period between 9 p.m. and 6 a.m., so as to create unreasonable noise.

F. Places of public assembly. No person shall operate or permit the use or operation of a public place of assembly, including but not limited to a campground, restaurant, bar, cafe, discotheque or dance hall, in which the sound level is equal to or exceeds 105 dB(A) in a residential area or 105 dB(A) in a non-residential area for more than 30 seconds at the location of said assembly.

6. Sound Level Measurement

The measurement of continuous sound or noise shall be made with a sound-level meter using an A-scale decibel level. Unless otherwise specified, measurements of noise generated on private property shall be conducted at the property line on which such noise is generated or perceived. Noises originating in places of public assembly shall be measured adjacent to the source of noise within the place of public assembly.

7. Application for special waiver.

A. The Town Board shall have the authority to grant special waivers from the provisions of this Chapter for good cause shown.

B. Any person who owns or operates any sound source or land upon which a special commercial or temporary event is proposed may file an application with the Code Enforcement Officer for a special waiver from any of the provisions of this Chapter. The Code Enforcement Officer shall review the application to ensure that it is complete before forwarding it to the Town Board. The application shall consist of a letter signed by the applicant and shall contain information, including but not limited to:

- i. The name and address of the applicant.
- ii. The nature and location of the sound source for which such application is made.
- iii. The nature and intensity of sound that will occur during the period of the waiver and the length of time for which the waiver is sought.
- iv. The reason for the requested waiver and a presentation of adequate proof that sound levels occurring during the period of the waiver will not constitute a danger to public health, safety or welfare.
- v. A presentation of adequate proof that compliance with this Chapter would impose an unreasonable hardship upon the applicant or the public.
- vi. An application fee as set and subject to periodic amendment by resolution of the Town Board.

C. The Town Board shall hold a public hearing on the proposed special waiver and publish a notice of the hearing, including the time, place, and purpose of the hearing, in the official paper of the Town not less than 10 days prior to the date of the public hearing. If the sound source for which a special waiver is requested is located on a particular property, all property owners within 1,000 feet of the subject property shall receive notice of the public hearing by mail. Such notice shall be by certified mail, return receipt requested. The applicant shall bear the costs of such mailing and present the receipts at the public hearing.

D. The Town Board may impose conditions on the special waiver in order to protect the health, safety, welfare and quality of life of the residents of the Town.

8. Administration and Enforcement.

- A. It shall be the duty of the Code Enforcement Officer, the Sullivan County Sheriff's Department, the New York State Police, and all other law enforcement agencies that have jurisdiction in the Town of Tusten to administer and enforce the provisions of this Chapter.
- B. Pursuant to the provisions of Municipal Home Rule Law § 10(4)(a) and Criminal Procedure Law § 150.10, the Code Enforcement Officer shall have the authority to issue and serve appearance tickets when he or she has reasonable cause to believe a person has violated any provision of this Chapter, and to prosecute the violation in the Justice Court of the Town.
- C. Additionally, the Sullivan County Sheriff's Department, the New York State Police, and all other law enforcement agencies that have jurisdiction in the Town of Tusten shall have the power to do the following:
 - i. Order any person to immediately cease and desist from any activity that causes a violation of any provisions of this Chapter.
 - ii. Issue and serve an appearance ticket for a violation of any provision of this Chapter.
- D. If the violation occurs on a premises which is occupied by someone other than the owner, the issuer of the appearance ticket must also notify the owner in writing of the violation within five business days of said violation. Failure to provide such notice shall not affect the prosecution of the person or persons charged with said violation.

9. Criminal penalties for offenses. A criminal action may be brought against any party found in violation of this Chapter in the Justice Court of the Town. Any person who violates any provision of this Chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be subject to penalties as outlined below.

- A. Upon conviction for a first offense, be guilty of a criminal violation and subject to a penalty of not less than \$50 nor more than \$500.
- B. Upon conviction of a second offense within three years of a prior conviction under this Chapter, be guilty of a misdemeanor and, upon conviction, be subject to a penalty of not less than \$250 nor more than \$1,000.
- C. If the violation is continuing in nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.

10. Civil Penalties.

- A. Upon application of the Town Attorney and court order, any person violating any provision of this Chapter may be enjoined from continuing such violation.
- B. A civil action may be filed for violations of this Chapter. Upon a finding by the court that a violation of this Chapter has occurred, a civil judgment may be entered by the Judge according to the following table:
 - 1. First offense: up to \$250 maximum.
 - 2. Second offense within an 18 month period: \$250 up to \$1,000.
 - 3. Third offense within an 18 month period: \$750 up to \$1,500.
- C. Any prior violation over 18 months old will not be considered a predicate offense.
- D. If the violation is continuing in nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.

13. Severability

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated.

Section 3. Authority

This local law is enacted in accordance with the powers vested in the Town by the Municipal Home Rule Law and Section 18 of the Public Officers Law.

Section 4. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.