

TOWN OF WINDSOR

LOCAL LAW NO. 1 OF THE YEAR 2016

A LOCAL LAW AMENDING CHAPTER 68 NOISE CONTROL

Be it enacted by the Town Board of the Town Windsor as follows:

Section 1. Purpose.

The purpose of this local law is to repeal Chapter 68 "Noise Control" in its entirety and replace it with the following:

Section 68-1 Short Title

This chapter shall be known and may be cited as the "Town of Windsor Noise Control Local Law."

Section 68-2 Policy

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

Section 68-3 Purposes

The purpose of this chapter is to protect the public health, welfare, safety, peace and tranquility of the residents of the Town of Windsor by regulating noise levels.

Section 68-4 Authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Windsor has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the Town of Windsor and for the protection and enhancement of its environment. The Town Board of the Town of Windsor may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

Section 68-5 Performance Standards

Property within the geographical boundaries of the Town of Windsor shall be utilized within the limits specified as follows as safeguards and conditions for the protection of the community welfare. Standard methods of collection, measurement and chemical analysis or any method approved by the Town of Windsor, United States Bureau of Standards, any relevant State or Federal Agency, and Broome County Health Department shall be used in the application of these standards.

Section 68-6 Definitions

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

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

AMBIENT NOISE- The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources. The calculation or measurement of ambient noise shall subtract any or all noise or sound generated by properties or uses that have been issued a special permit, as prescribed herein. Ambient Noise shall be calculated at L_{90} unless proven otherwise as allowed herein.

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."

CONTINUOUS SOUND- Any sound that is not impulse sound dBA, the abbreviation designating the unit of sound as measured by a decibel level meter using A-weighting, also known as "dB(A)."

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."

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

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 duration of less than one second.

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 within the Town.

PEAK SOUND PRESSURE LEVEL- Maximum absolute value of instantaneous sound pressure level during a specific time interval.

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

REAL PROPERTY POINT-Either:

(1) The vertical and horizontal boundaries of a dwelling unit whether it is a multi-dwelling-unit building or a neighboring stand-alone dwelling unit; or

(2) Where no dwelling unit exists; then a point, equally measured from the two opposing property boundaries lines- as can be reasonably measured.

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 OVER TIME- As the Sound Pressure level unit of dBA is a level of Noise for just a moment; but sound over a reasonable time needs to be measured. The appropriate statistical sound level measurement shall be used for Sound Over Time (L_{10} or L_{50} or L_{90}). The exact level descriptor shall be what is typically used at the time of measurement in the industry. (For example: L_{10} for measurement road traffic noise; L_{90} for business, commercial and industrial noises.) The level descriptor used measures if noise was at a certain level for a certain percentage. (i.e., at 45 dBA at L_{90} the sound level was 45 dBA or higher for 90% of the time or more.) The time measured shall be minimally 60 minutes but shall be what are typically used at the time of measurement in the industry. Both the level descriptor and the amount time shall be assumed to be those level set forth herein; unless and until demonstrated to the satisfaction of the Town or its agent(s) by the Sound Source or the Town.

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

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

Section 68-7 Unreasonable noise prohibited

No person shall make, cause, allow or permit to be made any unreasonable noise upon property, within the geographical boundaries of the Town of Windsor, except as otherwise provided herein.

Section 68-8 Maximum permissible continuous sound levels

The following general prohibitions regarding continuous sound levels shall apply in determining unreasonable noise. Noise shall be measured as follows:

- A. The measurement of sound or noise shall be made as Sound Over Time, with a sound level meter meeting the standards prescribed by the American National Standards Institute.
- B. The slow meter response of the sound level meter shall be used in order to best determine that the average amplitude has not exceeded the limiting noise level.
- C. Measurement of noise levels shall be made at or beyond the Real Property Point from which the complaint is made or on such Real Property Point on which such noise is perceived but not generated, as appropriate, and shall be taken at least four feet from ground level.

D. Daytime hours shall be between 7:00 a.m. and 7:00 p.m. Nighttime hours shall be between 7:00 p.m. and 7:00 a.m.

E. The maximum permitted noise or sound levels on property, within the geographical boundaries of the Town of Windsor are:

Residential uses:

During daytime hours: ambient noise levels plus ten (10) dBA.

During nighttime hours: ambient noise levels plus five (5) dBA.

Business uses:

During daytime hours: ambient noise levels plus twenty (20) dBA.

During nighttime hours: ambient noise levels plus ten (10) dBA.

Commercial uses:

During daytime hours: ambient noise levels plus thirty (30) dBA.

During nighttime hours: ambient noise levels plus twenty (20) dBA.

Additionally, until demonstrated to the satisfaction of the Town or its agent(s) by the Sound Source or by the Town, ambient noise or sound levels or the L_{90} within the Town of Windsor shall be assumed to be 45 dBA.

However, in no event shall the allowed noise or sound levels at any Real Property Point shall exceed 80 dBA, unless as allowed via the permitting/licensing processes specified herein.

Moreover, noise levels shall be measured as described in this Chapter.

Section 68-9 Exceptions

The provisions of this law shall not apply to:

- (1) Sounds and vibrations emitted for the purpose of alerting people in emergencies.
- (2) Sounds created by bells or chimes of religious institutions.
- (3) Sounds created by any governmental entity, their agents, employees or contractors in the course of its duties (fire districts, fire companies, emergency medical service entities, towns, villages, counties, schools, police agencies, etc.).
- (4) Noise from burglar alarms of any building or motor vehicle.
- (5) Noise from lawn mowers and related lawn equipment, snowblowers, and snowplows, if working within the parameters as set forth by the Manufacturer.
- (6) Noise typically associated with residential uses (e.g., air conditioners in good working order, swimming pool filter motors, etc.).
- (7) Noise created by the normal operation of public and private schools, typically consisting of classes and other school-sponsored activities.
- (8) Noise generated by municipally sponsored concerts and special events.
- (9) Noise generated by charitable organizations under the New York State Not-for-Profit Corporation Law.

(10) Noise generated by volunteer fire companies in the performance of their duties, drills, and public demonstrations.

(11) Noise allowed, pursuant to this chapter by Special Permit issued by the Town Board of the Town of Windsor or by temporary license issue by the Town Clerk of the Town of Windsor.

(12) Noise due to emergency repairs, where the repairs are necessary due to actual or imminent physical or property damage which demands immediate action.

(13) Sound from a farm, as defined in Section 93-4 or within an Agricultural District Designation that result from construction, repair, day to day activities, and/or emergency work that is done in the pursuit of farming.

(14) Noise from emergency generators used during power outages.

(15) Construction or modification of a single or two family house or its accessory structure(s) where one of the following has been granted: a Building Permit, Site Plan approval, Broome County Health Department approval, a Driveway Permit from the Town of Windsor Highway Department and/or where the construction or modification of a single or two family house or its accessory structure(s) will be completed within seven (7) calendar days.

(16) Noises during the construction of and the operation of land use activities; where it has been demonstrated that the technology to achieve compliance with this chapter does not yet exist or is prohibitively expensive based upon the proposed cost of the project.

(17) Construction, modification or operation of improvement(s), structure(s) or land use(s) where some form of State or Federal approval or review is conducted; including but not limited to: Public Service Law Articles VII or 10 matters, Environmental Conservation Law Articles 23, or 27 matters; this is applicable regardless of whether such State or Federal review/approval is completely or partially preemptive.

(18) Noises from Actions subject to a land use review (site plan, special use permit, an area/use variance) by a Town of Windsor Board (Planning Board, Zoning Board or Town Board) shall be subject to review under the land use review or determined by the Town to be Type II Actions under the State Environmental Quality Review.

Section 68-10 Enforcement and administration

The noise control requirements established herein shall be administered and jointly enforced by the Town enforcement officers and the police agencies of Broome County or officials authorized by the Town Board of the Town of Windsor, or by State or Federal Authority. Violations may be established upon written complaint by at least one person, including the enforcement officer. Noise control requirements for those matters or projects reviewed by or approved by State or Federal Agency(ies) shall not be enforced by the Town enforcement officers.

A. Compliance orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in this chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. If the condition or activity is not remedied after the issuance of the compliance order, then an appearance ticket may be issued as provided hereinafter.

B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the chapter.

C. Penalties for offenses. 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 in a fine of not less than \$50 and not more than \$250.

D. In addition to those penalties prescribed herein, any person who violates any provision of this chapter shall be liable for a civil penalty of not more than \$3,000 for each day or part thereof during which such violation continues. The civil penalties provide by this subsection shall be recoverable in an action instituted in the name of the Town.

E. If the violation is of a continuing nature, each eight-hour period during which it occurs shall constitute an additional, separate and distinct offense.

F. Injunctive relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce any provision of this chapter. In particular, but not by way of limitation, where there is an violation of this chapter, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board of the Town.

G. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this chapter. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section.

H. In addition to the above-provided remedies, the Town Board may also seek reimbursement to the Town for costs incurred by the Town in identifying and remedying each violation, including but not limited to reasonable attorney's fees.

Section 68-11 Temporary license

A. Application for a temporary license. The Town Clerk shall have the authority to grant temporary licenses for limited times and purposes of this chapter. Any person seeking a temporary license pursuant to this section shall file an application with the Town Clerk. 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 permit is sought into compliance with this chapter would constitute an unreasonable hardship on 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 vibration.

(2) The characteristics of the sound and vibration entitled 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 vibration.

(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 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.

(6) A filing fee as set by the Town Board, from time to time, via a Resolution.

(7) The requested duration of the permit.

(8) The hours and days of operation and maintenance.

B. Decision.

(1) Upon receipt by the Town Clerk of all information required for the granting of the temporary license, and upon receipt of the appropriate filing fee, the Town Clerk shall issue or deny the temporary license.

(2) The Town Clerk shall not issue the temporary license if the requested duration of the permit is in excess of three days.

(3) If the Town Clerk denies the application for a temporary license for any reason, the applicant may apply to the Town Board for a Special Permit, following the procedure established below.

(4) If the Town Clerk issues a temporary license pursuant to this provision, the temporary license shall be valid for the time requested, but shall be rendered invalid if the actual source of sound authorized under the issued permit, as measured by an enforcement officer, causes a continuous noise level in excess of 80 dBA across any real property boundary.

Section 68-12 Special Permit

A. Any person seeking a Special Permit from the Town Board pursuant to this section shall file an application with the Town Clerk. The Special Permit, if granted, shall be valid for a term of 5 years.

B. 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 Special Permit 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 vibration.

(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 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.

(4) The names and addresses of all owners of contiguous land within 500 feet of the premises.

(5) A filing fee as set by the Town Board, from time to time, via a Resolution.

(6) The requested duration of the Special Permit.

(7) Certification that there are no zoning or uniform code violations on the property.

(8) The hours and days of operation and maintenance for the activity causing the noise or sound.

(9) A Noise Management Plan, the goal of which is to mitigate noise levels and keep the noise levels as low as possible. Such NMP shall include:

a) Identification of noise sources;

b) Assessment of current and available noise mitigation programs;

c) Method of noise measurement;

d) Best practices programs; and

e) Continuous improvement programs.

C. Public hearing. Upon prior reasonable public notice published in the official newspaper of the Town, and upon a public notice board designated for that purpose by the Clerk for a minimum of 14 days, the Town Board shall hold a public hearing on the Special Permit application. The applicant in like manner shall give notice of the public hearing and application by certified mail, return receipt requested, to all property owners surrounding the sound source site within a radius 500 feet from the borders of said site. The notice to the neighbors shall be deposited in a mailbox at least 21 days prior to the public hearing date. The applicant shall provide an affidavit of mailing, showing proof of mailing to the neighbors as required herein. The applicant's affidavit of mailing shall become part of the application. Failure to provide notice to the neighbors shall result in automatic denial of the application.

D. Applicant to obtain other necessary permits or variances. This chapter does not preclude the necessity of the applicant to obtain any other approval, permit or variances as required by any other agency or local law before proceeding with an application for a Special Permit. The application for a Special Permit may not be initiated by the applicant until such time that other permits or variances, as may be required, are issued.

E. Decision

(1) In determining whether to grant or deny the application, the Town Board shall apply the following balancing test:

a) The use possesses characteristics of unique and special form to warrant its consideration as an individual case.

b) The location, size of the use and structure, nature and intensity of the operations involved, size of the site in relation to it and the location of the site with respect to the streets giving access to it are such that it will be in harmony with the orderly development of the district.

c) The proposed Special Permit will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; including but not limited to odor, light, traffic, etc.

d) The use shall not conflict with any Master Plan or part thereof.

e) The relief granted must be the minimum required to achieve the use. Best practices as to noise management and operating procedures shall be taken into account when determining what constitutes the minimum required to achieve the use. Noise management considerations should include but is not limited to, mufflers, enclosed buildings, burms, noise barriers, noise insulation, alignment, etc.

(2) The Town Board may consider other factors including, but not limited to the following:

a) The sound level of the noise;

b) The frequency of the noise;

c) Whether the noise is unusual and incongruous with the surrounding environment;

d) The sound level and frequency of the ambient noise, if any;

e) The use, nature and character of the zoning district of the immediate area where the noise source exists;

f) The time of day or night the noise occurs;

g) The duration of the noise;

h) The intensity of the noise;

i) Whether the origin of the noise is associated with nature or with human-made activity,

j) The existence of complaints concerning the noise from persons living or working in different places or premises who are affected by the noise and

k) Seasonal and prevailing weather; including wind, precipitation and tree cover.

(3) In connection with this section, the Town Board may cause the taking of sound level readings in the event that there shall be any dispute as to the sound levels.

(4) The Town Board shall have the power to impose restrictions, conditions and the recording of covenants upon any sound source site, including time limits on permitted activity in the event that it shall grant any Special Permit hereunder.

(5) The Town Board shall comply with the State Environmental Quality Review Act. If such a SEQRA review is necessary, the Town Board shall be lead agency in that SEQRA review.

(6) The Board, upon reviewing all input from the public hearing and obtaining any additional data or information as deemed necessary, shall then pass or deny the application by resolution. The decision shall be transmitted to the Clerk, who will advise the applicant of such decision by transmitting a copy of the Special Permit application to the applicant, with the decision and conditions, if any, imposed by the Town Board attached.

F. Transferability and expiration of Special Permit

A Special Permit is not transferable except upon approval by resolution by the Town Board.

A Special Permit shall authorize only one use and shall expire if the use ceases for more than three months for any reason.

Changes or modifications to the use, including but not limited to changes in noise levels, shall void the Special Permit. Changes or modifications to the use require a new application pursuant to this Chapter.

The Town Board may revoke the Special Permit at any time if the permit holder fails to comply with any section of this chapter or condition of the Special Permit.

G. The applicant or his agent shall have readily available the approved Special Permit at the location or site for which the Special Permit has been issued and shall show same to any agent of the Town whenever requested.

H. Activity open to inspection. Activity conducted under the Special Permit shall be open to inspection at any time by any agent of the Town.

I. Request for Recertification of the Special Permit

(1) The Special Permit, if granted, shall need to be recertified prior to the five-year anniversary date of the original grant and every five years thereafter. The holder of the Special Permit shall submit a signed written request to the Town Board for recertification between 12 months and 6 months prior to each five-year anniversary date. The application shall include all the information required for the original submission requesting the Special Permit with the additional information:

- a) The date of the original granting of the Special Permit;
- b) A statement that use is in compliance with the Special Permit and is in compliance with all applicable statutes, laws, local laws, ordinances, codes, rules and regulations.
- c) Whether the use has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the Special Permit.

2) A filing fee as set by the Town Board, from time to time, via a Resolution.

3) The review shall be an administrative review, not requiring a public hearing or notice to the neighbors.

4) If, after such review, the Town Board determines that the use is in compliance with the Special Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town Board shall issue a recertification of the Special Permit, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Town Board determines that the use is not in compliance with the Special Permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Town Board may refuse to issue a recertification of the Special Permit, and in such event, such use shall not be used after the date that the applicant receives written notice of such decision by the Town Board. Any such

decision shall be in writing and supported by substantial evidence contained in a written record.

J. The Board may hire any consultant and/or expert necessary to assist the Town Board in reviewing and evaluating the application and any recertification.

(1) The Town requires an applicant to deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town Board in connection with the review of any application. The initial deposit shall be the sum of \$5,000. However, the Town Board may, in its discretion reduce said fee upon good cause shown. These funds shall accompany the filing of an application and the Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall, in accordance with an agreement between the Town and its consultants or experts, bill or invoice the Town not less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance that shall not reasonably cover the cost of the remaining work of the Town's consultants/experts, the Town will require applicant to immediately replenish said escrow account in an amount set by the Town, but not to exceed \$2,500. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. If, at the conclusion of the review process, the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the applicant shall pay the difference to the Town prior to the issuance of any Special Permit. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing by the Town's consultants or experts, the difference shall be promptly refunded to the applicant.

(2) A request may be made by the applicant to reduce or eliminate the funds needed for the consultant/expert escrow. After a recommendation by the Attorney for the Town, Engineer for the Town and/or any other consultant/expert engaged by the Town pursuant to this chapter, the Town Board shall review the request and make a determination based upon the scope and complexity of the project, the completeness of the application and other information as may be needed by the Town Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the applicant. The initial amount of the escrow deposit may be established by Town Board upon receipt of information sufficient to make such a determination.

K. Other costs. The applicant seeking the Special Permit and/or Recertification must reimburse the Town all costs associated with the Special Permit, including the cost of the public hearing publication. Such reimbursement may be a condition of granting such Special Permit.

Section 2. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair

or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 3. Repealer.

All Ordinances, Local Laws and parts thereof inconsistent with the Local Law are hereby repealed, including but not limited to Local Law #4-2010 adopted on or about June 2, 2010.

Section 4. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.