

Ordinance #22

NOISE ORDINANCE FOR THE TOWN OF BOLTON

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1-Short title.

This Ordinance shall be known and may be cited as the "Town of Bolton ("Town") Noise Control Ordinance," ("Noise Ordinance") and by the enactment hereof shall replace any existing noise ordinance previously in effect.

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 general welfare, and to promote peace and quiet for the inhabitants of the Town. It is the public policy of the Town that inhabitants are entitled to ambient noise levels that are not detrimental to life, health and enjoyment of persons or property. It is hereby declared that the making, creation or maintenance of excessive and plainly audible, unreasonable noises within the Town deleteriously affects public health, comfort, convenience, safety, welfare and the prosperity of the inhabitants of the Town. The provisions hereinafter contained are enacted for the betterment of the Town and its inhabitants.

3 Interpretation.

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

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 ordinance, the following terms shall have the meanings indicated:

AGRICULTURAL USE

As defined in § **200-8** of the Town of Bolton Zoning Code (“Town Code”).

AGRICULTURAL EQUIPMENT

Necessary equipment used to conduct agriculture as that term is defined in § **200-8** of the Town Code.

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 uses as that term is defined in §200-8 of the Town Code and including any 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 wholesale services;
- (5) Establishments for recreation and entertainment;
- (6) Office buildings;
- (7) Transportation;
- (8) Warehouses;
- (9) Hotels and/or motels.

COMMUNITY SERVICE FACILITY

Any nonresidential facility used to provide services to the public, including but not limited to:

- (1) Club meeting halls, offices and facilities;
- (2) Organization offices and facilities;
- (3) Facilities for the support and practice of religion;
- (4) Private and parochial schools.

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." 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.

EXTRANEOUS SOUND

A sound which is neither part of the neighborhood residual sound nor 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.

INDUSTRIAL FACILITY

Any activity and its related premises, property, facilities, or equipment involving the fabrication, manufacture, or production of durable or nondurable goods.

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 in the Town of Bolton.

NOISE DISTURBANCE

Any sound which:

- (1) Is of a kind or nature that has the reasonable possibility of endangering or injuring the safety or health of humans or animals; or
- (2) Intends to cause public inconvenience, annoyance or alarm that a person of normal sensitivities would not tolerate; or
- (3) Endangers or injures personal or real property.

OUTDOOR AMPLIFIED NOISE

Any sounds that are projected mechanically or electronically emanating from a property, including announcements, music or entertainment tending to be broadcast to other properties from the source.

PARKS

Areas of public lands maintained by the Town of Bolton for public recreational access.

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.

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 emanating from a reproduction or amplification 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 noise 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 SERVICE FACILITY

Any facility and its related premises, property, or equipment used to provide governmental services to the public, including, but not limited to:

- (1) Maintenance centers;
- (2) Offices and buildings of agencies or instrumentalities of government;
- (3) Schools.

PUBLIC SERVICE INDUSTRIAL FACILITY

Any facility and its related premises, property, or equipment used to provide industrial governmental services to the public, including, but not limited to:

- (1) Waste collection centers;
- (2) Waste recycling centers;
- (3) Water and sewage facilities.

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 legally 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 primarily 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 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, 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.

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.

TRANSIENT SOUND

A sound, the level of which does not remain constant during measurement.

UNREASONABLE NOISE

Any sound which by reason of its duration, intensity, or the hour of the day or night inappropriately interferes with the quiet enjoyment and repose of nearby

properties and the reasonable expectations of privacy of inhabitants of such properties.

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.

5 Plainly Audible unreasonable noise prohibited.

No person shall make, cause, allow, or permit to be made any plainly audible unreasonable noise within the geographical boundaries of the Town and within those areas over which the Town has jurisdiction between the hours of 10:00 p.m. and 7:00 a.m. except as otherwise provided herein. The standards to be considered in determining whether a plainly audible unreasonable noise exists include the following:

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

6 Specific "Per Se" acts considered to be unreasonable noise.

In addition to the general prohibitions set forth in § 5 herein, certain specified acts are hereby declared to be per se violations of this Ordinance.

A.

No person shall operate or use or cause to be operated any loudspeaker, public-address system or similar amplification device at a sound level in excess of 75 dBA when measured at or within the real property line of the receiving property between the hours of 10:00 p.m. and 7:00 a.m., except when used in connection with a public emergency by a governmental agency, under circumstances of an emergency or in the course of constitutionally protected public assembly or protected speech.

B.

Unless expressly granted authority to do so by special permit issued by the Town Board pursuant to criteria specified in this Ordinance, no person shall commercially or privately operate any sound amplification device which conducts or broadcasts outdoor entertainment, music, announcements or similar outdoor sounds at any time of day. Nothing in this subsection is intended to prohibit outdoor amplified sound emanating from any sporting events, hunting activities or from any constitutionally protected events.

C.

No animal owner, dog owner, bird owner or custodian of an animal, dog or bird shall permit an animal, dog or bird harbored at their premises to cause plainly audible unreasonable noise over a period of more than 15 minutes in duration by repeated or continuous barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundaries of the property where such animal, dog or bird is harbored between the hours of 10:00 p.m. and 7:00 a.m.

D.

No person shall intentionally create any plainly audible unreasonable noise between the hours of 10:00 p.m. and 7:00 a.m., including, but not limited to, shouting, yelling, calling, cheering and hooting so as to annoy, alarm or disturb the quiet, comfort and repose of a reasonable person of normal sensibilities.

E.

No person shall project or broadcast from within a structure by the use of any device or amplification equipment from any commercial establishment or from private property any outdoor sound in such a manner so as to broadcast plainly audible noise at a distance of greater than fifty (50) feet in any direction from the operating source between the hours of 10:00 p.m. to 7:00 a.m. unless specifically permitted to do so by permit obtained from the Town Board. Nothing in this subsection is intended to prohibit outdoor amplified sound emanating from any sporting events, hunting activities or constitutionally protected events.

F.

No person shall cause or permit the creation of any plainly audible unreasonable noise between the hours of 10:00 p.m. and 7:00 a.m. by means of any device or otherwise on any sidewalk, street or public place adjacent to any school, court, house of worship, public library or adjacent to any medical facility or nursing home in such manner so that such sound intentionally disrupts the normal activities conducted at such facilities so as to cause public inconvenience, annoyance

or alarm that a person of normal sensibilities making use of such facilities would not tolerate.

G.

No person shall engage in, cause or permit the loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, equipment or similar objects between the hours of 10:00 p.m. and 7:00 a.m. which creates sound in excess of 75 dBA when measured at or within the residential real property line of the sound receiving property.

H.

Between the hours of 10:00 p.m. and 7:00 a.m., no person shall cause or permit to be caused the continuous sounding or "blaring" of any horn, car alarm or other auditory signaling device on or in any motorized vehicle except to serve as a warning of imminent danger where such sound is plainly audible across a residential property line.

I.

No person shall operate or permit to be operated any devices or equipment used in construction, drilling, blasting, excavations or demolition work, between the hours of 10:00 p.m. and 7:00 a.m., where such sound produces plainly audible unreasonable noise across a residential property line, except the provisions of this section shall not apply to emergency work.

7 Exceptions.

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

A.

Sound or vibration emitted for the purpose of alerting people in an emergency.

B.

Sound or vibration emitted in the performance of correcting an emergency.

C.

Sounds created by church bells or chimes, when a part of a religious observance or service.

D.

Sounds created by any government agency by the use of public warning devices.

E.

Sound from agricultural equipment when operated in a zoning district in which agricultural uses are permitted.

F.

Sound emitted from snow blowers, snow throwers, snow plows, lawn mowers and similar devices used for mowing, trimming or ground maintenance and electric generators utilized during periods of emergency.

G.

Sound from a burglar alarm of any building or residence, provided such burglar alarm shall

terminate its operation within five minutes after it has been activated.

H. Sound generated by municipality-sponsored concerts and events designed to promote the health, safety or welfare of the citizens of the Town.

I.

Sounds created or emanating from any public assembly circumstances involving constitutionally protected speech.

J.

Sounds created or emanating from any public or private activity which holds a permit to conduct such activity from the State of New York or the United States of America where the issuance of such permit is by virtue of the exclusive jurisdiction of the state or federal government.

K.

Noise which is projected or increased in volume or sound intensity, as regulated by this Ordinance, is not intended to include a limitation of sound sources from non-amplified musical instruments, non-amplified human voice and shall not include sound emanating from a radio, CD player, DVD player, television or similar electronic or digital audio device when used for personal or private individual entertainment.

8-Enforcement and administration.

The noise control requirements established by this Ordinance may be administered and enforced by either the Town Zoning Code Enforcement Officer, the Town Police, the Warren County Sheriff or the New York State Police and such other employees and/or officials authorized by resolution of the Town Board. A violation of the provisions of this Ordinance may be received and prosecuted upon the written sworn complaint of at least one person. This provision is not intended to preclude the Town Zoning Code Enforcement Officer from prosecuting an alleged violation based solely upon a supporting deposition of a witness. Violation of any provision of this Ordinance shall be cause for an accusatory instrument to be issued constituting notice of prosecution in any court of appropriate jurisdiction.

9-Penalties for offenses.

Any person found to have violated any of the provisions of this Ordinance by clear and convincing evidence shall be guilty of an offense and shall be subject to the following monetary penalties:

A.

Upon a first conviction, a monetary penalty not to exceed \$500.00

B.

Upon a second conviction, for an offense committed within a period of one year from the first such conviction, a monetary penalty not to exceed \$1,000.00.

C.

For a third and any subsequent conviction for an offense committed within a period of one year from the second such conviction, a monetary penalty not to exceed \$3,000.00.

D.

If any violation is of a continuing nature, each day during which such violation occurs shall constitute an additional, separate and distinct violation for which a separate monetary penalty shall apply. Any violation in failing to secure a special permit and in conducting an outdoor amplified sound event without a special permit shall each constitute separate violations of this Ordinance.

E.

In addition to imposition of a monetary penalty the Town of Bolton may for just cause seek equitable relief to abate, control, prevent and otherwise enjoin any person from acting in violation of this Ordinance in a court of appropriate jurisdiction and in addition to injunctive relief recover the costs of the court proceedings, disbursements and reasonable attorneys fees incurred by the municipality as may be expended in enforcing this Ordinance.

10 Application for a special permit to allow outdoor amplified noise

Notwithstanding the provisions and limitations of this Ordinance, the Town Board shall have the authority to consider and grant permission for specific times and grant limited authority to any person for the purpose of conducting a commercial or private activity or commercial or private event that may create or project outdoor amplified noise regulated by this Ordinance where it is appropriate to allow such conduct and activity under permitted circumstances. The applicant shall be the person or entity who is the owner of the premises or, when designated by the premises owner, a person or entity who will operate, host or act upon the owner's premises to project outdoor amplified noise. Any person seeking a special permit pursuant to this section shall submit a written request with the Town Board at least 45 days prior to the event. The request shall consist of a letter signed by the applicant or sponsor of the proposed outdoor amplified noise requesting exception from the strict application of this Ordinance. The Town Board may request that the applicant for a special permit provide at least the following information:

A.

The name 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.

B.

The plans, specifications and any other information pertinent to the source of sound and vibration.

C.

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.

D.

The noise abatement and control methods used to restrict the emissions of the sound and vibration.

E.

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.

F.

The names and addresses of all owners of contiguous land within 500 feet of the premises so as to allow the Town in like manner to provide notice of the application by first class mail to the record addresses of all property owners surrounding the sound source site within a radius of 500 feet from the borders of said site.

G.

Any prior circumstances pertaining to the issuance of special permits at the same premises.

H.

A reasonable application fee shall be established by the Town of Bolton by resolution as appropriate to the application for a special permit to allow outdoor amplified noise.

11- Public hearing and decision on a special permit application.

A

Upon prior reasonable public notice the Town Board shall conduct a hearing on the permit application as part of the regular agenda of a regularly scheduled town board meeting. The Town Board upon reviewing and considering all concerns expressed at the hearing and upon obtaining all information specified in paragraph 10 A-H herein and any additional data or information as is deemed necessary, shall then consider the application by resolution. The decision shall be transmitted to the Town Clerk who will advise the applicant of such decision with conditions, if any, imposed by the Town Board. In making a decision to grant or deny a permit, or to grant a permit with such conditions that the Town Board deems appropriate and necessary to protect public peace and safety, the Town Board shall consider, but not be limited, to the following:

(1) The location of the amplified sound producing activity and its surrounding environs

(2) Proximity to any school, courthouse or place of worship

(3) Nature of the requested activity

- (4) Time of day that the amplified sound production shall occur
- (5) Effect of the activity on any of the residential areas within the Town
- (6) Other proposed activities in the vicinity of the proposed location
- (7) Prior number of times in the past year that the applicant has sought a permit for amplified sound production from the same premises.
- (8) Prior experience with the applicant or the agent
- (9) Previous noise ordinance violations by the applicant or their agent
- (10) Other impacts and circumstances that may be deemed relevant

B

In addition to the authority of the Town Board to grant or deny any application for a special permit and to allow outdoor amplified noise under specific terms, duration, intensity and type, the Town of Bolton Planning Board shall continue to exercise jurisdiction as part of any site plan review procedure to grant as part of any site plan review approval specific requirements, in accordance with the intent of this Ordinance setting times and dates for blasting, excavation or building activities. Permission granted by the Planning Board for such activities as part of an approved site plan review shall exempt the applicant from further requirement to petition the Town Board for identical relief.

12- Applicant to obtain other necessary permits.

This Ordinance does not preclude the necessity of the applicant from obtaining any other approval or permit required by any other agency before proceeding with the action approved under the approved special permit. No action may be initiated by the applicant until such time that other permits, as may be required, are issued. A violation of the terms of any special permit issued by the Town Board or violations of permission granted by the Planning Board as part of any approved site plan review process shall subject the accused to the same penalties imposed as if such activity was conducted without a permit in violation of this Ordinance.

13- Powers and duties of Town Board.

A.

In determining whether to grant or deny a special permit as specified in paragraph 10 herein the application, the Town Board shall balance the hardship to the applicant, the community and other persons of not granting the special permit against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on the properties affected and any other adverse impacts of granting the special permit.

B.

The Town Board shall be permitted to require an applicant to take sound level readings in an event as to the sound levels prevailing or to prevail at the sound source site as relevant information to be considered for the issuance of future permits at the same property. This provision, however, shall in no way require the taking of sound level readings of such events or activities that are deemed by the Ordinance as Per Se acts of plainly audible unreasonable noise.

C.

The Town Board shall upon the issuance of a special permit pursuant to this Ordinance have the power to impose restrictions, conditions and the recording of covenants upon any sound source site, including time limits on permitted activities in the event that it shall grant any special permit hereunder.

D. Commercial seasonal permit in GB 5000 Zoning District

Under appropriate circumstances from Memorial Day through Labor Day and on Columbus Day weekend where a commercial establishment in the GB 5000 Zoning District may seek special permission to conduct outdoor amplified noise activities as part of a re-occurring, seasonal, regular course of commercial conduct such as outdoor entertainment or indoor entertainment which is likely to project and emanate from interior spaces to outside areas surrounding the commercial activity, the Town Board may in such case consider and provide a seasonal permit providing appropriate restrictions and limitations upon the same guidelines and criteria specified in paragraph 11A herein. A seasonal permit shall not be available for non commercial or private activities at private residences.

E.

Under appropriate circumstances from Memorial Day through Labor Day and on Columbus Day weekend where a commercial establishment in the RCH-5000 Zoning District may seek special permission to conduct outdoor amplified noise activities as part of a re-occurring course of commercial conduct such as outdoor entertainment or indoor entertainment which is likely to project and emanate from interior spaces to outside areas surrounding the commercial activity, the Town Board may in such case consider and provide a re-occurring permit providing appropriate restrictions and limitations upon the same guidelines and criteria specified in paragraph 11A herein. A re-occurring permit shall not be available for non-commercial or private activities at private residences.

F.

With the exception of an application for premises involving a commercial seasonal permit in a GB 5000 Zoning District, or a commercial re-occurring permit in the RCH-5000 Zoning District, a special permit to allow outdoor amplified noise at any premises in all other zoning districts shall not be granted where the same premises has obtained the benefit of a prior special permit to allow outdoor amplified noise within a prior period of 60 days. The Town Board may, upon a showing of “good cause,” relieve the applicant from the 60-day period if the applicant demonstrates an economic hardship or a practical difficulty imposed by this limitation.

14- Severability

In the event that any portion of this Ordinance may be construed by a court of competent jurisdiction as unenforceable it is intended that all remaining provisions hereof shall be considered fully enforceable.

15- Effective date

This ordinance is intended to take effect immediately in accordance with the requirements of law.

