

CHAPTER 8 OFFENSES AND NUISANCES

ARTICLE 8.06 NOISE CONTROL

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**Sec. 8.06.001 Purpose/findings incorporated**

The purpose of this article is to make it unlawful for any person or entity to make, cause to be made, or allow any unreasonably loud and disturbing noise of such a character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the citizens of the town and/or which renders the enjoyment of life, health or property uncomfortable or interferes with the public peace and comfort. The findings set forth in the preamble to Ordinance 06-47 are incorporated into the body of this article as if fully set forth herein. (Ordinance 06-47, sec. 1, adopted 5/23/07)

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**Sec. 8.06.002 Compliance by contractors and proposed developments**

It is the policy of the town that all contractors and subcontractors be included as those required to comply with the provisions and intent of this article in their operations. (Ordinance 06-47, sec. 2, adopted 5/23/07)

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**Sec. 8.06.003 Town contracts to be conditioned upon compliance**

Any written agreement, purchase order, or instrument committing an expenditure of town funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, shall be subject to the provisions of this article, and the person or entity entering into the contract must operate, construct, conduct, or manufacture its business without violating this article. (Ordinance 06-47, sec. 3, adopted 5/23/07)

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**Sec. 8.06.004 Definitions**

*Construction.* Any site preparation, assembly, erection, substantial repair, alteration, or similar action (excluding demolition) of public or private right-of-way surfaces, structures, utilities or similar property.

*Demolition.* Any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.

*Device.* Any mechanism which is intended to produce or which actually produces, noise when operated or handled.

*Emergency vehicle.* A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

*Motor vehicle.* Any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semitrailer, camper, motorcycle, minibike, go-cart, dune buggy or racing vehicle.

Noise disturbance. Any sound which annoys or disturbs, or which causes or tends to cause an adverse psychological or physiological effect upon the sensibilities of a reasonable, prudent, adult person; any unreasonably loud or disturbing noise which is offensive to the sensibilities of a reasonable, prudent, adult person; and any unreasonably loud or disturbing noise which renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

Noise disturbance per se. Not requiring extraneous evidence or support to establish the existence of a noise disturbance.

Nonresidential district. Any district not classified by the town’s comprehensive zoning Ordinance 05-20, as it exists or may be amended, as containing residential homes, apartments or condominiums.

Person. Any individual, firm, association, partnership, corporation or any other entity, public or private.

Power equipment. Any motorized electric or fuel-powered equipment, including, but not limited to, tractors, lawnmowers and all other motorized electric or fuel powered equipment.

Powered model vehicle. Any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

Property boundary. An imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.

Quiet zone. Property on which a school, hospital, clinic, library or other noise disturbance sensitive facility, as determined by the town, is operated.

Residential district. Any district classified by the town’s comprehensive zoning Ordinance 05-20, as it exists or may be amended, as containing residential homes, apartments or condominiums.

Within five hundred feet (500') of any residence or quiet zone. The shorter of the following two (2) distances, measured in a direct line:

- (1) From the property line of the source of the subject noise disturbance nearest the property line of the subject residence or quiet zone to the aforementioned property line of the subject residence or quiet zone; or
- (2) From the source of the subject noise disturbance to the property line of the subject residence or quiet zone.

All terminology used in this article and not specifically defined above, shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster’s Collegiate Dictionary.

(Ordinance 06-47, sec. 4, adopted 5/23/07)

**ARTICLE 8.06 NOISE CONTROL**

**Sec. 8.06.005 Specific noise disturbance prohibited**

(a) No person shall allow, make or cause to be made any unreasonably loud or disturbing noise in the town which is offensive to the sensibilities of a reasonable, prudent adult person, renders the enjoyment of life or property uncomfortable, interferes with public peace and comfort, or causes a noise disturbance as defined herein.

(b) The following list includes, but is not limited to, activities which can create unreasonably loud or disturbing noises in violation of this article, including activities which are noise disturbances per se, unless an exemption exists pursuant to section 8.06.006 or a permit of variance was first obtained as provided in section 8.06.007:

(1) Animals. Owning, keeping, possessing, or harboring any animal or animals which, by frequent or habitual noisemaking, unreasonably disturbs or interferes with the peace, comfort or repose of the citizens of the town, or causes a noise disturbance as defined herein. The provisions of this article shall apply to all private or public facilities including any animal shelters or commercial kennels which hold or treat animals.

(2) Radios, television sets, musical instruments, loudspeaking amplifiers and similar devices.

(A) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a nonresidential area in such a manner as to cause a noise disturbance.

(C) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device that produces or reproduces sound for the purpose of attracting attention to any cause or demonstration, or to any performance, show, sale or display of merchandise so as to attract attention to such cause, demonstration or premises when such use is done in a manner which causes a noise disturbance.

(D) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device on trucks or other moving vehicles for the purpose of attracting attention to any cause or demonstration, or for advertising any show, sale or display of merchandise when such use is done in a manner which causes a noise disturbance.

(3) Vehicular sound amplification systems. Operating or controlling a motor vehicle in either a public or private place within the town and operating any sound device which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle, in such a manner that, when operated, it is audible at a distance of thirty feet (30'), or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of thirty feet (30') from the source when such operation is done in a manner which causes a noise disturbance.

(4) Yelling, shouting, etc. The yelling, shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person within the town in such a manner as to cause a noise disturbance.

(5) Loading operations. The loading or unloading of any vehicle within the town in such a manner as to cause a noise disturbance.

(Ordinance 06-47, sec. 5, adopted 5/23/07)

(6) Construction/maintenance work.

(A) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of:

- (i) 7:00 p.m. and 7:00 a.m., Monday through Friday;
- (ii) 7:00 p.m. Friday night through 8:00 a.m. Saturday morning;
- (iii) 5:00 p.m. Saturday afternoon through 12:00 p.m. Sunday afternoon; and
- (iv) 7:00 p.m. Sunday afternoon through 7:00 a.m. Monday morning. A noise disturbance is not created by residential lawn maintenance or in the event emergency repairs are required on personal property.

(Ordinance 11-043 adopted 4/26/11)

(B) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto within a nonresidential district in such a manner as to cause a noise disturbance.

(7) Batch plants.

(A) Operating or permitting to be operated any gravel pit, rock crusher or other machinery, equipment and/or motor vehicle used for the separation, gathering, grading, loading or unloading of sand, rock or gravel and/or any other machinery, equipment and/or motor vehicle used in the production of concrete or asphalt, within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) Operating or permitting to be operated any gravel pit, rock crusher or other machinery, equipment and/or motor vehicle used for the separation, gathering, grading, loading or unloading of sand, rock or gravel and/or any other machinery, equipment and/or motor vehicle used in the production of concrete or asphalt within a nonresidential district in such a manner as to cause a noise disturbance.

(8) Power equipment.

(A) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by subsection (6) above) within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by subsection (6) above) within a nonresidential district in such a manner as to cause a noise disturbance.

(9) Motor vehicles—repairs or testing.

(A) The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a nonresidential district in such a manner as to cause a noise disturbance.

(10) Motor vehicles—running loud or out of repair.

(A) The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of

the tires, or the racing of a motor vehicle engine unnecessarily within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a nonresidential district in such a manner as to cause a noise disturbance.

(11) Motor vehicles—exhaust. The discharge into the open air of the exhaust of any motor vehicle in such a manner as to cause a noise disturbance, except as discharged through a muffler or other device which effectively and efficiently prevents loud and unusual noises and annoying smoke.

(12) Impulsive sources. Causing impulsive sound sources including, but not limited to, the use of fireworks, explosives, the firing of guns or other explosive devices within the town in such a manner as to cause a noise disturbance. This is not intended to preclude any existing ordinances prohibiting such acts.

(13) Powered model mechanical devices.

(A) The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise-producing devices, within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 7:00 p.m. and 7:00 a.m.

(B) The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise-producing devices within a nonresidential district in such a manner as to cause a noise disturbance.

(14) Refuse compacting vehicles. Operating or permitting to be operated any refuse compacting, processing or collection vehicle or parking lot sweeper in any residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone in such a manner as to cause a noise disturbance.

(15) Quiet zone. Creating a noise disturbance on any street adjacent to any school, hospital, clinic, library or other noise sensitive facility, as determined by the town.

(16) Vibration. Using or causing the use of any device that creates any ground vibration which is perceptible without instruments at any point on or beyond the property boundary of the source.

(17) Stationary nonemergency signaling devices. Sounding or permitting the sounding of any electronically activated or amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place for more than five (5) minutes during any consecutive sixty-minute period which causes a noise disturbance. Except such signaling device is allowed if used as a danger signal and/or as required by law if vehicle is backing, starting or turning in such a way as to likely cause a collision.

(Ordinance 06-47, sec. 5, adopted 5/23/07)

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**Sec. 8.06.006 Exemptions**

The following sources of potential noise disturbances shall be exempt from the regulations of this article:

- (1) Emergency safety signals, storm warning sirens or horns and the testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves.
- (2) Sound caused in the performance of emergency or public service work, including police, fire and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community.
- (3) Sounds caused by natural phenomena.
- (4) Activities conducted on public parks and playgrounds which are approved, sponsored or sanctioned by the town. Activities conducted on public or private school grounds including, but not limited to, school athletic and school entertainment events which are approved, sponsored or sanctioned by the school. Activities related to the maintenance of a public or private golf course, but not earlier than 6:00 a.m.

(Ordinance 06-47, sec. 6, adopted 5/23/07)

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**Sec. 8.06.007 Permits of variance**

(a) The town administrator, or his/her designated representative, is authorized to grant permits for relief of any provision in this article on the basis of undue hardship in cases where:

- (1) The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this article;
- (2) Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this article; or
- (3) No reasonable alternative is available to the applicant.

(b) An automatic variance will be granted without the payment of permit fees for the purpose of conducting parades or other public events provided that any noise disturbance created by such activity will be abated when such request is made by the town administrator, or his/her designated representative.

(c) The town administrator, or his/her designated representative, may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects and may suspend any permit issued for violating any provisions prescribed in the permit of variance.

(d) A fee of \$25.00 shall be charged to each applicant for processing permit applications.

(Ordinance 06-47, sec. 7, adopted 5/23/07)

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**Sec. 8.06.008 Appeals**

(a) Any applicant who has been denied a permit of variance or any permittee whose permit has been suspended, shall have the right to a hearing before the town council.

(b) Requests for a hearing shall be made in writing and received by the town administrator, or his/her designated representative, within ten (10) days of the date of the denial or the date of the notice of the suspension. The town

administrator may review the appeal at a staff level and has the authority to reject the action of his/her designated representative and order that a permit be granted or to reinstate a suspended permit. However, should the town administrator uphold the denial or suspension of a permit, he/she shall, or his/her designated representative shall, schedule a hearing before the town council within thirty (30) days of receipt of the request.

(c) The town council shall have the authority to review all pertinent files and information regarding the applicant/permittee which are in the custody of the town administrator, or his/her designated representative. Additionally, the town council shall have the authority to accept written and verbal testimony from the town administrator, his/her designated representative, any appropriate town staff member, applicant/permittee and interested citizens. The town council shall also have the authority to place time restrictions on the testimony to be given at the hearing.

(d) The town council shall have the authority to assess whether the town administrator, or his/her designated representative, acted properly within the powers granted under this article in the denial or suspension of a permit. A majority vote of a quorum of the town council shall determine whether to uphold or reject the town administrator's, or his/her designated representative's action. Upholding the action of the town administrator, or his/her designated representative, shall affirm the denial or suspension. Rejection of the town administrator's, or his/her designated representative's, action shall automatically grant a permit or reinstate a suspended permit. The decision of the town council shall be final.

(e) No person whose permit has been denied or suspended, shall create or allow the creation of the noise disturbance in dispute prior to final determination by the town council.

(Ordinance 06-47, sec. 8, adopted 5/23/06)

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**Sec. 8.06.009 Penalty**

Any person, firm or corporation violating any provision of this article, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not to exceeding five hundred dollars and no/100 (\$500.00), and each and every day such violation continues shall be considered a separate offense; provided, however, such penal provision shall not preclude a suit to enjoin such violation. (Ordinance 06-47, sec. 9, adopted 5/23/06)