

RESOLUTION OF INTRODUCTION

_____, seconded by _____,
reintroduced the following proposed local law, known as **Local Law No. 12** of 2021, entitled A
LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO CREATE
CHAPTER 91, “NOISE CONTROL,” OF THE ESOPUS TOWN CODE.

BE IT ENACTED by the Town Board of the Town of Esopus that Chapter 91 of the Town Code is created and reads as follows:

SECTION 1 – ENACTMENT

- A. Local Law No. 12 of 2021, entitled A Local Law of the Town of Esopus, Ulster County, New York to Create Chapter 91, “Noise Control” of the Esopus Town Code was originally introduced on February 2, 2021 and was the subject of a public hearing from February 16, 2021 to April 15, 2021;
- B. Based on public and agency comments received, the Esopus Town Board revised Law No. 12 of 2021 accordingly.
- C. Due to the revisions made, revised Local Law No. 12 of 2021 shall be subject to a public hearing and required referrals to the Esopus Planning Board and the Ulster County Planning Board.
- D. See attached for Revised Draft Local Law No. 12 of 2021, Chapter 91, “Noise Control.”

CHAPTER 91

NOISE CONTROL

Article I General Provisions

§91-1 Title

This chapter shall be known and may be cited as the “Town of Esopus Noise Control Law.”

§91-2 Purpose and intent.

It is hereby declared to be the public policy of the Town to reduce the noise level in the Town, so as to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the Town, prevent injury to human and animal life and property, foster the convenience and comfort of its inhabitants and visitors and to facilitate the enjoyment of the natural and man-made attractions of the Town. It is the public policy of the Town that every person is entitled to noise levels that are not detrimental to life, health and enjoyment of their property. It is hereby declared that the making, creation or maintenance of unreasonable noises within the Town affects and is a threat to public health, comfort, convenience, safety, welfare and the prosperity of the Town. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purposes.

§91-3 Interpretation.

This chapter shall be liberally construed so as to effectuate the purposes described herein. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this chapter.

§91-4 Conflicts.

If this chapter conflicts with any local, state, or federal legislation then, in that instance, the more stringent law shall apply. A law shall be determined to be more stringent if it requires lower sound levels, more restrictive timeframes, or includes additional specifically prohibited acts, then what is permitted by this chapter.

§91-5 Severability.

If any article, section, subsection, paragraph, sentence, clause or provision of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the validity of the other provisions of the chapter or application thereof to other persons and circumstances.

§91-6. Unreasonable noise prohibited.

No person shall make, cause, allow, or permit to be made any unreasonable noise within the geographical boundaries of the Town of Esopus. In addition to specific examples of unreasonable

noise set forth in **§91-7** herein, the following criteria shall be used in determining whether an unreasonable noise exists.

- A. The volume of the noise.
- B. The frequency of the noise.
- C. Whether the noise is unusual and incongruous with the surrounding environment.
- D. The volume and frequency of the ambient noise, if any.
- E. The proximity of the noise source to other properties.
- F. The use, nature and character of the zoning district of the immediate area where the noise source exists.
- G. The time of day or night the noise occurs.
- H. The duration of the noise.
- I. The existence of and compliance with applicable site plan, special use permit or other Town of Esopus approvals related to the noise.

§91-7. Specific acts considered to be unreasonable and therefore prohibited.

Unless otherwise exempted in accordance with this chapter, any of the following acts and causes thereof which either annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities are declared to be in violation of this chapter and to constitute unreasonable noise.

- A. No person shall cause or permit to be caused any noise that originates from residential property, public property or a public right-of-way between the hours of 9:00 p.m. and 7:00 a.m. Sunday through Thursday or between the hours of 9:00 p.m. and 8:00 a.m. Friday and Saturday that is in excess of 45 dBA as measured by a sound level meter. Refer to **§ 91-10** herein for instructions on measuring sound levels.
- B. No person shall cause or permit to be caused at any time any noise that originates from any property resulting from the use of obscene, abusive, or threatening language or as a result of fighting or violent, tumultuous or threatening behavior that is both perceptible at the property line of the source property resulting in a disturbance to, and disrupts the right of a reasonable person of normal sensibilities from their legal right to use and enjoy their property.
- C. The use of industrial or domestic tools, machinery and equipment of any kind on residential, or public property that results in loud grinding, hammering, sawing and similar noise shall be prohibited as follows:
 - (1) Between the hours of 9:00 p.m. and 7:00 a.m. Sunday through Thursday or between the hours of 9:00 p.m. and 8:00 a.m. Friday and Saturday; and

- (2) At any other time if said noise is unnecessary, unreasonable, or excessive under the circumstances.
- D. No person who owns or has immediate control over an animal shall permit such animal to cause annoyance, alarm, or noise disturbance for more than 15 minutes in any one-hour interval at any time of the day or night by repeated barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundary of such person's property.
- E. No person shall cause or permit the excessive sounding of any horn or other auditory signaling device on or in any motor vehicle except to serve as a warning of danger.
- F. Noisy vehicles. No person shall:
- (1) Use an automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud, unnecessary grating, grinding, rattling or other noise.
 - (2) Operate any vehicle in any manner as to cause unnecessary noise by spinning or squealing the tires or revving the motor of such vehicle.
 - (3) Modify or cause to be modified the muffler, exhaust system or other noise-control device of any vehicle in a manner that will increase the noise emitted by such vehicle above that emitted by the vehicle when newly manufactured, regardless of the date of manufacture. The noise-control devices of any vehicle operated in the Town of Esopus shall be maintained and in good working order. No person shall operate or permit to be operated a vehicle where the muffler, exhaust system or other noise-control device has been so modified or has not been maintained.
- G. The use of a drum, loudspeaker or any other sound producing instrument or device for the purpose of attracting public attention by the creation of noise.
- H. No person shall operate, play, or permit the operation or playing of any stereo, radio, television, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound so as to produce unreasonably or unnecessary noise at any time.
- I. No person shall use or permit the use of lawn mowers, leaf blowers or agricultural equipment when operated on residential or public property between the hours of between the hours of 9:00 p.m. and 7:00 a.m. Sunday through Thursday or between the hours of 9:00 p.m. and 8:00 a.m. Friday and Saturday.
- J. Vibration. Operating or permitting the operation of any device that creates vibration which is above the vibration perception threshold of an individual at or beyond the property of the source if on residential property or at approximately 50 feet from the source if on public property or public right-of-way. For the purposes of this section, "vibration perception threshold" means the minimum ground- or structure-borne vibrational motion necessary to

cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

§91-8 All-terrain Vehicles

- A. No person shall operate or cause to be operated any all-terrain vehicle, as defined herein, that is not equipped with a properly functioning muffler system required pursuant to the New York State Vehicle and Traffic Law.
- B. No all-terrain vehicle shall be operated within 500 feet of any residence, except the residence of the owner or operator thereof, between the hours of 7:00 a.m. to 10:00 p.m.
- C. No all-terrain vehicle shall be operated within 1,000 feet of any residence, except the residence of the owner operator thereof, between the hours of 10:00 p.m. and 7:00 a.m.
- D. All-terrain vehicles used for agricultural purposes or for snowplowing on the property of the owner or operator shall be exempt from the restrictions set forth in subsections B and C.

Article II Exceptions.

§91-9 Exceptions to prohibited noises.

The provisions of this chapter shall not apply to the following situations:

- A. Sound and vibration associated with a legally operating non-residential use.
- B. Sound and vibration emitted for the purpose of alerting people in an emergency, including, but not limited to, sirens, public warning systems and public address systems.
- C. Sounds and vibrations from emergency work, municipal construction or repair, and/or demolition performed by or on behalf of a governmental entity.
- D. Sounds and vibration emitted in the performance of correcting any other emergency.
- E. Training activities by fire, law enforcement, and public utility officials that cannot reasonably take place within the parameters of this chapter, including but not limited to training that involves: hydrant testing, pumping hose lays, running chain saws, operating power tools, demolition, vehicle noise, and use of generators.
- F. Sounds created by bells or chimes as part of a religious observance or service.
- G. Sound from snow blowers, snow throwers, salt/sanding vehicles, and snowplows when operated with a muffler for the purpose of snow or ice removal.
- H. Sound from a residential burglar alarm provided such burglar alarm shall terminate its operation within five minutes after it has been activated.

- I. Sounds from farm operations conducted in a manner consistent with sound agricultural practices as determined by the New York State Department of Agriculture and Markets.
- J. Sounds from forestry operations conducted in a manner consistent with the Timber Harvesting Guidelines, published by the New York State Department of Environmental Conservation, as may be amended.
- K. Sounds from emergency generators used during power outages.
- L. Sound generated by municipality-sponsored concerts and events, including municipally-sponsored fireworks.
- M. Sounds generated by private fireworks, between the hours of 9:00 a.m. and 10:00 p.m. and provided their use is otherwise lawful.
- N. Sounds generated between 9:00 a.m. and dusk during activities conducted in parks, public playgrounds and school grounds. This exemption shall not supersede Town of Esopus and public or private school regulations pertaining to parks, playgrounds and school grounds.
- O. Sounds generated between 9:00 a.m. and 11:00 p.m. by outdoor gatherings, public dances, shows and sporting and entertainment events on public property, provided said events are conducted pursuant to a license or permit by the Town of Esopus or in the event that local approval is not required, the events are otherwise lawful.
- P. Sounds generated between 9:00 a.m. and 11:00 p.m. during school band, school athletic and school entertainment events.
- Q. Planning Board approvals. The Planning Board shall reserve the right to issue conditions and provisions for granting site plan approvals varying from the limitations set forth herein for proposed projects provided all of the following circumstances apply:
 - (1) Site plan approval is necessary;
 - (2) The noise level and/or time of day set forth herein are reasonable given the proposed use, location and surrounding uses;
 - (3) That the granting of the site plan approval authorizing the proposed use and associated noise will not be materially detrimental to the comfort, health, or safety of the public;
 - (4) The requesting applicant has provided a plan for mitigation of noise which will be implemented on the approval of the site plan; and
 - (5) The requesting applicant shall provide sound level readings at reasonable intervals as directed by the Planning Board to verify compliance with site plan conditions.
- R. The discharge of firearms for the purposes of hunting during the hours permitted by New York State law.

Article III Administration and Enforcement

§91-10 Measurement of sound levels.

- A. Sound level meter. Sound levels shall be measured on the A-weighting network (A-Weighted Sound Level) of a sound level meter meeting the requirements of latest version of the ASA Standards for General Purpose Sound Level Meters published by the American National Standards Institute, Inc., using the slow meter response. The meter shall be calibrated and used according to the manufacturer's instructions.
- B. Location of microphone. For sound originating indoors or outdoors from residential, commercial, industrial or public property, measurements shall be taken with the microphone located at the subject property line, unless otherwise directed, but no closer than three feet from any wall and not less than three feet above the ground. For sound originating from a public right-of-way, measurements shall be taken with the microphone at a distance of 50 feet from the noise source. When measuring sounds that originate within a dwelling unit of a two-family or multi-family dwelling unit building, all exterior doors and windows shall be closed and the measurements shall be taken in the center of the receiving room.
- C. Minimum of two readings. Unless circumstances require an alternative approach, including, but not limited to impulse sounds, a minimum of two readings shall be taken for a period of ten minutes each with ten-minute intervals between measurements. The sound level shall be the average of these readings.
- D. If necessary to accurately account for ambient noise levels, the offending sound may need to be silenced during the readings, if feasible.

§91-11 Administration and Enforcement

The noise control requirements established by this chapter shall be administered and enforced jointly by Town Building Inspector/Code Enforcement Officers and such other employees and/or officials authorized by the Town Board along with the Ulster County Sheriff and the NYS Police. A violation of any provision of this chapter shall be cause for a summons to be issued.

§91-12 Penalties.

Any person violating any of the provisions of this chapter shall be guilty of an offense and, upon conviction, shall be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or by both such fine and imprisonment.

Article IV Definitions

§91-13 Terms defined. All terminology used in this chapter, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

All-TERRAIN VEHICLE – Any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally

operated on public highways and as further defined by § 2281 of the New York State Vehicle and Traffic Law, or any successor statute. All-terrain vehicles shall include, but not be limited to, three-wheelers, four-wheelers, six-wheelers, off-road motorcycles and minibikes.

AMBIENT NOISE – The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

A-WEIGHTED SOUND LEVEL – The sound pressure level in decibels as measured on a sound level meter using the A-weighting frequency response, which provides the meter with a sensitivity to noise levels similar to the average human ear.

CONSTRUCTION – Any activity necessary or incidental to the erection, demolition, assembly, alteration, or installation related to buildings on residential or public property, public right-of-ways, public or residential roads, parks, including but not limited to land clearing, grading, earthmoving, excavating, blasting, filling and landscaping, but not including agriculture or ice and snow removal

dBA – The abbreviation designating the unit of sound level as measured by a sound level meter using A-weighting.

DWELLING, MULTIFAMILY – A building containing three or more dwelling units, including attached townhouse dwellings.

DECIBEL – The logarithmic unit used to measure sound level; abbreviated “dB.”

DEMOLITION – Any dismantling, intentional destruction, or removal of buildings or structures.

EMERGENCY – Any occurrence or circumstances involving actual or imminent physical or property damage which demands immediate action.

EMERGENCY WORK – Any work or action necessary to deliver essential service, including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging of waterways or abating life-threatening conditions.

FARM OPERATION – The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse-boarding operation, a timber operation, compost, mulch or other biomass crops and commercial equine operation, each as defined within §301 of the New York State Agriculture and Markets Law, as may be amended. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

FREQUENCY – The number of sound pressure oscillations per second, expressed in hertz; abbreviated “Hz.”

LEGALLY OPERATING USE – Any use of a structure or land that complies with applicable regulations of the Town of Esopus Town Code and is in compliance with any associated site plan, special use permit or other valid approvals.

NOISE – Any sounds of such level and duration as to be or tend to be injurious to human health or welfare or which would unreasonably interfere with the enjoyment of life or property throughout the Town.

NOISE DISTURBANCE — Either:

- A. 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; or
- B. A level of sound which, in each context described either annoys or disturbs a reasonable person of normal auditory sensitivities, or is clearly audible outside the structure or real property boundary from which it originates, or is loud, disturbing, unusual, unreasonable and unnecessary as well as audible outside the structure or the real property boundary from which it originates.

PROPERTY LINE – Either:

- A. A line of record, including its vertical extension, that bounds a parcel of real property and separates one parcel of real property from another or from a street or any other public space; or
- B. The vertical and horizontal boundaries of a dwelling unit that is within a two-family or multifamily dwelling.

SOUND – An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL – the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C, as specified in American National Standards Institute (ANSI) specifications for sound level meters.

SOUND LEVEL METER – Any instrument, including a microphone, amplifier, an output meter and frequency weighting networks for the measurement of noise and sound levels in a specific manner and which complies with standards established by the American National Standards Institute (ANSI) specifications for sound meters.

SOUND PRESSURE LEVEL – The level of a sound measured in dB units with a sound level meter which has a uniform (“flat”) response over the band of frequencies measured.

SOUND SOURCE – Any person, animal, device, operation, process, activity, or phenomenon which emits or causes sound.

VIBRATION – An oscillatory motion of solid bodies of deterministic or random natures described by displacement, velocity or acceleration with respect to a given reference point.

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Section 2. If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

Section 3. This local law shall take effect upon filing with the Secretary of State in accord with Article 3 of the Municipal Home Rule Law.

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York (State Environmental Quality Review Act) (“SEQRA”), the Town Board, as lead agency has classified this Action as an Unlisted Action as defined under said regulations; and

WHEREAS, pursuant to General Municipal Law §239-m and Esopus Town Code §123-51, the matter must be referred to the Ulster County Planning Board and to the Town of Esopus Planning Board for review and recommendation; and

WHEREAS, Supervisor Geuss advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this law. He offered the following resolution which was seconded by Councilperson _____, who moved its adoption; and

WHEREAS, on June 17, 2021, _____ has reintroduced this local law for the Town of Esopus, to be known as “Town of Esopus **Local Law No. 12** of the Year 2021, entitled **A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO CREATE CHAPTER 91, “NOISE CONTROL,” OF THE ESOPUS TOWN CODE.**

RESOLVED, that a public hearing be held in relation to the proposed local law as set forth in the form of notice, hereinafter provided, at which hearing parties of interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 1 Town Hall Way, Ulster Park, New York, on July 1, 2021, at 7:00 clock p.m., Prevailing Time, and that notice of said meeting shall

be published in the official newspaper of general circulation in the Town of Esopus, by the Town Clerk, at least ten (10) days before such hearing and that notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Esopus will hold a public hearing at the Town Hall, 1 Town Hall Way, Ulster Park, New York on July 1, 2021 at 7:00 p.m., on Revised **Local Law No. 12** of the Year 2021, A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO CREATE CHAPTER 91, “NOISE CONTROL,” OF THE ESOPUS TOWN CODE.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Esopus, at the Town Hall, 1 Town Hall Way, Ulster Park, New York between the hours of 9:00 a.m. and 4:00 p.m. by appointment and online at the Town of Esopus Website: <https://www.esopus.com/> on all business days between the date of this notice and the date of the public hearing.

PLEASE TAKE FURTHER NOTICE THAT, the Public Hearing will be held with limited in-person attendance. Interested participants may instead join via Zoom or view our live stream on the Town of Esopus Facebook Page or the broadcast on Local Public Access Channel 23.

DATED: Ulster Park, New York

_____, 2021

HOLLY A. NETTER, TOWN CLERK

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Geuss _____

Councilperson Clarke _____

Councilperson Quick _____

Councilperson Farrell _____

DATED: Ulster Park, New York

_____, 2021

HOLLY A. NETTER, TOWN CLERK