

MEMORANDUM

To: Supervisor and Ulysses Town Board
From: Peter J. Walsh, Attorney for the Town of Ulysses
Re: Noise Law Regulation
Date: September 10, 2021

Introduction

This memo examines the Town's existing legislation for regulating noise and related issues, and presents models for noise regulation and amendments to existing law that might be considered by the Town Board. The Town has local laws regulating noise, but they are scattered, incomplete, and likely difficult to enforce. Further on we will discuss what the Town actually has in place.

The Town also regulates lighting, which in various circumstances may be considered to have nuisance potential (Code Section 212-123), but this memo focuses exclusively on noise.

It should also be noted that the Village of Trumansburg (the "Village") has its own approach to regulating noise, which is different from that of the Town, although residents of the Village may on occasion be affected by sounds generated within the Town outside the Village. The Trumansburg Police Department has had a noise meter, but it has not seen the light of day for some time, is not certified as correctly calibrated, and the department has no one certified to use it.

This memo will explore noise measurement, legal and practical issues in noise regulation, the Town's existing local laws on the subject, examples of noise regulation in other municipalities, and directions that the Town might follow. In order that the reader might more easily follow the details of the discussion, we begin with a summary of recommended changes to the Town's existing noise regulation scheme, i.e., where we come out.

Recommended Changes

1. Consolidate in a single place in the Town Code all provisions for regulating sound, and make them positive law, not merely 'design standards'.
2. Regulate globally so the new scheme governs for all districts in the Town including the Fairgrounds, with the possible exception of the Village of Trumansburg.
3. Integrate noise standards into the Town's existing special event permit scheme, treating an application for permission to host a noisy event which might not otherwise qualify as a 'special event'.
4. Emphasize notice to neighbors of anticipated noisy events, and a neighborly approach preceding formal enforcement.
5. Try to make noise regulation scheme uniform with the Village.
6. Use a reasonable person standard, but allow for metric (decibel) measurement where feasible now or in future., by making specific metrics in decibels equivalent with plain

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English standards, e.g., sound audible to the human ear, measured at 25 feet from the source.

7. Make specific intent an aggravating feature, as with repeated offenses. This would make production of noise an offense without regard to whether it was intended to be annoying.
8. Standardize definitions, provide definitions where now they are lacking.
9. Extend the application of the Town's special events permitting system to the Fairgrounds, which is now exempt.
10. Consider whether the Town can effectively control the use of fireworks as a matter of sound and light, not as 'fireworks' per se, in view of the State's preemption of fireworks regulation. (See below).

What is Noise?

Audible sound is commonly measured in decibels – abbreviated as dB – on an agreed scale of values, using a sound meter. The decibel scale is logarithmic. For example, 90 dB is about 10 times more intense than 80 dB. Noise is sound, audible to the human ear, that is unwanted, because it is out of place or time, prolonged, or excessive. Noise can be annoying, disturbing, or downright dangerous. Prolonged exposure to 80 dB can produce permanent hearing loss. Exposure to 130 dB can rupture the eardrum. One of several decibel scales, labeled dBA, is intended to mimic the perception of the human ear.

As the existing Town regulations of noise are measured in decibels (dBA), we set forth a chart equating decibel levels with what a normal human ear perceives, for comparison with the levels proscribed under the Town Code now.

<u>Source of Sound*</u>	<u>dB</u>
human breathing	10
whisper, rustling leaves	20
conversation at home	50
conversation in restaurant with background music	60
passenger car at 65 mph measured 25 feet from highway edge	65
garbage disposal, dishwasher, food blender, or diesel truck at 40 mph, measured from 50 feet	80 - 88
motorcycle at 25 feet	90
jet liner take-off at 25 meters	150

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* From IAC Acoustics

Legal and Practical Issues in Noise Regulation

Regulating noise entails a number of legal and practical issues. Approaches may be broadly treated as defining noise by a ‘reasonable person’ standard, sometimes sarcastically labeled ‘the subjective man standard’, i.e., would a person of ordinary sensibilities find a particular sound obnoxious, or by a metric definition: so many decibels measured on an instrument. The ultimate question is enforcement. Would a judge, confronted with certain evidence, find that there was proof beyond a reasonable doubt to sustain a charge of noise in violation of the statute?

The noise regulations of another local jurisdiction define the ‘reasonable person’ standard, and conversely ‘unreasonable’ noise as “any excessive or unusually loud sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities”. As a result, even without a sound meter, a complaint is appropriate if a sound bothers ‘a reasonable person of normal sensitivities’. Factors to be considered in determining whether a given sound is unreasonable include:

- a. The intensity of the noise.
- b. The duration of the noise.
- c. The intensity of the background noise, if any.
- d. The zoning district within which the noise emanates, and all zoning districts within 500 feet of the source of the noise.
- e. The time of day or night that the noise occurs..
- f. The proximity of the noise to sleeping facilities.
- g. Whether the noise is continuous or impulsive.
- h. The existence of complaints concerning the noise from one or more persons who are affected by the noise.
- i. Whether the nature of the noise is usual or unusual.
- j. Whether the noise is due to a natural or human activity.

Measurement of sound in dB is the gold standard and occasionally useful. A decibel definition is commonly used as a measure of highway vehicles, which are regulated by state law, and in labor/health situations such as noisy factories. A decibel measured on the “A” scale, is a decibel without regard to the nature of the sound: an objective measure of sound pressure, taking account of environmental conditions including ambient or background sound that affect how the human ear perceives a particular sound. A ten-fold increase in measured sound pressure does not necessarily register to the human ear as ten times louder.

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The metric approach jumps over the problem of personal preferences: Pavarotti at 100 dBa may be my cup of tea but not yours, and the Lead Zeppelin at 100 dBa may be equally objectionable to me. The problem is like that confronted by the United States Supreme Court dealing with pornography: ‘I can’t define it, but I know it when I see it’.

But because most people don’t walk around with a sound meter in their pockets, it may ordinarily be more practical to identify noise by what the average person hears, at a certain distance from the source, and at what hour of the day. My neighbor’s lawnmower, operated for two hours, may be loud, but acceptable, at 10 am. At 10 pm when I am trying to sleep, the same lawnmower may be completely unacceptable no matter how briefly operated.

In legal terms, a prohibition on using a lawnmower in a residential zone after nightfall may create a legal presumption – capable of being overcome – but shifting the burden of proof to the defendant to show why the noise complained of was reasonable in the circumstances.

Any attempt to regulate noise also touches on issues of definition, whether the conduct complained of was intentional, and penalties associated with the offense.

Finally, there is the question of where an offense is situated. May a resident of the Village of Trumansburg complain about noise generated at the Trumansburg Fair Grounds? And is his or her complaint governed by the local law of the Town, or of the village, which is where he or she was negatively affected? Most offenses are defined by where the action took place: a murder is where the person got stabbed and died. Sound (and odors) travel across jurisdictional boundaries.

On the question of noise generated in another jurisdiction, e.g., noise generated in the Town but heard in the village, it would be possible for the village to formally consent to apply the Town’s regulatory scheme within the village, instead of its own, making a uniform system. And of course, village residents are also residents of the Town.

Current Noise Regulation in the Town of Ulysses

Existing Town legislation governing noise is found in several places in the Town Code (“Code”). Those include regulation of water craft (Code Section 205), under the heading of zoning (several items), special events (Code Section 142), design standards (Code Section 212

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B), special agricultural zone (Code Section 212-30), and right-to-farm legislation (Code Section 212-24). We will treat them separately.

Water Craft

Code Section 205 regulates operation of vessels on Cayuga Lake within the Town limits, up to 1500 feet from the shoreline. Noise generated by water craft operating within that zone may not exceed 65 dBA during daytime hours (one half hour before sunrise, to one-half hour before sunset), and may not exceed 55 dBA during night time hours. Noise is to be measured at the shoreline. This standard is more stringent than general state provisions found in NYS Navigation Law Section 44, allowing up to 75 dBA for a moving pleasure boat.

Special Events

The Town's special events regulations (Code Section 142) do not explicitly regulate noise, but may be used to allow noise generation in excess of what would be permitted ordinarily in a given zoning district. It should be noted that the provisions on special events have effect everywhere within the Town EXCEPT for the A-2 (Fairgrounds) zone.

Special Agriculture Zone (the Fairgrounds)

Code provisions for the Special Agricultural Zone (Code Section 212) make no mention of noise as such with one oblique exception. After listing as permitted uses a variety of activities including athletic competition, auctions, circuses, "concerts, dramas, plays, religious events and revivals, variety shows and other forms of live entertainment". It allows any "legal" form of racing, and "racing and other events that utilize motorized or otherwise self-propelled vehicles, except during weekdays from 7:30 a.m. to 5:00 p.m. during the school calendar year." This last is clearly designed to limit noise production that would be a problem for the school nearby.

Environmental Performance Standards

Code Section 212-120, Subdivision B, which is part of the zoning law, explicitly regulates noise, although under the stated purpose of providing "specific standards to be applied to the design of buildings, structures, commercial or industrial sites and other types of land uses.,in order to promote the orderly physical development of the community, ensure the health

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and safety of the public, conserve the natural and cultural resources and the rural character of the community...”

Despite its stated purpose of providing design criteria, Subsection B very clearly aims at noise production. ‘Recognized public celebrations’, and events conducted under a special events permit are “excluded from the noise restrictions of this chapter”. Noise from “any source” shall be muffled so as not to be objectionable exceeding two hours during daylight or a half hour at night. Noise from property maintenance or temporary construction is exempt. Noise from agricultural operations as defined by the Agriculture and Markets Law is exempt, thus carving out an exception to regulation that honors the Town’s Right to Farm law.

No noise, measured at the boundary of the property on which it is generated, shall exceed 90 dBa from 7:00 a.m. to 11:00 p.m., or exceed 55 dBa between 11:00 p.m. and 7:00 a.m. Although the environmental performance standards speak broadly, suggesting a uniform application to all districts of the Town, it is not clear whether they actually apply to noise generated in the Fairgrounds, which has a carve-out for motorized racing, as noted.

It should be noted that the Code Section noise regulations employ both a measured, metric approach (X number of decibels, between certain hours), and a ‘reasonable person’ standard: noise that is “objectionable due to sustained intermittence”, etc., whereas the water craft regulations depend strictly on a measured standard in decibels between certain hours and measured at a definable point.

The Town has no regulation specifically addressing fireworks, which have become a subject of discussion recently. It may well be that, with one, very narrow exception, the Town (and other municipalities) are specifically excluded from regulating in this area by the New York State Penal Law. Penal Law section 405.00(5) expressly supersedes “[all] local ordinances regulating or prohibiting the display of fireworks”. See, Informal Opinion No. 2011-8 of the NYS Attorney General. Addressing the question of whether a municipality could supersede provisions of the Town Law, pursuant to the Municipal Home Rule Law Section 10 to establish a permitting system for fireworks, the answer of the Attorney General was an unqualified “no”.

Approaches of Other Jurisdictions

Village of Trumansburg

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The village prohibits “unreasonable noise”, which is “any disturbing, excessive or offensive sound that annoys a reasonable person of normal sensibilities.” The statute requires a showing of intent to cause public inconvenience, annoyance, or alarm, or acting with reckless disregard of the effects on others. Certain acts are considered ‘prima facie’ (on their face), evidence of a violation, including:

1. Any “unnecessary noise from any source” between 11 p.m. and 7 a.m.
2. Keeping an animal which by causing frequent or long-continued noise shall disturb the comfort or repose of any person in the vicinity.
3. Burglar or vehicle alarm persisting more than five minutes.
4. Operation of a radio, etc. in a “loud, annoying or offensive manner” at a distance of 60 feet from the source, or that interferes with conversations of the public more than 60 feet from the source.
5. Construction noise outside the hours of 7 a.m. to 9 p.m.
6. Sounding a horn of a motor vehicle for “any unnecessary or unreasonable period of time.”
- 7 “Shouting or outcry or clamor” on a public street to sell something “or otherwise attracting attention”.

The statute adds a metric to these ‘reasonable person’ standards to bar generation of any noise level in excess of 90 dBa, measured at the specified distance.

The village statute also provides for issuance of permits for noise in connection with certain events.

Town of Ithaca

The quite comprehensive noise ordinance of the Town of Ithaca employs a reasonable person standard to bar “excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual or unnatural in their time, place and use or which are detrimental to the environment”. Nighttime hours run from 9 pm. to 7 a.m. Particular attention is given to ‘unreasonable noise’ in a residential zone or within 500 feet of a residential zone, inside a building or outside a building at a distance of 25 feet, and to those instances of parties or gatherings.

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As with the village, the Town of Ithaca ordinance has a permitting system, with judgment confided to the town board, allowing a balancing of the interests of the applicant against those of surrounding neighbors.

City of Ithaca

The City of Ithaca regulatory system relies generally on a reasonable person standard where the sound interferes with conversation of members of the public 25 feet or more from the source. It also includes a table of maximum permitted sound levels, measured in decibels and classified by district type and hour of day. For example, in a residential district, outdoors, maximum permitted decibels range from 40 to 50 dBA, nighttime, and daytime.

The city's system also includes provision for permits where the anticipated sound level exceeds allowed levels.

Drafting Considerations

In crafting a noise regulation scheme, the drafter will wish to address the following considerations:

1. Definition of noise, generally: excessive, unreasonable, unnecessary, unlawful.
2. Standard(s) for measurement
3. Particular levels, globally, by zone, by hour of day.
4. Enumeration of particular sources: voice, reproduced or amplified sound, motor vehicles, or by broader definition.
5. Duration, intensity, frequency.
6. Exceptions: emergencies, churches, parades, recognized public celebrations, etc.
7. Permitting system
8. Penalties and enforcement.
9. Grouping all regulations in a single place for findability and enforcement.

Both the Town of Ithaca and the City of Ithaca schemes, particularly with respect to large parties, have been extensively tested by litigation and in my opinion might serve as examples for the Town.

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References

For reference, copies of a small selection of noise regulation schemes are attached as exhibits:

- A. Town of Ulysses
- B. Village of Trumansburg
- C. Town of Ithaca
- D. City of Ithaca

Examples of other statutory schemes are on hand and can be supplied if thought useful, including City of Rochester, City of Binghamton, Town of Malta, and the Town of LaGrange.

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