

LOCAL LAW NO. 2 OF 2003

**TOWN OF LEXINGTON LOCAL LAW
REGULATING NOISE**

Be it enacted by the Town Board of the Town of Lexington, in the County of Greene, as follows:

Section 1.

A new local law of the town Code of the Lexington, Entitled "Town of Lexington Noise Control Law" is hereby enacted to read as follows:

NOISE

ARTICLE 1. IN GENERAL

Section 1. Short title

This Chapter shall be know and may be cited as the "Town of Lexington Noise Control Law."

Section 2. Declaration of Policy

It is hereby declared to be the public policy of 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 attraction 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. This Local Law is enacted pursuant to Municipal Home Rule Law, Section 10, subsection (1)(ii)(11) and (12) and 4(b).

Section 3. Interpretation

This chapter shall be liberally constructed so as to effectuate the purposes describe in this chapter. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this chapter. Nothing herein shall be construed to abridge the emergency powers of any health department or the right of such department to engage in any necessary or proper activities.

Section 4. Definitions and word usage

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.

As used in this chapter, the following terms shall have the meanings indicated:

AMIENT 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 facilities and the abutting public right-of-way and public spaces.

COMMERCIAL FACILITY – 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 wholesales 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.

CONTINUOUS SOUND – Any sound that is not impulse sound.

“dBA” – The abbreviation designating the unit of sound level as measured by a sound level meter using the A-weighting, also known as “DBA”.

DECIBEL – The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (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 actions.

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 right-of-ways, dredging of waterways or abating life-threatening conditions.

EXTRANEIOUS SOUND – A sound, which is neither part of the neighborhood residual sound or comes from the source under investigation.

FREQUENCY – The number of sound pressure oscillations per second, expressed in hertz; abbreviated “Hz”.

IMPULSE SOUND – Sound characterized by either a single pressure peak or a single burst (multiple pressure peaks) having a duration of less than one second.

MOTOR VEHICLE – Shall include any automobile, motorcycle, truck, recreational vehicle, all terrain vehicle or snowmobile.

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

NOISE DISTURBANCE – Any sound which (a) endangers or injures the safety or health of humans or animals, or (b) annoys or disturbs a reasonable person of normal sensitivities, or (c) endangers or injures personal or real property.

PEAK SOUND PRESSURE LEVEL – The maximum absolute value of the instantaneous sound pressure level during a specified time interval.

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

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 structure thereon that are owned, leased, or controlled by a governmental entity.

REAL PROPERTY LINE - Either (a) the imaginary line including its vertical extension that separates one parcel or real property from another, or (b) 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 PROEPRTY – 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 the medium. The description of sound may include and 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 a A, B, or C as specified in American National Standard Institute specifications for sound level meters (ANSI). If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER – Any instrument including a microphone, amplifier, and 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.

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. Televisions, 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.

TRANSIENT SOUND – A sound whose level does not remain constant during measurement.

UNREASONABLE NOISE – Any sound which is defined in Sections 151-6, 151-7 or 151-8 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.

ARTICLE II. PROHIBITED ACTS

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, including the waters and beaches adjacent to, abutting or bordering the Town.

Section 6. Specific Acts Considered to be Unreasonable Noise

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 chapter and to constitute unreasonable noise:

- A. No person shall operate or use or cause to be operated any loud speaker, public-address system or similar amplification device between the hours of 10:00 p.m. and 7:00 a.m. except when used in connection with a public emergency by officers of any police agency, fire department or of any municipal entity.
- B. Using or operating any sound reproduction device or other instrument or device for commercial or business advertising purposes or for attracting attention to any performance, show or sale or display of merchandise in connection with any commercial operation in front or outside any building, place or premises, or through any aperture of such building, place or premises, abutting or adjacent to any public right-of-way, or in or upon any vehicle operated, standing or being in or on any public right-of-way, or from any stand, platform or other structure, or from any airplane or other device used for flying over the Town of Lexington, or on a boat on the waters within the jurisdiction of the Town of Lexington, or anywhere on any public right-of-way.
- C. The use of any sound reproduction device outside a structure either on private property or on a public right of way or public space or inside a structure in such a manner as to result in the sound from such apparatus to be projected therefrom between 10:00 p.m. and 7:00 a.m. Sound, which can be heard from inside a structure across any real property boundary, where all exterior doors and windows are closed, shall be deemed to be projected

within the meaning of this subsection. Nothing within this subsection shall be construed to prevent the operation of any such apparatus by any person within any building or structure, provide that the sound therefrom is not projected outside of any building or out –of-doors.

- D. No animal or bird owner shall permit any animal to cause noise, which shall annoy or disturb the quiet, comfort, or repose of a reasonable person of normal sensibilities. Noise disturbance for more than 15 minutes at any time of the day or night, by repeated barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundary of the owner's property, shall be deemed prima facie evidence of unreasonable noise.
- E. The shouting, yelling, calling, or hooting at any time or place so as to annoy or disturb the quiet, comfort and repose of a reasonable person of normal sensibilities.
- F. No person shall engage in, cause or permit the loading, unloading, opening, closing or other handling of boxes, crates, container, building materials or similar objects between the hours of 8:00 p.m. and 7:00 a.m. the following day in such a manner as to cause unreasonable noise across a residential real property boundary.
- G. No person shall cause or permit to be caused the excessive, persistent or unnecessary sounding of any horn or other auditory signaling device on or in any motor vehicle except to serve as a warning of danger.
- H. No person shall operate or permit to be operated lawn maintenance equipment between the hours of 10:00 p.m. to 7:00 a.m.
- I. No person shall operate or permit to be operated a refuse compacting vehicle in the process of compacting or collecting refuse contained in a dumpster or similar receptacle between the hours of 10:00 p.m. and 7:00 a.m. except in cases of emergency or the interests of public safety.
- J. No person shall operate or permit to be operated any tools or equipment used in construction, drilling, excavations or demolition work between the hours of 8:00 p.m. and 8:00 a.m. the following day except the provisions of this section shall not apply to emergency work.

- K. No person shall cause or permit the operation of any device, vehicle, construction equipment, snow blowing or lawn maintenance equipment, including but not limited to any diesel engine, internal combustion engine or turbine engine, without a property functioning muffler, in good working order and in constant operation regardless of sound level produced.
- L. No person shall operate a motor vehicle in such a manner or cause excessive squealing or other excessive noise of the tires of such vehicle as to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.
- M. No person shall operate or permit the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle, for a period of longer than thirty (30) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion or emergency work, within 150 feet of a residential property between the hours of 10:00 p.m. and 7:00 a.m. on the following day.
- N. No person shall allow noise from a motor vehicle or building alarm in excess of five (5) minutes after it has been activated.
- O. Any excessive or unusually loud sound, which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.

Section 7. Maximum Permissible Continuous Sound Levels

It shall be prima facie evidence that an activity has created unreasonable noise if it measures in excess of the standards set forth below for continuous sound levels. An activity that does not measure in excess of the standards may still be deemed to have created unreasonable noise if it violates any of the prohibitions set forth in section 151-6 of this chapter.

- A. No person shall make, cause, allow, or permit the operation of any source of sound on a particular category of property or any public space or right-of-way in such a manner as to create a sound level that exceeds the particular continuous sound level limits set forth in Table I when measured at or within the real property line of the receiving property except as provided in subsection (B).
- B. When measuring noise within a dwelling unit of a multi-dwelling-unit building, all exterior doors and windows shall be closed and the measurements shall be taken in the center of the room.

TABLE I		
	RESIDENTIAL AREA	COMMERCIAL AREA
7:00 a.m. to 10:00 p.m.	65 dBA	70 dBA
10:00 p.m. to 7:00 a.m.	50 dBA	60 dBA

B. Motor Vehicles.

- (1) Motor Vehicle sound level limits and equipment shall be in compliance with provisions of any state law, including, but not limited to, Sections 386 and 375 of the New York State Vehicle and Traffic Law governing the emission of sound from public highways.
- (2) No person shall operate or permit to be operated any motor vehicle off of a public highway at any time, at any speed or under any condition or grade, load, acceleration or deceleration or in any manner whatsoever as to exceed eighty six (86) dBA. The limit shall apply at a distance of fifty (50) feet from such motor vehicle.

Section 8. Maximum Permissible Impulsive Sound Levels

- A. It shall be prima facie evidence that an activity has created unreasonable noise if it measures in excess of the standards set forth below for impulsive sound levels. An activity that does not measure in excess of the standards may still be deemed to have created unreasonable noise if it violates any of the prohibitions set forth in Section 151-6 of this chapter.
- B. No person shall make, cause, allow or permit the operation of any impulsive source of sound within any and all property in the Town which has a peak sound pressure level in excess of eighty (80) dBA. If an impulsive sound is the result of the normal operation of an industrial or commercial facility and occurs more frequently than four times in any hour, the levels set forth in Table I shall apply.

ARTICLE III. EXCEPTIONS

Section 9. Exceptions

Regardless of the decibel limits, the provisions of this chapter 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 by bells or chimes by any church, synagogue or school when such instrument is used during or in conjunction with a predetermined, scheduled activity such as a service or observance.
- D. Sounds created by any government agency by the use of public warning devices.
- E. Noise from domestic power tools, lawn mowers, and agricultural equipment when operated with a properly functioning muffler between the hours of 7:00 a.m. and 10:00 p.m., provided they produce less than eighty-five - (85) dBA at or within any real property line of a residential property.
- F. Noise from snow blowers, snow throwers, and snow plows when operated with a properly functioning muffler for the purpose of snow removal.
- G. Noise from an exterior burglar alarm of any building or motor vehicle provided such burglar alarm shall terminate its operation within five (5) minutes after it has been activated.
- H. Noise from construction activity provided all motorized equipment used in such activity is equipped, where applicable, with property functioning mufflers, except as provided in Section 151-6.
- I. Noise generated by municipality sponsored concerts and event.

ARTICLE IV. POWER, DUTIES AND QUALIFICATIONS

Section 10. Enforcement and Administration

(A) The noise control requirements established by this chapter shall be administered and enforced by any law enforcement agency that has jurisdiction the Town of Lexington, the Town of Lexington Constable, and Town Attorney or his/her designee and such other employees and/or officials authorized by the Town Board.

(B) Pursuant to the provisions of Municipal Home Rule Law, Section (10)(4)(a) and Criminal Procedure Law, Section 150.10, the Town Constable of the Town of Lexington, who is a civilian employee and public servant of the Town, is hereby authorized to issue and serve appearance tickets, as defined in Criminal Procedure Law, returnable in Town Court of the Town of Lexington, when he or she has reasonable cause to believe a person has violated, in his or her presence, Chapter 151 of the Code of the Town of Lexington entitled "Town of Lexington Noise Control Law," and to prosecute the violation in Town Court.

ARTICLE V. PENALTIES

Section 11. Penalties

Any person who violates any provision of this chapter shall be deemed guilty of an offense and, upon conviction thereof, shall be subject to penalties in the following manner:

Upon a first conviction in any one calendar year, by a fine not less than fifty (\$50) dollars and not more than two-hundred fifty (\$250) dollars or by imprisonment for a period not to exceed seven (7) days or by both such fine and imprisonment.

Upon a seconded conviction in any one calendar year, by a fine not less than two-hundred fifty (\$250) dollars and not more than five hundred (\$500) dollars or by imprisonment for a period not to exceed ten (10) days or by both such fine and imprisonment.

Upon a third or subsequent conviction in any one calendar year, by a fine not less than five hundred (\$500) dollars and not more than one thousand (\$1,000) dollars or by imprisonment for a period not to exceed fifteen (15) days or by both such fine and imprisonment.

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

Section 12. Additional Remedy

As an additional remedy, the Town may seek a civil penalty in the amounts set forth in Section 151-11 above, and/or a restraining order or injunction from a court of competent jurisdiction for the abatement of unreasonable noise.

ARTICLE VI. VARIANCES

Section 13. Application for Special Variance

- A. The Town Board shall have the authority to grant special variances from this chapter for limited times and purposes.
- B. Any person seeking a special variance pursuant to this section shall file an application with the Town Board. The application shall consist of a letter signed by the applicant and shall contain a legal form of verification. Such letter shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this chapter would constitute an unreasonable hardship of the applicant, on the community or on other persons. In addition, the following information shall be provided:
 - (1) The plans, specifications and any other information pertinent to the source of sound and vibrations.

- (2) The characteristics of the sound and vibration emitted by the source, including but not limited to the sound levels, the presence of impulse sounds or discrete (pure) tones, the day(s) and hours during which such vibration and sound is generated.
- (3) The noise abatement and control methods used to restrict the emissions of the sound and vibrations.
- (4) A time schedule for the installation of noise abatement and control devices, technology and procedures or process modifications that will be followed to restrict the emissions of sounds and vibrations.
- (5) The names and address of the applicant and the applicant's agent, if any, and whether the applicant is the owner, lessee, licensee, etc., of the premises. If the applicant is not the owner, the application must contain the written consent of the owner.
- (6) The names and addresses of all owners of contiguous land within five hundred (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 five hundred (500) feet from the border of said site.
- (7) A filing fee in an amount as determined from time to time by the Town Board.

Section 14. Public Hearing and Decision for Variances before Town Board

A Public Hearing shall be required for all variance applications heard by the Town Board. Upon reasonable public notice published in the official newspaper of the Town of Lexington and posted upon a public notice board designated for the purpose by the Town of Lexington in the Town office, for a minimum of ten (10) days, the Town Board shall hold a public hearing on the special variance application. The Board, upon reviewing all input from the public 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 Clerk, 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.

Section 15. Applicant to Obtain Other Necessary Permits

This Chapter 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.

Section 16. Variances to be Available for Inspection

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

Section 17. Activity Open to Inspection

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

Section 18. Powers and Duties of the Town Board

- A. In determining whether to grant or deny the application, the 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 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 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 19. Severability

If any provisions 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 2. Effective Date

This Local Law shall be effective immediately upon filing with the Secretary of State. Filed with the NYS Dept of State on 9/05/03