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**Via Email Only**

Hon. Karen A. Tarapata, Mayor  
Village of Upper Nyack Board of Trustees  
Michael Esmay, Deputy Mayor/Trustee  
Jeffrey M. Epstein, Trustee  
Laurie Dodge, Trustee  
Kennon Rothchild, III, Trustee  
328 N. Broadway  
Upper Nyack, NY 10960

**Re: Proposed “Noise Law of the Village of Upper Nyack.”**

Dear Mayor Tarapata and Village of Upper Nyack Board of Trustees:

As you are aware, his office represents Goosetown Environmental Action (“GEA”), an association of Village of Upper Nyack, residents in and around the Van Houten’s Landing Historic District. During the public hearing on the Noise Ordinance on May 20, 2021, the issues of constitutionality of the Village ordinance as well as the overarching health impacts of noise were raised for the first time. The Board also indicated it would be discussing the Noise Ordinance further at the working meeting on May 27, 2021. In an effort to assist the Board, we are providing some comments on the constitutionality and enforceability of noise laws, as well as some resources documenting the health impacts of noise in the community.

**Constitutional vs. Enforceable**

While we have frequently raised the question of the ability to effectively enforce the Noise Ordinance as written, during the May 20, 2021 hearing, the issue of the proposed law’s constitutionality was raised for the first time. We offer the following analysis to assist the Board in its continuing review process.

In relation to the constitutionality of a local law for vagueness, the court uses a two-part test. The Court of Appeals explained in People v. Stephens: First, we must determine “whether the statute in question is sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.” Second, we must determine “whether the enactment provides officials with clear standards for enforcement” so as to avoid “resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory

application.” 28 N.Y.3d 307, 312 (2016) (internal citations omitted). However, “[o]n the other hand, ‘[a] statute which employs terms having an accepted meaning long recognized in law and life cannot be said to be so vague and indefinite as to afford the defendant insufficient notice of what is prohibited or inadequate guidelines for adjudication, even though there may be an element of degree in the definition as to which estimates might differ.’” Id. at 312-313 (citation omitted).

In relation to noise laws, New York Courts have found such terms as “excessive” and “loud” to have common meanings. The courts will uphold a noise ordinance provided it uses objective criteria for determining whether there is a violation and limited contexts that violate the ordinance. The Court of Appeals has explained that when evaluating whether a local law is unconstitutionally vague the test is “whether a reasonable man subject to the statute would be informed of the nature of the offense prohibited and what is required of him.” People v. Byron, 17 N.Y.2d 64, 67 (1966). To that end, New York Courts have held that “[t]here is no constitutional requirement that a decibel meter or other such device be used to determine whether a noise level will be considered illegal.” People v. Lord, 7 Misc. 3d 78, 79, 796 N.Y.S.2d 511, 511–12 (App. Term 2005). However, just because an ordinance based on general concepts of “unreasonable noise” survives the test for constitutionality does not make it “a model of foresight and predictability.” People v. Kleber, 168 Misc. 2d 824, 835, 641 N.Y.S.2d 488, 498 (Just. Ct. 1996). The Village should consider not just whether the statute survives the baseline test for constitutionality, but whether it provides a meaningful basis for deterrence and enforcement.

The current law contains terms and language that could create difficulties in enforcement, but more importantly does not provide sufficient clarity and penalties to provide a clear deterrent for the worst offenders. As noted as far back as 1975 in the preamble to the EPA Model Noise Ordinance, “Many existing community noise ordinances are based on outmoded model ordinances and/or the common law approach to noise control which relies exclusively on difficult to enforce noise provisions. . . . the increase in reliable monitoring equipment available to local governments, coupled with definitive standards incorporated into local noise control ordinances, should result in ordinances which are more easily enforceable than many have been in the past.” <https://www.nonoise.org/epa/Roll16/roll16doc6.pdf>

We encourage the Board to consider standards that are readily identifiable by the general public. Good definitions that provide clear standards avoid varying interpretations and assist in enforcement. Dangerous and extremely loud noise should be prohibited in any residential area.

### **Health Impacts**

The impact of noise in a community is well recognized and the health impacts in particular have drawn substantial consideration by local, state and even global authorities. Far

more than an inconvenience, the WHO *Guidelines for Community Noise*, caution “[s]pecific effects to be considered when setting community noise guidelines include: interference with communication; noise-induced hearing loss; sleep disturbance effects; cardiovascular and psychophysiological effects; performance reduction effects; annoyance responses; and effects on social behaviour.” <https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>

The United States Department of Labor, Occupational Safety and Health Administration website cautions: “Loud noise can create physical and psychological stress, reduce productivity, interfere with communication and concentration, and contribute to workplace accidents and injuries by making it difficult to hear warning signals. The effects of noise induced hearing loss can be profound, limiting your ability to hear high frequency sounds, understand speech, and seriously impairing your ability to communicate.” <https://www.osha.gov/noise/health-effects> While OSHA focuses primarily on noise impacts in the workplace, these same impacts can occur anywhere excessive noise occurs.

As a broad guide, the American Speech-Language-Hearing Association, provides the following chart of dangerous and safe noise levels with the average decibel levels for everyday sounds:

**Painful impulse noise—Not safe for any period of time**

150 dBP = fireworks at 3 feet, firecracker, shotgun

140 dBP = firearms

**Painful steady noise—Not safe for any period of time**

130 dBA = jackhammer

120 dBA = jet plane takeoff, siren, pneumatic drill

**Extremely loud—Dangerous to hearing; wear earplugs or earmuffs**

112 dBA = maximum output of some MP3 players, rock concert, chainsaw

106 dBA = gas leaf blower, snow blower

100 dBA = tractor, listening with earphones

94 dBA = hair dryer, kitchen blender, food processor

**Very loud—Dangerous to hearing; wear earplugs or earmuffs**

91 dBA = subway, passing motorcycle, gas mower

**Moderate—Safe listening for any time period**

70 dBA = group conversation, vacuum cleaner, alarm clock

60 dBA = typical conversation, dishwasher, clothes dryer

50 dBA = moderate rainfall

40 dBA = quiet room

**Faint—Safe listening for any time period**

30 dBA = whisper, quiet library

<https://www.asha.org/public/hearing/loud-noise-dangers/>

“Noise around 85 decibels (dBA) – which is loud enough that you must raise your voice to be heard by someone three feet away (arm’s length) – can damage your hearing after repeated exposures lasting 8 hours or more. Equipment, like printing presses and lawn mowers, and activities like vacuuming, or using earbuds or headphones with the volume set around 70%, all average about 85-90 dBA. When noise reaches 95 dBA – which is loud enough that you must shout to be heard by someone at arm’s length – it ***can put your hearing at risk in less than an hour***. Bulldozers, ambulance sirens, chain saws, bars/nightclubs and large sporting events are all louder than 95 dBA.” (Emphasis added.)

The Center for Disease Control and Prevention (CDC) NIOSH Science Blog, posted June 28, 2018 by Ellen Kerns, MPH, CPH, COHC and Elizabeth Masterson, PhD, CPH, COHC  
<https://blogs.cdc.gov/niosh-science-blog/2018/06/28/noise-effects/>

In choosing to regulate noise within the Village, the Board is embracing its responsibilities to protect the public from threats to the public peace and the public health. It is imperative that any ordinance be designed to best meet those needs.

We applaud the Village Board’s conscientious efforts and time expended to address these critical issues.

Thank you for your time and attention to this matter.

Respectfully submitted.



Meave M. Tooher

Cc: Noelle Wolfsen, Esq. (via email)  
Carol Brotherhood Village Clerk (via email)