

Chapter 73: NOISE

VILLAGE OF SOUTH BLOOMING GROVE LOCAL LAW NO. 4 OF 2011

A LOCAL LAW TO AMEND CHAPTER 73, OF THE VILLAGE CODE, ENTITLED "NOISE"

Be it enacted by the Village Board of the Village of South Blooming Grove as follows:

ARTICLE I General Provisions

§ 73-1. Title.

This chapter shall be cited and may be referred to hereinafter as the "Noise Pollution Control Law of the Village of South Blooming Grove."

§ 73-2. Legislative intent.

It is the intention of the Village Board of the Village of South Blooming Grove by the adoption of this chapter to establish and impose restrictions upon the creation of excessive, unnecessary or unusually loud noise within the limits of the Village of South Blooming Grove in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity and the peace and quiet of the Village of South Blooming Grove and its inhabitants.

§ 73-3. Definitions.

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

B. Unless the context otherwise clearly indicates, the words and phrases used in this chapter are defined as follows:

A-WEIGHTED SOUND LEVEL [dB(A)] — The sound pressure level in decibels as measured on a sound meter using the A-weighting network slow response. The level so read is designated dB(A).

COMMERCIAL DISTRICT — An area where offices, clinics and the facilities needed to serve them are located; an area with local shopping and service establishments; a tourist-oriented area where hotels, motels and gasoline stations are located; a business strip along a main street containing offices, retail businesses and commercial enterprises; and other commercial enterprises and activities which do not involve the manufacturing, processing or fabrication of any commodity. "Commercial district" shall include but shall not be limited to any parcel of land- zoned commercial.

COMMERCIAL PURPOSE — Includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, any goods or any services or for the purpose of attracting the attention of the public to or advertising for or soliciting the patronage of customers to or for any performance, show, entertainment, exhibition or event or for the purpose of demonstrating any such sound equipment.

CONSTRUCTION ACTIVITIES — Any and all activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads, or appurtenances thereto, including land clearing, grading, excavating and filling.

CONTINUOUS NOISE — A steady, fluctuating or impulsive noise which exists, essentially

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without interruption, for a period of 10 minutes or more, with an accumulation of an hour or more over a period of eight hours.

- H. **DECIBEL (dB)** — A unit of level which denotes the ratio between two quantities which are proportional to power. The number of decibels corresponding to the ratio of two amounts of power is 10 times the logarithm to the base 10 of this ratio.
- I. **DEVICE** — Any mechanism that is intended to produce or which actually produces sound when operated or handled.
- J. **EMERGENCY** — Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage, which demands immediate action.
- K. **EMERGENCY WORK** — Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- L. **FLUCTUATING NOISE** — The sound pressure level of a fluctuating noise which varies more than six dB(A) during the period of observation when measured with the slow meter characteristic of a sound-level meter.
- M. **IMPULSIVE SOUND** — A sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop force impacts and the discharge of firearms.
- N. **INDUSTRIAL DISTRICT** — An area, in which enterprises and activities which involve the manufacturing, processing or fabrication of any commodity, are located. "Industrial district" shall include but shall not be limited to any parcel of land zoned as an industrial district under Chapter 235, Zoning.
- O. **L-10** — The level exceeded 10% of the time.
- P. **MOTOR VEHICLE** — Any vehicle, defined as such in the New York State Vehicle and Traffic Law, but not limited to a passenger vehicle, truck, truck-trailer, trailer or semi trailer, propelled or drawn by mechanical power, and shall include motorcycles, snowmobiles, mini-bikes, go-carts, quads, all terrain vehicles and any other vehicle which is self-propelled.
- Q. **NOISE** — Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.
- R. **NOISE DISTURBANCE** — Any sound which endangers or injures the safety or health of humans or animals or annoys or disturbs a reasonable person of normal sensitivities or endangers or injures personal or real property.
- S. **NOISE SENSITIVE ZONE** — Any area designated pursuant to this chapter for the purpose of ensuring exceptional quiet.
- T. **NONCOMMERCIAL PURPOSE** — The use, operation or maintenance of any sound equipment for other than a commercial purpose. "Noncommercial purpose" shall mean and include but shall not be limited to philanthropic, political, patriotic and charitable purposes.
- U. **PERSON** — Any individual, association, partnership or corporation, including any officer, employee, department, agency or instrumentality of the state or any political subdivision of a state.
- V. **REAL PROPERTY BOUNDARY** — A line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
- W. **RESIDENTIAL DISTRICT** — An area of single or multiple-family dwellings and shall include areas where multiple-unit dwellings, high-rise apartments and high-density residential districts are located. "Residential district" shall also include but is not limited to hospitals, nursing homes, homes for the aged, schools, courts and similar institutional facilities.
- X. **SOUND** — An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and

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rarefaction of that medium. The description of "sound" may include any characteristics of such sound, including duration, intensity and frequency.

- Y. **SOUND-LEVEL METER** — An instrument, including a microphone, an amplifier, an output meter and frequency weighting networks for the measure of sound levels.

- Z. **SOUND REPRODUCTION DEVICE** — Any device that is designed to be used or is actually used for the production or reproduction of sound, including but not limited to any musical instrument, radio, television, tape recorder, phonograph, loudspeaker, public-address system or any other sound-amplifying device.

AA UNREASONABLE NOISE — Is defined as follows:

- (1) **"Nighttime Hours"** (from 10:00 p.m. to 8:00 a.m.): noise that exceeds 75 dBA; and
- (2) **"Daytime Hours"** (from 8:00 a.m. to 10: 00 p.m.): noise that exceeds 90 dBA.
- (3) All sound level measurements shall be measured with a precision sound level meter.

§ 73-4. Prohibited acts.

No person shall make, continue or cause or suffer to be made or continued any unreasonable noise as defined in § 73-3 hereof. In particular, without limitation of the foregoing provision of this section, the following enumerated acts are declared to be in violation of this section.

- A. **Animals.** No person shall keep, permit or maintain any animal under his control that frequently or for continued duration makes sounds, which creates an unreasonable noise across a residential real property boundary. This provision shall not apply to veterinarian facilities.
- B. **Commercial, business and industrial operation.** No person shall operate or permit to be operated on a sound source site a commercial business or industrial operation that produces an unreasonable noise.
- C. **Construction.**
- (1) No person shall operate or permit to be operated any tools, machinery or equipment used in construction, drilling or demolition work:
 - (a) Between **sunset and 8:00 a.m. Monday through Saturday**, or at any time on Sunday or legal holidays, such that the sound there from creates an unreasonable noise across a residential real property boundary.
 - (b) At any other time such that the sound level at or across a real property boundary exceeds an 90 dB(A) for the daily period of operation.
 - (2) The provisions of this subsection shall not apply to emergency work.
- D. **Domestic power tools.** No person shall operate or permit the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar device used outdoors in residential areas between the hours of 10:00 p.m. and 8:00 a.m.
- E. **Explosives and similar devices.** No person shall use or fire explosives or similar devices which create impulsive sound.
- F. **Horns and signaling devices.** No person shall cause or permit to be caused the sounding of any horn or other auditory signaling device on or in any motor vehicle except to serve as a danger warning.
- G. **Motor vehicle repairs and testing.** No person shall repair, rebuild, modify or test any motor vehicle in such a manner as to cause an unreasonable noise across a residential real property boundary or within a noise sensitive zone.

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- H. **Mufflers.** No person shall discharge into the open air the exhaust of any steam engine, stationary internal-combustion engine, air-compressor equipment, motor vehicle or other power device, which is not equipped with an adequate muffler in constant operation and properly maintained to prevent any unreasonable noise or noise disturbance, and no such muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device which causes said engines, vehicles or other power devices to create an unreasonable noise.
- I. **Noise sensitive zones.** No person shall cause or permit the creation of any sound by means of any device or otherwise on any sidewalk, street or public place adjacent to any hospital, nursing home, school, court, house of worship or public library while such facility is in use at any time, so that such sound disrupts the normal activities conducted at such facilities or disturbs or annoys persons making use of such facilities.
- J. **Trucks.** No person shall load any garbage or trash on a compactor truck, or any other truck, whereby the loading, unloading or handling of boxes, crates, equipment or other objects is conducted within a residential district nor within 300 feet of any hotel or motel between the hours of 10:00 p.m. and 5:00 a.m.
- K. **Hawkers and peddlers.** It shall be unlawful for any person within the Village to sell anything by outcry within any area of the Village zoned for residential uses. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licensed public entertainments events.
- L. **Schools, hospitals and churches.** It shall be unlawful for any person to create any noise on any street, sidewalk or public place adjacent to any school, institution of learning or church while the same is in use or adjacent to any hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in such streets, sidewalk or public place indicating the presence of a school, church or hospital.
- M. **Live, Amplified Music.** The playing and operation of any instrument(s), bands, tape recorder, compact disc player, phonograph, television set, musical instrument(s), jukeboxes, machine or device, in such a manner as to be plainly audible in excess of the set decibel levels and times set forth in this chapter / article at a distance of 50 feet from the place, building, structure, and / or vehicle in which it is originating from. Any exception to these provision(s) requires all person(s) to first obtain a permit from the Village.
- N. **Operation of other devices.** The operation of any radio receiving set, television, musical instrument (s), tape recorder, phonograph, I-pod, MP-3 player, jukebox, machine or sound device or apparatus in such a manner as to disturb the peace, health, tranquility, comfort and repose of a reasonable person of normal sensibilities at a distance of 50 feet or more from the place, building, structure, and / or vehicle in which it is originating from. Such a disturbance shall be a prima facie evidence of a violation of this section.
- O. **Sound Levels.** Except as otherwise permitted in this chapter, any source of sound in excess of the sound level limits set forth herein shall constitute a violation of this chapter. For purposes of determining sound levels from any source of sound, sound level measurements shall be made at a distance of 50 feet from the place, building, structure, and / or vehicle in which it is originating.
- P. **Special Exception(s):** Any exception(s) to these provision(s) requires all person(s) to first obtain a permit from the Village.

§ 73-5. Exceptions.

The provisions of this chapter shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency.

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- B. The emission of sound in the performance of emergency work.
- C. The prohibition on the use of snow and/or Ice removal equipment machinery shall not apply, where prevailing weather conditions require that property owners uses such tools for purposes of ingress and egress from their property, including sidewalks and driveways, or are otherwise required to make sidewalks, walkways or other areas safe for pedestrian traffic.
- D. This section shall not apply to any person participating in a school band or in a parade, or sounds emanating from sporting, or other public events where such devices are used.

§ 73-6. Special Use Permits.

Any person may request that the Village Board issue a special permit, authorizing that person to engage in activities, either for a single event, or on an ongoing basis, that would produce noise that might otherwise conflict with the provisions of this chapter.

- A. The Village Board of the Village of South Blooming Grove shall have the authority, consistent with this section, to grant variances to this chapter.
- B. Any person seeking a special permit pursuant to this section shall file an application with the Village Board. The application shall consist of a letter signed by the applicant. Such application shall contain information, which demonstrates that the source of sound, or activity for which the special permit is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, or, alternatively that the activity is a benefit to the community which is not outweighed by the possible detrimental health, safety and welfare effects concurs that this chapter is intended to prevent on the community or on other persons. In addition, the following information shall be provided:
 - (1) The plan, specifications and other information pertinent to such sources.
 - (2) The characteristics of the sound emitted by the source, including but not limited to the sound levels, the presence of impulsive sounds and the hours during which such sound is generated.
 - (3) The noise abatement and control methods used to restrict the emission of sound.
- C. The Village Board, upon receipt of such application and upon payment of any fee which shall be required by resolution of the Village Board, shall set the matter down for a public hearing. The Village Board shall cause publication of such public hearing to be given in the official newspaper of the Village. The applicant shall give notice of the application by certified mail to all property owners surrounding the sound source site within a radius of 200 feet from the borders of the said site.
- D. In determining whether to grant or deny the application, the Village 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 other adverse impacts of granting the special variance.
- E. The Village Board shall cause the taking of sound level readings by an agency to be designated by the Village Board in the event that there shall be any dispute as to the sound levels prevailing or to prevail at the sound source site.
- F. The Village 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.
- G. Such permits, when granted, shall remain in effect for a period of two (years), unless otherwise limited by the Village Board. It shall be the obligation of the applicant/permittee to request the extension of a permit or renewal, prior to such time as the current permit expires.

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ARTICLE II Amplified Sound Permits

§ 73-7. Permit required.

It shall be unlawful for any person (and / or business), other than personnel of law enforcement or governmental agencies, to install, use or operate within the Village a loudspeaker or sound-amplifying equipment in a; fixed or movable position or mounted upon any sound truck, for the purposes of giving instructions, directions, talks, addresses, lectures, performance, entertainment or other show or amusement (for hire or not), without first filing a permit application and obtaining a permit thereof as set forth in this article.

§ 73-8. Requirements and duties.

A. Permit Application; filing. Every user who will / may exceed the established hours and / or decibel levels of sound of this chapter / article shall file an application with the Village Clerk 30 days prior to the date on which the sound-amplifying equipment is intended to be used (but the Clerk, in her / his discretion, may waive the time period), which statement shall contain the following information:

- (1) The name, address and telephone number (including cell phone and e-mail address) of both the owner, organization, and user of the sound-amplifying equipment, loudspeaker, live music, and / or operation of other sound device;
- (2) The maximum sound producing power of the sound-amplifying equipment, which shall include the wattage to be used, the volume in decibels of sound which will be produced and the approximate distance for which sound will be audible from the sound-amplifying equipment;
- (3) The Driver's license, copy of statement of insurance, copy of registration, color photo of the vehicle and motor number if a sound vehicle is to be used;
- (4) A general description of the sound-amplifying equipment which is to be used;
- (5) Whether the sound-amplifying equipment will be used for residential, commercial or noncommercial purposes.
- (6) Type and / or Name, Date, Hour, Address, of the event. (include rain dates and start and end time)
- (7) Estimated number of attendees.
- (8) Type of noise event: Live Band, DJ, Karaoke, Loudspeaker, Speech, Recorded Music, Movie, Carnival, Block Party with Music or other sound device,
- (9) General Description of the Sound Equipment: how many speakers (and size Large, Medium, Small), how many in the band, how many performers,
- (10) Whether the event is a fundraiser? If so name, address, and general contact information including cell phone number and e-mail of organization,
- (11) Name, phone number (including cell phone), address (including e-mail) of Person (s) with Authority to Control Noise, Sound and / or Event.
- (12) Whether a fee will be charged, will there be an entrance fees / ticket? If so, what is the cost per attendee?
- (13) Copy of statement of insurance, including a hold harmless agreement with the Village when applicable.
- (14) Whether any additional police presence may be required for the event.
- (15) Whether alcohol be served.

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B. Permit Disapproval; In the event that the permit is denied, the Village Clerk shall notify the applicant. The applicant may, within five (5) days thereafter, appeal to the Village Board, who may, after a public hearing thereon held after five days public notice, either approve or disapprove the application. Or, the applicant may apply to the Z.B.A. within 30 days to seek an appeal to the Village Board's decision.

§ 73-9. Fees.

At submission of the permit and prior to an approval, a permit fee must be paid. All fees as set by resolution of the Village Board from time to time shall be paid to the Village. No fee shall be required for the operation of a loudspeaker or sound-amplifying equipment for non-profit organizations purposes.

§ 73-10. Permit Regulations.

The residential, commercial and noncommercial use of **Live, Amplified Music, and / or** equipment shall be subject to the following regulations:

- A. The only sounds permitted shall be either music or human speech, or both.
- B. It shall be unlawful to operate any sound-amplifying equipment within 200 feet of churches, schools, hospitals or municipal or County buildings, unless permitted by the Village Board.
- C. The number and size of speakers may be limited based on the nature of the event.
- D. Even with an approved permit, the Police Department is hereby authorized to request immediate cessation of noise or the reduction of noise levels based on any founded complaint.
- E. The permit may be revoked by the Mayor of his / her designee, and / or Police Chief for failure to obey the terms of the permit, violation of regulations so stated in this chapter, or for public safety reasons.
- F. A block party permit is required if right-of-ways, village roads, or village owned easements are to be used.
- G. The applicant(s) and responsible person / organization shall explain the provisions and restricts of this permit to all members of the live band, the D.J. and all attendees of the event.
- H. No Alcoholic beverages shall be sold during the permit event unless the proper State of New York Liquor permit / license have been issued for the event.
- I. The person(s) listed on the application as having authority to control noise or event must remain at this event until its completion, and shall be available to accept any complaints, in person or via phone.
- J. The applicant(s) and responsible person / organization shall maintain order at the event and shall be held responsible for the actions of or damages caused by any person attending or performing at the event.
- K. At the conclusion of the event, the applicant(s) and responsible person / organization shall patrol the public right-of-ways, parkways, alleys, and the surrounding neighbor's properties and shall remove all litter or refuse from the event.
- L. The Village will be held harmless for any injury to any person or loss or damage to property caused by the granting of this permit or as a result of the event or the action(s) of any person attending the event.
- M. The Village Board reserves the right to place additions restriction(s) on any approved permits.

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ARTICLE III Penalties; Enforcement

§ 73-11. Enforcement.

This chapter shall be enforced by the Building Inspector (Code Enforcement Officer) (or a Building Inspector that represents the Village through an executed inter-municipal agreement as so stated in § 70-17 of the Village code), and/or the Town of Blooming Grove Police Department personnel, or other duly authorized personnel or by any other special personnel as may be from time to time authorized by the Village Board.

§ 73-12. Penalties for offenses.

- A. Any person who shall violate any provision (excluding § 73-4 subsection “M”, “N” and “O” and § 73-6 through § 73-10) of this chapter shall be guilty of an offense and, upon conviction thereof, shall be subject to a fine of not more than \$400 and not less than \$50.00, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- B. Any person who shall violate § 73-4 subsection “M”, “N” and “O” of this chapter shall be guilty of an offense and, upon conviction thereof, shall be subject to a fine of not more than \$500 and not less than \$300, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- C. Any person who shall violate § 73-6 through § 73-10 of this chapter shall be guilty of an offense and, upon conviction thereof, shall be subject to a fine of not more than \$1000 and not less than \$100.00 for a residential permit and a fine of not more than \$2500 and not less than \$800.00 for a commercial permit, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- D. In addition to the above provided penalties and punishment, the Village Board may also maintain any action or proceeding in the name of the Village in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such chapter.
- E. The remedies contained within this chapter shall further not be exclusive, but shall be in addition to any other remedy provided by law, so long as not inconsistent herewith, nor shall the invoking of any remedy or procedure contained within this chapter preclude the pursuit of any and all other remedies, and the same are intended to be cumulative.

§ 73-9. Supersession of other laws.

This chapter supersedes, and is in derogation of, Chapter 158 of the Code of the Town of Blooming Grove, County of Orange, and State of New York. This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority here for.

§ 73-10. Repeal.

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

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§ 73-11. Effective Date.

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.