

VILLAGE OF UPPER NYACK
Local Law __ of 2021

Be it enacted by the Board of Trustees of the Village of Upper Nyack as follows:

SECTION 1. TITLE

A Local Law regulating Sound within the Village of Upper Nyack.

SECTION 2. LEGISLATIVE INTENT

The making and creating of unreasonably disturbing or excessive Sound within the Village of Upper Nyack is a condition which has persisted, and the level and frequency of occurrences of such Sound continues to increase. These Sound levels are a detriment to the public health, comfort, convenience, safety and welfare of the citizens of the Village. It is the intent of this Local Law to balance the rights of residents and Property owners to use their Property in a reasonable manner with the rights of others in the Village to the quiet enjoyment of their Property and to be free of excessive, continuous, unnecessary or disturbing Sound.

SECTION 3: DEFINITIONS

The terms, phrases, words and their derivatives used in this Local Law shall have the meanings ascribed to them below. Except where specifically defined herein, all words used in this Local Law shall carry their customary and dictionary meanings.

A. **CLEARLY AUDIBLE:** A Sound that can be heard by a person with average hearing without the assistance of sound amplification devices.

B. **CONTINUOUS OPERATION:** The use or operation of Heavy Machinery for any purpose on a Property during which there is no pause in the production of Sound for a period of thirty (30) consecutive minutes or more.

C. **EMERGENCY REPAIRS:** Repairs which are necessary to address a condition which presents an immediate, significant threat to life, health or property.

D. **LEGAL HOLIDAY:** New Year's Day, Martin Luther King Jr Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving, Day after Thanksgiving, Christmas, Day after Christmas or any other day designated as a holiday by the Board of Trustees of the Village of Upper Nyack.

E. **HEAVY MACHINERY:** Construction, industrial or commercial machinery including but not limited to rock breaking machinery, pile drivers, riveters, jackhammers, power sandblasters or glass blasters, chain saws, tile saws, and other engine powered saws.

F. **PERSON:** Any individual human being or group of individuals, corporation, partnership, limited liability company, association, or any other entity.

G. **PROPERTY:** A parcel of land established by a map or subdivision plat filed in the Office of the Rockland County Clerk, or as otherwise permitted by law, not divided by a street, to be separately owned, used or developed.

H. **REGULATED DEVICES:** Sound producing equipment regulated pursuant to Section 4(C)(i),(ii), or (iii) of this Local Law.

I. **SOUND:** Vibrations that are detected by the human ear.

SECTION 4. PROHIBITED SOUND

It shall be unlawful for any Person to make, continue or cause to be made or continued any of the following acts producing Sound that exceed the limits in the following provisions:

A. **Radios, televisions, electronic Sound-reproduction devices, and other similar devices.** The using, operating or permitting to be played, used or operated of any radio, television, speaker, musical instrument or instruments, or other similar devices, in such a manner that creates Sound that is Clearly Audible beyond the Property line of the Property from which the Sound is emanating during the hours of 10:00 p.m. to 10:00 a.m., or Clearly Audible from a point that is 300 feet from the Property line of the Property from which the Sound is emanating at all other times.

B. **Animals.** The keeping or harboring of any animal outdoors which is barking, whining or making any other Sound for a duration that would annoy or disturb a reasonable person of normal auditory sensitivities and which is Clearly Audible beyond the Property line of the Property on which the animal is located during the hours of 10:00 p.m. to 10:00 a.m., or Clearly Audible from a point that is 300 feet from the Property line of the Property on which the animal is located at all other times.

C. **Leaf blowers, outdoor power tools and machinery.**

i. Leaf Blowers: Gasoline-powered leaf blowers may be used only between March 15 through May 15, and September 15 through December 15. During the portions of the year when the use of gasoline powered leaf blowers is permitted, they may only be used from 8:00 a.m. until 7:00 p.m. on Monday through Friday; 9:00 a.m. until 5:00 p.m. on Saturdays; and 12 noon until 5:00 p.m. on Sundays and Legal Holidays. The use of gasoline powered leaf blowers shall be prohibited at all other times. Electric and battery-powered leaf blowers are exempt from the date restrictions of this section but shall be subject to the hours of operation set forth in this section.

ii. Outdoor Power Tools and Machinery: The operation of engine-driven power tools or motorized equipment on a Property, including, but not limited to, lawn mowers, weed trimmers and other similar equipment that emit Sound beyond the Property line of the Property on which such equipment is being used, other than leaf blowers (which are regulated by Section 4C(i) hereof) and Heavy Machinery (which is regulated by Section 4C(iii) hereof) is hereby permitted in the Village provided that such equipment may only be used from 8:00 a.m. until 7:00 p.m. on Monday through Friday; 9:00 a.m. until 5:00 p.m. on Saturdays; and 12 noon until 5:00 p.m. on Sundays and Legal Holidays. Where possible any such tool or equipment shall be properly equipped with a muffler or other properly installed manufacturer-approved Sound-reduction device so designed

and in such a condition as to prevent unnecessary Sound and to prevent a public nuisance in its operation.

iii. Work Involving the Use of Heavy Machinery: The use or operation of Heavy Machinery that emits Sound that is Clearly Audible from a distance of 100 feet or more from the Property line of the Property on which the Heavy Machinery is being used or operated must cease for a period of thirty (30) consecutive minutes after two (2) consecutive hours of Continuous Operation. Within the thirty (30)-minute respite period, use or operation of all Regulated Devices on such Property that emit Sound that is Clearly Audible from a distance of 100 feet or more from the Property line of such Property must cease. The use or operation of Heavy Machinery may commence no earlier than 9:00 a.m. and shall end no later than 4:30 p.m., Monday through Friday, and commence no earlier than 10:00 a.m. and end no later than 3:00 p.m. on Saturdays. The use or operation of Heavy Equipment shall be prohibited on Sundays and Legal Holidays.

iv. Exceptions to this Section 4C: The following shall not be subject to the limitations and restrictions of this Section 4C:

a) The use of Regulated Devices by municipal and school contractors or employees while in the performance of their regular duties beyond 100 feet from the Property line of a Property improved with a residence.

b) The use of Regulated Devices by utility companies, municipal and school employees or Property owners and/or their subcontractors while performing Emergency Repairs. Emergency Repairs conducted outside of the timeframe for Sound producing activities as set forth in this Section 4C shall be to the minimum extent necessary to abate the emergency situation and secure the Property, and all additional work to remediate and correct the condition shall be completed in accordance with the limitations of this Section 4C.

c) The use of emergency generators providing power to buildings in the event of a power outage, HVAC equipment serving buildings and structures, and snow blowers.

d) Clean up occurring within 72 hours after a storm event if the Mayor, in the exercise of his or her reasonable discretion, suspends the provisions hereof which term may be extended by the Mayor for up to 72 additional hours depending on the severity of the storm and extent of damage within the Village. Such suspension may be subject to reasonable conditions and limitations provided by the Mayor.

D. **Restaurants.** The playing, causing to be played or permitting to be played of music of any kind or description, including instrumental music, radio, player piano, jukebox, recorded, electronically produced or vocal music, which is Clearly Audible from a point that is 300 feet from the Property line of the Property on which the use is located or the nearest residential Property, whichever is closer, between the hours of 10 p.m. and 7:30 a.m. in any restaurant, bar, tavern and/or other public place licensed to sell liquors, wines or beer to be consumed on the premises.

SECTION 5. ENFORCEMENT AND PENALTIES FOR OFFENSE

A. **Enforcement.** The Village's Code Enforcement Official, Code Enforcement Officer, and any duly authorized deputy thereof, and the Town of Clarkstown Police Department are hereby authorized to enforce the provisions of this Local Law and are authorized to issue appearance tickets for any violation of this Local Law.

B. **Penalties for Offenses.** Any Person violating the provisions of this Local Law shall be guilty of an offense punishable by a fine of \$250 for the first offense and \$500 for each subsequent offense in the same calendar year. For purposes of this section, a "Person" shall mean the owner or user (i.e. tenant) of the Property on which the prohibited activity occurs and the owner of the instrumentality exceeding permissible Sound levels if such instrumentality is being used by such owner or an employee or contractor of such owner who is working at the direction of such owner.

C. **Injunctive Relief.** Notwithstanding the penalties herein above provided, the Village may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this Local Law.

D. **Remedies Not Exclusive.** The foregoing provisions for enforcement of the regulations in this Local Law are not exclusive, but are in addition to any and all laws applicable thereto.

SECTION 6. AUTHORITY

This Local Law is enacted pursuant to the authority of Section 10 of the Municipal Home Rule Law.

SECTION 7. SEPARABILITY

Should any section, sentence or provision of this Local Law be determined by any court of competent jurisdiction to be unconstitutional or invalid in any way, such determination shall not affect the validity of this Local Law as a whole or any part thereof other than the part expressly so determined to be unconstitutional or invalid.

SECTION 8. EFFECT ON OTHER LAWS

Nothing in this Local Law shall be construed to vary or modify the provisions of any other general or Local Law or to authorize the violation thereof; however, where there is a conflict between this Local Law and another Local Law the more restrictive provision shall control.

SECTION 9. EFFECTIVE DATE

This Local Law shall take effect upon its filing in the Office of the Secretary of State.