

ITEM

24-009

To set a Public Hearing date of February 26th to consider and act on adoption of a town wide Noise Ordinance, as recommended by the Ordinance Committee



M E M O R A N D U M

TOWN OF CUMBERLAND, MAINE
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To: Town Council
From: William R. Shane, Town Manager
Date: February 8, 2024
Re: Noise Ordinance

The Ordinance Committee has met to discuss a potential noise ordinance. This evening, I will present the elements of that ordinance for the full council to discuss and offer input. I am in hopes that you will be able to return comments to me within the next week, at which time the Town Attorney will assist in drafting the final copy of this new ordinance. This new ordinance will not be part of the Zoning Ordinance, and therefore it will be a standalone ordinance and will not require a recommendation from the Planning Board.

I expect there will be parts of this ordinance you will like and other parts that you may feel to be too much for Cumberland. I know that Kennebunk has had this ordinance in place for several years and it has had its challenges in enforcement. I believe this ordinance would require police training and purchasing of calibratable tools for measuring decibels near or at property lines, but I believe at this time it may be the only viable tool we have outside of disturbing the peace for dealing with noise complaints.

3-19 NOISE CONTROL ORDINANCE

I. PURPOSE

It is found and declared by the Town of Kennebunk that:

(A) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the Town is a condition which has existed sporadically for some time, and the extent and volume of such noises has been recently increasing; and

(B) The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, safety, welfare and quality of life of the residents of the Town; and

(C) The necessity and the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life of the Town and its inhabitants.

II. UNLAWFUL NOISE PROHIBITED

It is unlawful for any person to make, emit, continue, or cause to be made, emitted or continued, any noise beyond the boundaries of that person's property in excess of the noise levels established in this Ordinance. Where multiple residencies exist within the confines of a structure, the limits of one's occupancy rights shall be considered the boundary.

III. NOISE LEVEL STANDARDS

Sound or noise from any source within the Town shall not exceed the following equivalent continuous sound level (Leq) limits, to be measured at the lot line of the receiving property and in accordance with Section VII:.

<u>Zone Classification</u>	<u>Daytime Hours</u>	<u>Nighttime Hours</u>
Residential	55 dBA	45 dBA
Commercial	60 dBA	50 dBA
Industrial	70 dBA	60 dBA

IV. EXCLUSIONS

The noise levels set forth in Section III do not apply to noise emitted by or related to the following:

A. Natural phenomena.

B. Church bells rung as part of any official church ceremony or service, and tower clock bells ringing the hour during daytime hours, provided that at no time shall such duration exceed thirty (30) minutes.

- C. Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in any emergency situation, provided, however, that burglar alarms not terminating within thirty (30) minutes after being activated shall be unlawful.
- D. Warning devices required by OSHA or other State or Federal safety regulations.
- E. Noise from domestic power equipment such as, but not limited to, power saws, sanders, grinders, lawn and garden tools, lawn mowers, snow blowers, tractors or similar devices operated during daytime hours.
- F. Noise generated by any construction or demolition equipment which is operated during daytime hours, provided that the operation of construction equipment during nighttime hours shall not exceed the maximum noise levels in appropriate zone as specified in Section III. Emergency construction or repair work by public utilities shall also be exempted.
- G. Noise created by refuse and solid waste collection, provided that the activity is conducted during hours provided for in the Town's Solid Waste Ordinance.
- H. Noise created by registered Motor Vehicles on a public way.
- I. Noise created by plows, trucks and other equipment used in the removal of snow.
- J. Noise from any aircraft operated in conformity with, or pursuant to, Federal law, Federal air regulations, and air traffic control instruction, including any aircraft operating under technical difficulties, in any kind of distress, or under emergency orders of air traffic control.
- K. Noise from trains operating in conformity with or pursuant to all applicable State and Federal laws and regulations.
- L. Special events approved by the Select Board including but not limited to parades, special sporting events, public concerts, and fireworks displays.
- M. Emergency or extraordinary situations
- N. Noise generated from the operations and animals of the Animal Welfare Society facility on the Holland Road.
- O. For good cause shown, after public hearing, the Select Board has the authority to alter noise levels in specific cases provided four (4) or more members of the Select Board so vote.

V. ZONING DISTRICT CLASSIFICATIONS

All zoning districts within the Town shall be classified as Residential, Commercial or Industrial. The current zoning districts are classified as set forth below. Any new districts created after the date of this Ordinance shall, at the time of the creation of such zoning district, be classified into one of these three categories.

<u>Zoning District</u>	<u>Use Classification</u>
Resource Protection	Residential
Branch Brook Aquifer	Residential
Rural Conservation	Residential
Rural Residential	Residential

Coastal Residential	Residential
Suburban Residential	Residential
Village Residential (VR and WKVR)	Residential
Downtown Business	Commercial
Upper Square	Commercial
York Street Mixed Use	Commercial
Lower Village Business	Commercial
West Kennebunk Village	Commercial
Suburban Commercial	Commercial
Business Park	Commercial
Industrial	Industrial
39 Portland Rd Contract Zone	Commercial
12 Depot St. Contract Zone	Commercial
One Alfred Road Contract Zone	Commercial
119 Main Street Contract Zone	Commercial
Cousens School Contract Zone	Commercial
Terrace Green Contract Zone	Residential
Webber Hill Road Contract Zone	Commercial
Portland Road Mixed Use Zone	Commercial

VI. DEFINITIONS

The following definitions apply in the interpretation and enforcement of this Ordinance.

- A. Decibel: The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.
- B. Daytime Hours (not Day Light Hours): The hours between 7:00 a.m. and 10:00 p.m., Monday through Saturday, and the hours 9:00 a.m. through 10:00 p.m. on Sunday.
- C. Noise Level: The sound pressure level as measured with a sound level meter using the A-weighting network. The level so read is designated dB(A).
- D. Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- E. Emergency Vehicle: Any motor vehicle authorized by a town, county, state or federal authority to have sound warning devices such as sirens and bells which can lawfully be used when responding to an emergency.
- F. Emergency Work: Work made necessary to restore property to a safe condition following an emergency, or work required to protect persons or property from exposure to imminent danger.
- G. Equivalent continuous sound level (Leq): The measure that accounts for the moment-to-moment-fluctuations in noise levels from all sources during the sampling time period.

- H. 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.
- I. Motor Vehicle: The term as defined in 29-A M.R.S.A., Section 101 (42), as may be amended from time to time.
- J. Nighttime Hours: All hours other than daytime hours as defined herein.
- K. Person: Any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency, or political or administrative subdivision of the State or other legal entity of any kind.
- L. Premises: Any building, structure, land or portion thereof, including all appurtenances, and shall include yards, lots, courts, inner yards, and real properties without buildings or improvements, owned or controlled by a person.
- M. Sound Level Meter: An instrument for the measurement of sound levels conforming to A.N.S.I. Type I and II Standards.

VII. MEASUREMENT PROCEDURES

For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable:

- (A) All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation.
- (B) Instruments used to determine sound level measurements must conform to the Standards of A.N.S.I. Type I or Type II meters.
- (C) The general steps listed below must be followed when preparing to take sound level measurements:
 - (1) The instrument manufacturer's specific instructions for the preparation and use of the instrument must be followed.
 - (2) The sound level meter must be calibrated before and after each set of measurements. The calibrator itself shall be recalibrated at least once every year.
 - (3) The sound level meter must be placed as specified by the manufacturer's instructions and at least four (4) feet above the surface of the ground. It shall be placed so as not to be interfered with by individuals conducting the measurements.
 - (4) All measurements shall be at the lot line of the receiving property.
 - (5) Measurement period shall be fifteen (15) continuous minutes.

VIII. MANNER OF ENFORCEMENT

This ordinance shall be administered and enforced by the Kennebunk Police Department and/or the Code Enforcement Officer. Residential and commercial violations shall be typically the responsibility of the police department, whereas industrial violations, that of the code enforcement.

IX. VIOLATIONS, PENALTIES AND OTHER REMEDIES

When the noise level standards set forth in Section III are exceeded after being sampled for fifteen (15) continuous minutes, it shall constitute a violation of this Ordinance. For each such violation, the Town shall be entitled to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). Additionally, each violation of this Ordinance shall be deemed to be, and is hereby declared to be, a public nuisance for which the Town is entitled to injunctive relief issued by a court of competent jurisdiction. In any enforcement action, whether for penalties, injunctive relief, or both, the Town shall be entitled to an award of its costs of court, attorney's fees, sound consultant or expert fees, and any other costs incurred in enforcement of this Ordinance. Actions to enforce the provisions of this ordinance shall be brought in the Maine District Court, in accordance with the procedures and requirements established by Rule 80H of the Maine Rules of Civil Procedure.

X. VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

XI. EFFECTIVE DATE; APPLICABILITY

The effective date of this Ordinance shall be immediately upon passage by Town meeting. Notwithstanding any other ordinance provision to the contrary, this Ordinance shall apply to all existing uses and properties on the date of passage.

Adopted 11-02-2004
Amended 11-6-2007
Amended 06-11-2008
Amended 06-12-2012