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11/19/09
Linda Kennedy
Town Clerk*

Local Law Filing

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Town of East Greenbush
Local Law No.1 of the year 2009

A local law adding Chapter 50 of the Code of the Town of East Greenbush entitled "Town of East Greenbush Noise Control Local Law".

Be it enacted by the Town Board of the Town of East Greenbush as follows:

SECTION 1. Chapter 50 is hereby added to the Code of the Town of East Greenbush as follows:

ARTICLE I
General Provisions

§ 50-1. Short title.

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

§ 50-2. Declaration of policy.

It is hereby declared that the public policy of the Town is to reduce the ambient noise level in the Town, so as to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the Town, prevent injury to human and animal life and property, foster the convenience and comfort of its inhabitants, and facilitate the enjoyment of the natural attractions of the Town. It is the public policy of the Town that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive or unreasonable noises within the Town affects and is a menace to public health, comfort, convenience, safety, welfare and the prosperity of the people of the Town. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purpose.

§ 50.3. Interpretation.

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 to enforce the provisions of this chapter. Nothing herein shall be construed to abridge the emergency powers of any health department or the right of such department to engage in any necessary or proper activities.

§ 50-4. Definitions and word usage.

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-weighting frequency response, which provides the meter with a sensitivity to noise levels that is similar to that of the average human ear.

COMMERCIAL PROPERTY — Any property that is primarily used for retail or wholesale trade or furnishing services for sale or profit, including but not limited to:

- (1) Dining and/or drinking establishments;
- (2) Banking or other financial institutions;
- (3) Establishments for providing retail goods or services;
- (4) Establishments for providing wholesale goods or services;
- (5) Establishments for recreation and entertainment;
- (6) Office buildings; and
- (7) Hotels and/or motels.

CONSTRUCTION — Any activity necessary or incidental to the erection, demolition, assembly, alteration, installation or equipment of buildings, public or private highways, roads, premises, parks, utility lanes or other property, including but not limited to land clearing, grading, earthmoving, excavating, blasting, filling and landscaping, but not including agriculture or ice and snow removal.

dba — The abbreviation designating the unit of sound level as measured by a sound level meter using A-weighting.

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."

DWELLING UNIT — A single unit within a building providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, and having only one kitchen.

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 WORK — Any work or action necessary to deliver essential service, 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.

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 PROPERTY — Property that is primarily used for manufacturing and processing operations, which may include exterior or interior storage of goods, materials, and/or finished products, and showrooms for the sale of finished products, or for storage and distribution of goods, wares, merchandise, substances or articles, excluding wholesale or retail sales.

MULTI-DWELLING-UNIT BUILDING — Any building in which there are two or more dwelling units.

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 throughout the Town.

NOISE DISTURBANCE — Any sound which:

- (1) Endangers or injures the safety or health of humans or animals; or
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

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 and disposal 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) A line of record, including its vertical extension, that bounds a parcel of real property and separates one parcel of real property from another or from a street or any other public space; or

(2) The vertical and horizontal boundaries of a dwelling unit that is within a multi-dwelling unit building.

REFUSE COLLECTION VEHICLE — A motor vehicle designed or used to compact and remove, collect, or transport refuse, solid waste or recyclables.

RESIDENTIAL PROPERTY — Property used 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 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.

ARTICLE II
Prohibited Acts

§ 50-5. Unreasonable noise prohibited.

Any of the following acts and causes thereof which annoy, disturb, injure or endanger the comfort, repose, health, peace, safety or welfare of a reasonable person of normal sensibilities are declared to be in violation of this chapter and to constitute unreasonable noise:

- A. No person who owns or has immediate control over an animal shall permit such animal to cause annoyance, alarm, or noise disturbance for more than 15 minutes at any time of the day or night, by repeated barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundary of such person's property.
- B. The shouting, yelling, crying or hooting of peddlers, hawkers and vendors.
- C. No person shall cause or permit to be caused the excessive sounding of any horn or other auditory signaling device on or in any motor vehicle except to serve as a warning of danger.
- D. No person shall cause or permit the operation of any device, vehicle, construction equipment or lawn maintenance equipment, including but not limited to any diesel engine, internal combustion engine or turbine engine, without a properly functioning muffler in good working order.
- E. No person shall cause or permit to be caused noise from power tools, lawn mowers, leaf blowers or agricultural equipment when operated on a residential property between the hours of 10:00 p.m. and 7:00 a.m.
- F. No person shall cause or permit to be caused any noise which, when measured by a sound level meter at the real property line of the parcel of residential or commercial property, public space (measured 50 feet from noise source) or the dwelling unit (within a multi-dwelling-unit building) from which it is emanating, is in excess of 90 dBA except that no noise in excess of 60 dBA shall be allowed to be caused or permitted from 9:00 p.m. on Sundays to 7:00 a.m. on Mondays; from 9:00 p.m. on Mondays to 7:00 a.m. on Tuesdays; from 9:00 p.m. on Tuesdays to 7:00 a.m. on Wednesday; from 9:00 p.m. on Wednesdays to 7:00 a.m. on Thursdays; from 9:00 p.m. on Thursdays to 7:00 a.m. on Fridays; from 11:00 p.m. on Fridays to 7:00 a.m. on Saturdays; and from 11:00 p.m. on Saturdays to 7:00 a.m. on Sundays..
- G. No person shall cause or permit to be caused any noise which, when measured by a sound level meter at the real property line of the parcel of industrial property from which it is emanating, is in excess of 75 dBA between the hours of 10:00 p.m. and 7:00 a.m.
- H. No person shall collect refuse from residential property with a refuse collection vehicle between the hours of 10 p.m. and 6 a.m., except that this subsection shall not apply to the collection of refuse during an emergency, such as a storm or other unexpected event, which causes delays in refuse collection.

§ 50-6. Motor Vehicles.

- A. Motor vehicle sound level limits and equipment shall be in compliance with provisions of any state law, including but not limited to §§ 386 and 375 of the New York State Vehicle and Traffic Law.

NOTE: NYS Vehicle and Traffic Law § 386 is entitled "Motor vehicle sound level limits" and establishes maximum sound levels (in decibels) that may emanate from motor vehicles or motorcycles. NYS Vehicle and Traffic Law § 375 entitled "Equipment" addresses horns [§ 375(1)], uses of sirens/gongs by non-emergency vehicles [§ 375(26)], mufflers and exhaust systems [§ 375(31)], and vehicle audio systems [§ 375(47)].

- B. No person shall operate a vehicle in such a manner as to cause unreasonable noise by spinning or squealing the tires of such vehicle.
- C. No person shall allow noise from an automobile alarm in excess of five minutes after it has been activated.

§ 50-7. Vessels and boats.

Vessel and boat sound level limits and equipment shall be in compliance with provisions of any state law, including but not limited to § 44 of the New York State Navigation Law.

**ARTICLE III
Exceptions**

§50-8. Exceptions to prohibited noises.

Regardless of the decibel limits, the provisions of this chapter shall not apply to:

- A. Sound and vibration emitted for the purpose of alerting people in an emergency, including, but not limited to, sirens and public address systems.
- B. Sound and vibration emitted in the performance of correcting an emergency.
- C. Sounds created by bells, chimes or similar instruments and devices as part of a religious observance or service or used by a cemetery or school licensed or chartered by the State of New York.
- D. Sounds from agricultural equipment when operated on a farm, as defined in the East Greenbush Land Use Law.
- E. Noise from equipment operated for the purpose of snow removal or ice control, including but not limited to snow blowers, snow throwers, sanders, and snow plows, provided such equipment is operated with a muffler.

- F. Noise from a burglar alarm on any building or motor vehicle, provided such burglar alarm shall terminate its operation within five minutes after it has been activated. If the alarm does not terminate its operation within five minutes it shall nevertheless be exempt if there have been less than three such incidents involving the building or motor vehicle within the previous 12 months.
- G. Noise from a public service facility or a public service industrial facility.
- H. Noise from military, civic or authorized parades, or funeral processions.
- I. Noise from emergency generators used during power outages.
- J. Noise from construction, repair, and/or demolition performed by or on behalf of a governmental entity, and emergency work.
- K. Noise emanating from a mechanical, electronic, or electrical device that is broken, defective, is malfunctioning, and/or is not under the immediate control of its owner or operator in order to cease such noise. Such owner/operator shall therefore be afforded the opportunity to cure such violation soon as reasonably practical.

ARTICLE IV
Enforcement and Administration

§50-9. Enforcement officers

The noise control requirements established by this chapter shall be administered and enforced by the Town of East Greenbush Police Department, and such other trained employees and/or officials authorized by the Town Supervisor, pursuant to applicable New York State and Local laws and procedures.

ARTICLE V
Penalties

§50-10. Penalties for offenses

Any person who violated any provision of this chapter shall be deemed guilty of an offense and, upon conviction thereof shall be subject to penalties in the following manner.

- A. Upon a first conviction, by a fine not less than \$50 and not more than \$250 or by imprisonment for a period not to exceed seven days, or by both such fine and imprisonment.
- B. Upon a second conviction, by a fine not less than \$100 and not more than \$250 or by imprisonment for a period not to exceed 10 days, or by both such fine and imprisonment.
- C. Upon a third or subsequent conviction, by a fine not less than \$250 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment.
- D. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

ARTICLE VI
Variances

§ 50-11. Application for special variance.

The Zoning Board of the Town of East Greenbush shall have the authority to grant special variances for the purposes of this chapter. Any person seeking a special variance pursuant to this section shall file an application with the Board. 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 variance 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:

- A. The plans, specifications and any other information pertinent to the source of sound and vibration.
- B. 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.
- C. The noise abatement and control methods used to restrict the emissions of the sound and vibration.
- D. 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.
- E. 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.
- F. The names and addresses of all owners of contiguous land within 200 feet of the premises. The applicant in like manner shall give notice of the application by certified mail return, receipt requested, to all property owners surrounding the sound source site within a radius of 200 feet from the borders of said site.
- G. A filing fee, as set by resolution of the Town Board of the Town of East Greenbush.

§ 50-12. Public hearing and decision.

Upon prior reasonable public notice published in the official newspaper of the Town of East Greenbush, posted on the Town web site, and placed upon a public notice board designated for that purpose by the Town Clerk for a minimum of five days, the Zoning Board shall hold a public hearing on the special variance application. The Board, upon reviewing all input from the public hearing and

obtaining any additional data or information as deemed necessary, shall then pass upon the application by resolution. The decision shall be transmitted to the Town Clerk, who will advise the applicant of such decision by transmitting a copy of the special variance application to the applicant, with the decision and conditions, if any, imposed by the Zoning Board attached.

§ 50-13. Applicant to obtain other necessary permits.

This chapter does not preclude the necessity of the applicant to obtain the approval or permit required by any other agency before proceeding with the action approved under the approved special variance. No action may be initiated by the applicant until such time that other permits, as may be required, are issued.

§ 50-14. Variance to be available for inspection.

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

§ 50-15. Activity open to inspection.

Activity conducted under the special variance shall be open to inspection at any time by any agent of the Town.

§ 50-16. Powers and duties of Zoning Board.

- A. In determining whether to grant or deny the application, the Board shall balance the hardship to the applicant, the community and other persons of not granting the variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on the property affected and any other adverse impacts of granting the special variance.
- B. In connection with this section, the Board shall cause the taking of sound level readings in the event that there shall be any dispute as to the sound levels prevailing or to prevail at the sound source site.
- C. The 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 variance hereunder.

**ARTICLE VII
Conflicts and Severability**

§ 50-17. Conflicts.

If this chapter conflicts with any local, state, or federal legislation then, in that instance, the more stringent law shall apply. A law shall be determined to be more stringent if it permits less noise.

§ 50-18. Severability.

If any article, section, subsection, paragraph, sentence, clause or provision of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the validity of the other provisions of the chapter or application thereof to other persons and circumstances.

SECTION 2. This Local Law shall be effective six (6) months after filing with the office of the Secretary of State.

SECTION 3. On or about six months from the effective date of this Local Law, the Town of East Greenbush Local Law Committee in coordination with the Town of East Greenbush Police Department shall review the terms and provisions of this Local Law to assess the effectiveness of this Local Law in preventing excessive noise and furthering the public policy identified above without imposing unreasonable constraints on the community. This review shall be conducted in order to determine whether further amendment of the Town of East Greenbush Noise Control Local Law should be recommended to the Town Board.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2009 of the Town of East Greenbush was duly passed by the Town Board on November 18, 2009, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or re-passage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2009 of the (County)(City)(Town)(Village) of was duly passed by the on 2009, and was (approved)(not approved)(re-passed after disapproval) by the and was deemed adopted on 2009, in accordance with applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2009 of the (County)(City)(Town)(Village) of was duly passed by the on 2009, and was (approved)(not approved)(re-passed after disapproval) by the and was deemed adopted on 2009. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 2009, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 2009 of the (County)(City)(Town)(Village) of was duly passed by the on 2009, and was (approved)(not approved)(re-passed after disapproval) by the and was deemed adopted on 2009. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 2009, in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

~~5. (City local law concerning Charter revision proposed by petition.)~~

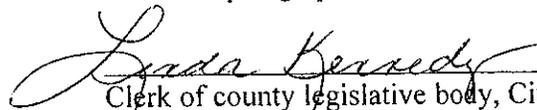
~~I hereby certify that the local law annexed hereto, designated as local law No. of 2009 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on 2009, became operative.~~

~~6. (County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. of 2009 of the County of State of New York, having been submitted to the electors at the General Election of November 2009, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph, above.



Clerk of county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal) Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF
RENSSELAER

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



11/19/09

Town of East Greenbush Town Attorney