

## Appendix F - Noise Control Ordinance

1. **Authority:** This ordinance is adopted under authority of 24 V.S.A. § 2491 and 24 V.S.A. chapters 59.
2. **Purpose:** This ordinance is intended to protect, preserve and promote the health, safety, welfare, and peace and quiet for the citizens of the Town of Williston through the reduction, control and prevention of noise. This ordinance establishes controls that will eliminate and reduce unnecessary noises, which are physically harmful or otherwise detrimental to the enjoyment of life, property and maintenance of business.
3. **Definitions**
  - 3.1. "Average sound level" – A sound level during a given period of time (e.g. one hour) found by the general rule of combination of sound levels. Also called equivalent sound level.
  - 3.2. "Decibel" – Unit of measurement of the sound pressure level as prescribed by the American National Standards Institute.
  - 3.3. "Emergency" Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.
  - 3.4. "Emergency Work" Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
  - 3.5. "Instantaneous maximum sound" means either a single pressure peak or a single burst (multiple pressure peaks) that has duration of less than one second.
  - 3.6. "Plainly audible" means 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 or reproduction 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 music is sufficient to constitute a plainly audible sound.
  - 3.7. "Property line" means either (a) the imaginary line including its vertical extension that separates one parcel of property from another; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property, the interface between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the property line would be the interface between the residential area and the commercial area).
  - 3.8. "Receiving Property" – The location that is receiving the sound in question.
  - 3.9. "Residential Property" - Property used for human habitation or sleeping
  - 3.10. "Sound level" – In decibels measured by a calibrated ANSI type I or type II sound level meter, using "A" frequency weighting (expressed in dBA)
  - 3.11. "Sound measurement standards" – Sound shall be measured in accordance with standards specified by the American National Standards Institute (ANSI)
  - 3.12. "Unoccupied Lands" – Lands without permanent structures used for human habitation or business.

- 3.13. “Unreasonable Noise” 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 within the Town of Williston. Elements to be considered in determining whether noise is excessive in a given situation include, but are not limited to, the following: intensity of the noise, whether the noise is usual or unusual, whether the origin of the noise is natural or unnatural, the intensity of the ambient noise, the proximity of the noise to sleeping facilities, the zoning district within which the noise emanates, the time of the day or night the noise occurs, the duration of the noise, whether the noise is continuous or intermittent, and/OR whether alternate methods are available to achieve the objectives of the sound producing activity.

#### **4. General Prohibitions**

No person or persons shall make, cause to be made, assist in making or continue any excessive, unnecessary, unreasonably loud noise or disturbance, which disturbs, destroys, or endangers the comfort, health, peace, or safety of others within the immediate vicinity of the noise or disturbance. Without limitations, the commission of one or more of the following acts, shall be deemed a violation of this Ordinance and shall be considered as a noise disturbance and public nuisance, provided that the instrument, devices, vehicles or other noise source is plainly audible from the receiving property Boundary line.

- 4.1. Defect in vehicle or operation of vehicle: The operation of any automobile, truck, motorcycle, all-terrain vehicle, snowmobile or boat in such a manner as to create squealing, or squealing of tires, or loud and unnecessary grating, grinding, exploding-type, rattling, or other noises.
- 4.2. Dogs, cats, birds and other animals. The keeping of any dog, cat, bird or other animal, which shall become a nuisance to another person in the vicinity where such dog, cat or other animal is kept, by frequent or continued barking, howling, yelping, screaming or other animal noise and vocalizations.
- 4.3. Vocal disturbances. Yelling, shouting, whistling, singing or making any other loud vocal or noise disturbance, including parties and other social events so as to disturb, destroy, or endanger the peace of persons in the immediate vicinity of the noise or disturbance. It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce unreasonable noise. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at the event and resides on the premises involved or is a person who lives in or on the premises involved and who has authorized the use of the premises for such event.
- 4.4. Construction related activities: Noises emanating from the road construction or from the excavation, demolition, alteration, construction, or repair of buildings, structures, property between the hours of 9:00 PM and 6:00 AM.
- 4.5. Loud speakers, amplifiers. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising, attracting the attention of the public, or communicating to employees.

- 4.6. Horns, signaling devices, etc. The sounding of any horn or signal on any automobile, motorcycle, boat or other vehicle except as a danger warning; the creation, by means of any other signaling device, of any unreasonable loud or harsh sound; and. the sounding of any such device for unnecessary and/or unreasonable periods of time.
- 4.7. Radios, phonographs, etc. The using, operating or permitting to be played, used or operated of any radio or television receiving set, musical instrument, phonograph, or other machine or device for producing or reproducing of sounds in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such a machine or device is operated and who are voluntary listeners thereto.
- 4.8. Exhaust. The discharge into the open air of the exhaust of any steam engine, internal combustion engine, motorboat, or motor vehicle, except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.
- 4.9. Trash Removal. The removal of household and commercial trash by authorized commercial trash haulers utilizing mechanized conveyances within 500 feet from a residential property between the hours of 9:00 PM. and 6:00 A.M.
- 4.10. Mobile. Portable or Outdoor Electronic Sound-producing Devices. The playing or use of a mobile, portable or outdoor electronic sound-producing device in such manner or with such volume at any time and place as to disturb, destroy or endanger the comfort, repose or peace of persons.

## **5. Prohibitions for Non-Residential Uses**

- 5.1. It shall be a violation of this Ordinance for anyone to create or allow the creation of noise not otherwise specified under General Prohibitions, in excess of the following stated limits during the stated time periods for noise generated on properties being used for other than residential purposes.
- 5.2. Noise measurements shall be made at the property line.
- 5.3. This standard shall not apply to unoccupied receiving properties.
- 5.4. Sound level measurements shall be taken with a sound level meter meeting the minimum American Standards Institute (ANSI) requirements for Type I or Type II accuracy, and shall use the fast response setting.
- 5.5. Nothing in this Ordinance shall limit the Board from imposing additional noise control measures beyond that needed to reach the limits set below.

<u>Time Period</u>	<u>Receiving Property</u>	<u>One hour Average dBA</u>	<u>Instantaneous Maximum dBA</u>
7:00 am to 10:00 pm	Industrial A	75	90
7:00 am to 10:00 pm	Residential	55 to 65	80
10:00 pm to 7:00 am	Industrial A	60	70
10:00 pm to 7:00 am	Residential	45	60
7:00 am to 10:00 pm	Other	65	50
10:00 pm to 7:00 am	Other	60	70

## **6. Exemptions and Exclusions**

Sounds from the following sources shall be exempt from the prohibitions specified in this ordinance:

- 6.1. Any person or organization that has obtained a noise waiver from the Town of Williston. (i.e. parade, block party, fire works display, etc.)
- 6.2. Any vehicle and equipment owned by and operated by any governmental unit or a utility in the performance of its duties.
- 6.3. Noise associated with routine snow removal activities where customary practices and equipment are used and where the snow removal OR SNOW grooming equipment is operated within the manufacturer's specifications and in proper operating condition.
- 6.4. Any construction activity that has obtained approval of the Town of Williston to occur between the hours of 9:00 PM and 6:00 AM and that is deemed to be in the best interest of the public health, safety and welfare.
- 6.5. All safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work including but not limited to police, fire and medical/rescue vehicle sirens, and backup alarms required by OSHA, VOSHA or other federal or state agency.
- 6.6. Noise associated with a bona fide response to an emergency situation that poses a threat to the public health, safety or welfare.
- 6.7. Musical, recreational and athletic events conducted by and on the site of a school or educational facility or municipal facility or is sponsored by the municipal, state or federal government.
- 6.8. Equipment for maintenance of lawns and grounds during the hours of 6:00 A.M. to 9:00 P.M. (including but not limited to lawn mowers, hedge trimmers, weed trimmers, chain saws, snow blowers and leaf-blowers) assuming they are properly muffled.
- 6.9. Vehicles or aircraft that meet state and federal standards operating on the public right-of-way or air space and operated in a manner consistent with state and federal law.
- 6.10. Noise associated with standard agricultural operations.
- 6.11. Sound created by bells, carillons, or chimes associated with specific religious observances or the Town Clock.
- 6.12. Natural phenomena including wind, rain, flowing water, and wildlife.

- 6.13. The use of firearms when used for hunting in accordance with state Fish and Wildlife laws or when used for sport shooting consistent with any permitting conditions placed on such use. For sport shooting uses permitted prior to January 1, 2005, the hours of operation will be determined through a written agreement with the Town.
- 6.14. Vocal disturbances, whether or not it is electronically amplified, by spectators or participants in a political protest or rally, an athletic event or assembly sponsored by a public or private school, or recognized organized recreational activities.

## **7. Variance**

- 7.1. Residential Sources - Any person may apply to the Selectboard for a variance from the requirements of this Ordinance prior to doing acts prohibited by this ordinance. The applicant shall provide a list of property owners within two hundred fifty (250) feet of the site(s) where the activity is to occur. Ten (10) days advance written notice of the Selectboard meeting shall be provided to the property owners and residents appearing on the list. For good cause shown, the Selectboard may, in its sole discretion, either grant or deny the variance. If the variance is granted, the Selectboard may impose reasonable conditions to it. For noise events lasting less than a 12-hour period, the Board may waive or reduce the ten-day advance written notice of the Selectboard meeting.
- 7.2. Non-Residential Sources – An application for variance from the provisions of this Ordinance may be submitted to the Selectboard. Information the Selectboard may require includes:
  - ◆ Information on the nature and location of the facility or process for which such application is made;
  - ◆ The reason for which the variance is required;
  - ◆ A description of the interim noise control measures to be taken by the applicant to minimize the impact caused by the noise;
  - ◆ A statement of the length of time a variance will be required; and
  - ◆ Any other relevant information requested by the Selectboard to make a determination regarding the application.
  - ◆ Information on ambient sound levels.
- 7.3. Delegation of Authority – The Selectboard may delegate its authority to grant variance requests for events lasting less than a 12-hour period, if it so chooses, by a majority vote of the Board.

## **8. Enforcement**

- 8.1. Enforcement - Any certified Vermont Law Enforcement officer shall be the designated enforcement officer. Such Officer may issue complaints and may be the appearing officer at any hearing.
- 8.2. An Enforcement officer may issue a Vermont Civil Violation Complaint to the individual responsible for any sound in violation of this ordinance including the driver of a motor vehicle, or the first registered owner of the vehicle, the owner of record or a resident of a single family home, or apartment, the proprietor of a business or the person who is in physical control of the sound emitting device or animal responsible for the unreasonable or excessive noise.
- 8.3. Violations - A violation of this Ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. § 1974a and § 1977 *et seq.* Anyone convicted of a violation or failure to comply with any of the provisions of this Ordinance, including the failure to make a required

report or to pay any fee, may be subject to a civil penalty of not more than \$500 in addition to the waiver fees outlined in Sections 9.1 and 9.2 below. Each day a violation continues shall constitute a separate offense.

- 8.4. Initial Administrative Appeal – Anyone in found in violation of this ordinance shall have the right to appeal any waiver fee to the Police Chief. An appeal must be filed within 17 days of receipt of the fee or violation notice. The decision of the Police Chief may be appealed to the Williston Selectboard within 10 days of receipt of the Chief’s decision. In the event such appeal is not satisfactorily resolved before the Selectboard, the Town pursuant to 24 V.S.A. § 1974(a) may bring civil enforcement proceedings.

**9. Penalties**

- 9.1. First offense - A first offense of any provision of this ordinance by a person shall be deemed a civil violation and shall be punishable by a fine of one hundred fifty dollars (\$150.00). The waiver fine shall be one hundred dollars (\$100.00).
- 9.2. Second and subsequent offenses - A second offense during a twelve-month period from the date of the first offense, shall be deemed to be a civil violation and shall be punishable by a fine of two hundred fifty dollars (\$250.00). The waiver fine shall be two hundred dollars (\$200.00). Each subsequent offense shall be deemed a civil violation and shall be punishable by a fine of five hundred dollars (\$500.00). The waiver fine shall be four hundred dollars (\$400.00).
- 9.3. PAYMENT DEADLINE - ALL FEES MUST BE PAID WITHIN THIRTY (30) DAYS OF RECEIPT OF NOTICE. IF FEES ARE PAID AFTER THIRTY DAYS, AN ADDITIONAL FEE OF \$10.00 WILL BE CHARGED.
- 9.4. EACH DAY ON WHICH A VIOLATION OCCURS OR CONTINUES AFTER RECEIVING A VIOLATION COMPLAINT SHALL BE CONSIDERED A SEPARATE VIOLATION OF THIS ORDINANCE.

**10. SEVERABILITY:**

IF ANY SECTION, SENTENCE, OR PHRASE OF THIS ORDINANCE SHALL FOR ANY REASON BE HELD INVALID OR UNCONSTITUTIONAL BY A DECREE OR DECISION OF ANY COURT OF COMPETENT JURISDICTION, SUCH DECREE OR DECISION SHALL NOT AFFECT OR IMPAIR THE VALIDITY OF ANY OTHER SECTION OR REMAINING PORTION OF THIS ORDINANCE.

**11. EFFECTIVE DATE:**

THIS ORDINANCE WAS ADOPTED OCTOBER 25, 2004 AND SHALL TAKE EFFECT ON JANUARY 1, 2005.