

## **ARTICLE II. NOISE CONTROL**

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### **Sec. 13-51. Purpose.**

The purpose of this article is to reduce and control any loud, unnecessary or unusual sound which either annoys, disturbs, injures or endangers the comfort, repose, convenience, health, peace or safety of others, within the limits of the town.

(Ord. of 4-11-94, § 5.9.1)

### **Sec. 13-52. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Ambient sound level* means at a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the specific development or activity of interest. See also "background sound."

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated db(A) or dBA.

*Background sound* means at a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, excluding the specific development or activity of interest. See also "ambient sound level."

*Decibel (dB)* means a unit for measuring the volume of a sound equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

*Equivalent sound level ( $L_{eq}$ )* means the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of that period.

*Fixed sound source* means a stationary device which creates sounds, including but not limited to agricultural, commercial, industrial, and residential machinery and equipment, pumps, fans, compressors, air conditioners and refrigeration equipment. "Fixed sound source" shall include a moveable sound source that is constrained to a reasonably small, fixed area, such as but not limited to the yard of a parcel of land.

*Hourly Sound Level* means the equivalent sound level for one hour measured or computed in accordance with this ordinance.

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*Mobile sound source* means any noise source other than a fixed source.

*Noise disturbance* means any sound that is in violation of the provisions of this article.

*Noise sensitive areas* means areas within 300 feet of a school, church, hospital, nursing home or funeral home.

*Person* means any individual, association, partnership, corporation, or other legally recognized entity, and includes any officer, employee, department, agency or entity, public or private.

*Plainly audible* means any sound for which the information content is communicated to the listener, such as, but not limited to, understandable speech, comprehension of whether a voice is raised or normal, repetitive bass sounds, or comprehensible musical rhythms, without the aid of any listening device. For the purposes of the enforcement of this article, the detection of any component of sound by a person using unaided hearing faculties is sufficient to establish a plainly audible sound. It is not necessary for the person to determine the title, specific words or artist of music, or the content of any speech.

*Private person* means any individual, association, partnership corporation, or other legally recognized entity, but excluding municipal or quasimunicipal entities.

*Property owner* means the person holding title to the real property as evidenced by the records in the county registry of deeds.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk, or alley that is maintained by the town or the state.

*Real property boundary* means the property line along the ground surface, and its vertical extension, that separates the real property owned by one person from that owned by another person, or separates real property from the public right-of-way. For the purpose of enforcing this article, boundary lines as shown on the town's tax maps shall be prima facie evidence of those boundaries.

*Renter-occupied dwelling unit* means a residential dwelling unit leased by a person from the owners or lessee for monetary consideration.

*Routine operation or activity* means the regular and recurrent operation or activity involving regulated sound sources associated with the purpose or use of a site.

*Short duration repetitive sound* means a sequence of repetitive sounds, including by way of example only explosion, drop forge impact, or firearm discharge, which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration.

*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that cause compression and rarefaction of the medium. The description of sound may include any characteristics of sound, including duration, intensity or frequency.

*Sound level* means ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this ordinance, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.

*Sound level meter* means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for Type 2 meters in the American National Standards Institute specifications for sound level meters, S1.4-1983, or the most recent revision thereof. The measurement of Hourly Sound Level requires an integrating-averaging sound meter, also typically known as an integrating sound level meter.

*Sound pressure* means the root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval.

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*Sound pressure level* means ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.

*Tonal sound* means, for the purpose of this ordinance, a sound that exists if, at the property line of the property from which the sound emanates, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz; by 8 dB for center frequencies at or between 160 and 400 Hz; and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Any word, term or phrase not defined herein shall have its customary dictionary definition, except that any undefined land use related term shall have the definition ascribed thereto in the Orono Land Use Ordinance, as may be amended or replaced from time to time.

**Sec. 13-53. Sound level limits.**

- (a) Sound from routine operations or activities: It shall be unlawful for any person to operate or cause to be operated any single or combination of fixed source or mobile source equipment or machinery or to conduct any other activity or process that individually or collectively constitutes an identifiable sound source, in such a manner as to cause the Hourly Sound Level at any point on the real property boundary of any property to exceed the limits set forth below:

District	Time	Hourly Sound Level (dBA)
Noise sensitive areas, as defined in this ordinance	7:00 a.m. to 6:00 p.m.	50
	6:00 p.m. to 10:00 p.m.	45
	10:00 p.m. to 7:00 a.m.	40
Medium Density Residential Gateway Medium Density Residential	7:00 a.m. to 6:00 p.m.	55
	6:00 p.m. to 10:00 p.m.	50
	10:00 p.m. to 7:00 a.m.	45
Forestry and Agriculture Low Density Residential Public parks & recreation areas Resource Protection	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50
High Density Residential Commercial-2 Commercial-1 Village Commercial Economic Development Zone	7:00 a.m. to 6:00 p.m.	60
	6:00 p.m. to 10:00 p.m.	55
	10:00 p.m. to 7:00 a.m.	50
Industrial	7:00 a.m. to 6:00 p.m.	70
	6:00 p.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	55

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Where the background sound is determined to be the same as or higher than the maximums listed above, the maximum permissible Hourly Sound Level of the subject source shall be five decibels higher than the background sound level. If the police department or other enforcement agency determines that it is necessary to establish background sound in order to determine compliance of the identifiable sound source with the standards of this section, the operator of the identifiable sound source shall cooperate with the department or agency to turn off the identifiable sound source so that the level of the background sound can be measured. If the department or agency concludes, based on information from the owner or operator of the identifiable sound source, that turning off the source is not practicable or would cause undue economic hardship, the owner or operator shall submit a plan to the department or agency that includes best sound control practices to reduce or to help reduce the ambient sound to no more than five decibels higher than the maximum permissible Hourly Sound Level, and upon approval of the department or agency shall implement such plan within an approved timeframe. Failure to comply with the foregoing provisions shall constitute a violation of this article, without the necessity of the notice and warning provisions of Section 13-57.

Where properties in two or more districts join at a common boundary, the maximum noise level shall be the arithmetic mean of the maximum levels for each of the properties affected.

(b) Sound from construction activities: The sound from construction activities between 6 p.m. and 10 p.m. and between 10 p.m. and 7 a.m. shall be subject to the sound limits prescribed for those time periods in the respective zoning districts. Sound from construction activities during other times shall not exceed the following limits at the boundary line of the property on which the construction activities are taking place:

Duration	Hourly Sound Level Limit
More than 8 hours	87 dBA
6 - 8 hours	90 dBA
4 - 6 hours	92 dBA
3 - 4 hours	95 dBA
2 - 3 hours	97 dBA
1 - 2 hours	100 dBA
Less than 1 hour	105 dBA

All equipment used in construction shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.

(c) Short duration repetitive sounds: Short duration repetitive sounds shall comply with the standards for sound from routine operations and activities as set forth in paragraph (a) of this Section, except that if the short duration repetitive sounds occur more than an average of three times per hour during any eight-hour period, 5 dBA shall be added to the one-hour equivalent sound level ( $Leq_{A1hr}$ ) measurement interval in which the short duration repetitive sound events are present.

(d) Tonal sounds: For the purpose of determining compliance with the standards for sound from routine operations or activities as set forth in paragraph (a) of this Section, 5 dBA shall be added to the observed levels of any tonal sounds that result from the routine operations or activities.

(e) Sound from production blasting: Notwithstanding paragraph (d) in this Section 13-53, sound from production blasting shall meet the standards and limitations set forth in Chapter 375, Section 10, Control of Noise, paragraph C(4), Sound from Production Blasting, of the Rules of the Maine Department of Environmental Protection, as the same may be amended from time to time.

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**Sec. 13-54. Public nuisance noise.**

- (a) Notwithstanding the provisions of section 13-53, and in addition thereto, it shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of the town any loud, unnecessary or unusual sound of such character, intensity or duration which, in the judgment of the police department, unreasonably disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area.
- (b) The characteristics and conditions to be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:
  - (1) The level of the sound.
  - (2) Whether the nature of the sound is usual or unusual.
  - (3) Whether the origin of the sound is natural or unnatural.
  - (4) The level and intensity of the background sound,.
  - (5) The proximity of the sound to residential area sleeping facilities.
  - (6) The nature and zoning of the areas within which the sound emanates.
  - (7) The density of the inhabitation of the area within which the sound emanates.
  - (8) The time of the day or night the sound occurs.
  - (9) The duration of the sound.
  - (10) Whether the sound is recurrent, intermittent, or constant.
  - (11) Whether the sound creates a noise disturbance across a real property boundary and/or across an apartment unit boundary wall.
  - (12) Whether the noise disturbance annoys, disturbs or injures a reasonable person.
- (c) The following activities, among others, are hereby declared to be loud, disturbing, unnecessary, excessive or offensive sounds in violation of this section, but such enumeration shall not be deemed to be exclusive:
  - (1) The use of a horn or other signaling device on any vehicle except as an emergency or danger warning signal.
  - (2) The use, operation, or permitting to be played, used, or operated, any sound production or reproduction device, radio receiving set, musical instrument, drums, stereo, television set, loudspeakers, sound amplifiers or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of any reasonable person of normal sensitivity in any single-family dwelling, group home, nursing and convalescent home, hotel, hospital or other similar type of residence, or of any person in the vicinity thereof. The operation of any such sound producing device between the hours of 11:00 p.m. and 8:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle from which the sound emanates shall be prima facie evidence of a violation of this section.
  - (3) Yelling, shouting, hooting, whistling, singing, or the making of any other loud sounds in a public right-of-way, or the making of any such sounds at any time or place in such a manner as to disturb the peace, quiet, and comfort of any reasonable person of normal sensitivity in any single-family dwelling, group home, nursing and convalescent home, hotel, hospital or other similar type of residence, or of any person in the vicinity thereof.
  - (4) The keeping, or the permitting to be kept, of any animal or bird, except in the Forestry and Agricultural District and the Low Density Residential District, which by any frequent or long continued sound shall cause annoyance or discomfort to a reasonable person of normal sensitivity in the vicinity. The sound of any such animal or bird that disturbs two or more

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residents who are in general agreement as to the times and durations of the sound, and who reside in separate dwelling units located on property adjacent at any point to the property on which the subject animal or bird is kept, shall be prima facie evidence of a violation of this section.

- (5) The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of sound. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.
- (d) For two or more residential dwelling units contained in a single structure, the following activities, among others, are hereby declared to be loud, disturbing, unnecessary, excessive or offensive sounds in violation of this section, but such enumeration shall not be deemed to be exclusive:
  - (1) The use, operation or permitting to be played, used, or operated any sound production or reproduction device, radio receiving set, musical instrument, drums, stereo, television set, loudspeakers, sound amplifiers or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of any reasonable person of normal sensitivity in another dwelling unit in the structure. The operation of any such sound producing device between the hours of 11 p.m. and 8 a.m. in such a manner as to be plainly audible in another dwelling unit in the structure shall be prima facie evidence of a violation of this section.
  - (2) Yelling, shouting, hooting, whistling, singing or the making of any other loud sounds in such a manner as to disturb the peace, quiet and comfort of any reasonable person of normal sensitivity in another dwelling unit in the structure.
  - (3) The keeping, or the permitting to be kept, of any animal which by any frequent or long, continued sound causes annoyance or discomfort to a reasonable person of normal sensitivity in another dwelling unit in the structure.
  - (4) The use of any drum or other instrument such that it results in sound that causes annoyance or discomfort to a reasonable person of normal sensitivity in another dwelling unit in the structure.
  - (5) Any other activity that causes loud, unnecessary or unusual sound of such character, intensity or duration that it unreasonably disturbs the peace, quiet and comfort of any reasonable person of normal sensitivity in another dwelling unit in the structure.

**Cross reference**— Animals, ch. 6.

**Sec. 13-55. Exemptions.**

None of the terms or prohibitions of the previous sections shall apply to or be enforced against:

- (1) *Schools and churches.* Any bell or chime from any building clock, school or church.
- (2) *Emergency vehicles and municipal operations.* Any police or fire vehicle or any ambulance while engaged in necessary emergency business; and municipal operations carried out in furtherance of the duties of the various municipal departments.
- (3) *Highway and utility maintenance and construction.* Necessary excavation in, maintenance (summer/winter) of, or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the town, or any public utility, or any agency of the state.
- (4) *Farming equipment.* Any farming or logging equipment or permitted farming or logging activity performed between 7 a.m. and 8 p.m.
- (5) *Public address.* The reasonable use of amplifiers or loudspeakers for public addresses which are noncommercial in nature.

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- (6) *Warning devices.* Any alarm, siren, bell, or whistle required by OSHA or other state or federal safety regulations.
- (7) *Refuse collection.* The operation of refuse collection machinery and equipment, provided that such machinery and equipment is in compliance with all laws applicable thereto.
- (8) *Ambient traffic noise.* Any noise generated by vehicles travelling on federal interstate highways or state defined primary or major secondary highways.
- (9) *Scheduled events in public facilities and other public events.* Crowd noise generated by scheduled sporting events at publicly-owned arenas, stadiums, or similar facilities, and public concerts, parades, fairs, shows, and celebrations that have been properly permitted and licensed.
- (10) *Power equipment.* The use of outdoor power equipment, such as chainsaws, lawn mowers, snow removal equipment, garden tractors and the like, required to maintain the grounds of a property. Except for snow removal equipment, the use of such equipment shall be limited to the hours between 7:00 a.m. and 8:00 p.m. In addition, this exemption shall only apply to power equipment that has the manufacturer's, or equivalent, noise suppression equipment installed and operational on the power equipment. This power equipment exemption also covers the use of emergency power generators necessitated by the loss of electrical power, provided that the routine testing of such generators shall not exceed one hour in any one-week period or two hours in any six-week period and shall be confined to the hours between 10:00 a.m. and 4:00 p.m. unless otherwise required by the Orono Fire Department or health and safety regulations. Such power generators shall have the manufacturer's, or equivalent, noise suppression equipment installed and operational.
- (11) *Commercial/industrial use existing as of the effective date of this article or amendment thereto.* The routine operation of a commercial or industrial use or activity that is in existence as of the effective date of this article or amendment thereto and that exceeds the limits of Sec. 13-53 may continue according to the terms of this paragraph. If the sound level is no more than 5 dBA of the limits set forth in Sec. 13-53, the existing use shall be deemed in compliance with this ordinance. A sound level from an existing use or activity that is more than 5 dBA greater than the limits set forth in Sec. 13-53 shall be deemed in compliance only if the owner or operator of the existing use documents that level to the satisfaction of the police department, utilizing a qualified third party and the measurement procedures specified in Sec. 13-58, within 90 days of the effective date of the ordinance or amendment thereto, or, if the existing use or activity is periodic during the year, by such other deadline as may be agreed to by the police department.

If the sound level emanating from an existing commercial or industrial use at the property line exceeds the limits set forth in Sec. 13-53 by more than 5 dBA and documentation of this higher level was not provided within 90 days of the effective date of this ordinance or amendment thereto (or by such other date agreed to by the police department), the owner or operator of the existing commercial or industrial use may seek from the Board of Appeals a variance from the sound level limit. The Board of Appeals, as established in Chapter 18, Article III, Section 18-43 of the Land Use Ordinance, is hereby empowered to hear such appeals following the same hearing procedure as set forth in Section 18-84 of the Land Use Ordinance and using the same decision process as set forth in Section 18-83(e) of the Land Use Ordinance. Appeals from a decision of the Board shall be as set forth in Section 18-83(f) of the Land Use Ordinance.

A variance shall not be granted unless the Board finds:

- (i) The variance will not unreasonably interfere with the health of those living on or using surrounding properties or of members of the public;
- (ii) The applicant is utilizing best practical noise control measures or that such technology is unavailable based on the circumstances of the property; or compliance with the sound level limits of this ordinance is not technically and financially feasible without substantial curtailment of the existing commercial or industrial activity, creating significant financial hardship for the existing commercial or industrial activity; and

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(iii) The requested variance is the minimum needed to allow the existing commercial or industrial use to continue.

The application for a variance from the sound level standards shall be made in writing through the Code Enforcement Office. It shall specify the requested maximum sound level limit that will apply to the existing use or activity; shall specify how the request complies with the criteria in this paragraph; and shall provide documentation that the use or activity from which the sound emanates was existing as of the effective date of this ordinance or amendment thereto.

(Ord. of 4-11-94, § 5.9.5)

**Sec. 13-56. Enforcement.**

The police department shall be responsible for the administration and enforcement of this article, including but not limited to the following duties and responsibilities:

- (1) Investigation of complaints of unlawful sound;
- (2) Documentation of violations of this article;
- (3) Measurement of the offending sound by an approved sound level meter or other measuring device, if appropriate, consistent with the procedures in Sec. 13-59;
- (4) Issuance of written warnings for violation of this article; and
- (5) Initiation and prosecution of legal proceedings to enforce the provisions of this article.

(Ord. of 4-11-94, § 5.9.6)

**Sec. 13-57. Penalties and Costs.**

- (a) Any person who violates the provisions of sections 13-53 and/or 13-54 of this article shall be given a written notification of such violation and a warning to cease such activity.
- (b) If any person continues to violate the provisions of sections 13-53 and/or 13-54 subsequent to the written notification and warning, that person shall be liable for a civil penalty in accordance with the following:
  - (1) One hundred dollars for the first violation;
  - (2) Two hundred dollars for a violation which occurs within 12 months of the date of the first violation; and
  - (3) Three hundred dollars for a third or subsequent violation which occurs within 12 months of the date of the last violation.
- (c) Each such violation which either continues for more than 15 minutes after issuance of a written notice and warning of violation of this article, or is repeated within four hours of the issuance of a written notice and warning of violation of this article, shall be a separate offense and shall be subject to a civil penalty as a separate offense.
- (d) All civil penalties shall inure to the benefit of the town.
- (e) If the violation occurs in a renter-occupied dwelling unit, the town shall provide the owner with written notice of such violation.
- (f) In addition to the civil penalties, if the Town is the prevailing party, it shall also be awarded reasonable attorney fees, expert witness fees and costs.

(Ord. of 4-11-94, § 5.9.7)



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**Sec. 13-58. Other remedies.**

If the person or persons responsible for any activity which violates sections 13-53 and/or 13-54 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation. The responsible person may be prosecuted under this article, and shall be subject to the civil penalties set forth in section 13-57.

(Ord. of 4-11-94, § 5.9.8)

**Sec. 13-59. Measurement Procedures.**

(a) Measurement instrumentation shall meet the criteria contained in Chapter 375, Section 10H(2.2) through Section 10H(2.4) of Maine Department of Environmental Protection's Rules, within the Noise Control Section of the Rule on No Adverse Environmental Effect Standard of the Site Location Law, as the same may be amended from time to time.

(b) Measurement of ambient or background sound, when required, shall follow the procedures set forth in Chapter 375, Section 10H(3) of Maine Department of Environmental Protection's Rules, within the Noise Control Section of the Rule on No Adverse Environmental Effect Standard of the Site Location Law, as the same may be amended from time to time.

(c) Measurement and reporting of sound from the routine operation of an activity shall be consistent with the procedures set forth in Chapter 375, Section 10(H)(4) of Maine Department of Environmental Protection's Rules, within the Noise Control Section of the Rule on No Adverse Environmental Effect Standard of the Site Location Law, as the same may be amended from time to time.

**Sec. 13-59A. Severability.**

If any portion of this article is found to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of this article in its entirety or any of the remaining sections, paragraphs, sentences, clauses and provisions.