

TOWN OF ALBURGH NOISE CONTROL ORDINANCE

This Ordinance is adopted under authority granted in 24 V.S.A. Sec 2291(14) and 24 V.S.A. Chapter 59.

PURPOSE

This ordinance is enacted by the Town of Alburgh Select Board to protect, preserve and promote the health, safety, and welfare, peace and quiet for the citizens of Alburgh through the reduction, control and prevention of noise. The intent is to establish standards which will eliminate and reduce unnecessary noises which are physically harmful or otherwise detrimental to the enjoyment of life, property and maintenance of business. It is the goal of this ordinance to create an environment that will allow all residents of the Town to coexist in a manner which is mutually respectful of the interests and rights of other. This Ordinance will come into effect **after the failure of less formal intervention** such as, but not limited to, citizen to citizen contact, verbal warning, mediation between parties, etc.

DEFINITIONS

2.1 Plainly Audible – Any sound that can be detected by a person using his or her unaided hearing faculties. **As an example**, *if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.*

2.2 Unreasonable Sound – 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 sensibilities within the Town of Alburgh. Elements to be considered in determining whether noise is excessive in a given situation include, but are not limited to the following: *intensity of the noise, whether the noise is usual or unusual, whether the origin of the noise is natural or unnatural, the intensity of the ambient noise, the proximity of the noise to sleeping facilities, the time of day or night the noise occurs, the duration of the noise, whether the noise is continuous or intermittent, and/or whether alternate methods are available to achieve the objective of the sound producing activity.*

2.3 Municipal Official – *Any member of the Selectboard, Municipal Clerk, Municipal Clerk Assistant, Town Health Officer, Town Constable.*

GENERAL PROHIBITIONS

It shall be unlawful for any person to make or cause to be made any loud or unreasonable noise (see definitions 2.2) on a daily or recurring basis or for an excessive period of time. Noise shall be deemed to be unreasonable **when** upon investigation by a Municipal Official or Law Enforcement Official it is found to disturb, injure or endanger the peace, health, safety or welfare of another or to disturb, injure or endanger the peace, health, safety or welfare of the community. Any such noise shall be considered to be a noise disturbance and a public nuisance.

EXPRESS PROHIBITIONS

The following acts, not deemed to be exclusive, are declared to be loud, objectionable, and unnecessary noises, are therefore a public nuisance, and are prohibited by this ordinance,

1) Construction Noise

Noises emanating from the excavation, demolition, alteration or repair of buildings, structures, property or highways between the hours of 11:00pm and 5:00am except for emergency repairs necessary to protect people and/or property.

2) Defect in Vehicle or Operation of Vehicle

The operation of any automobile, motorcycle or other type of motor vehicle, at any time of the day or night, in such a manner as to create squealing of tires or loud and unnecessary grating, grinding, exploding, rattling or other types of noises.

3) Dogs, Cats and Other Animals

The keeping of any dog, cat or other animal, which shall become a nuisance to another person in the vicinity by frequent or continued barking, howling, yelping or screaming. Customary agricultural activities are exempt.

4) Exhausts

The discharge into the open air of the exhaust of any steam or internal combustion engine, or any motorized vehicle, except through a muffler or other device, which effectively prevents loud or explosive noises there from.

5) Horns, Signaling Devices, etc.

The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle except as a danger warning, the creation by means of any other signaling device or any unreasonably loud or harsh sound and the sounding of any device for unnecessary and/or unreasonable periods of time.

5) Sound Producing Devices

The use or operation of any amplifier, loudspeaker, musical instrument, phonograph, radio or other sound-making or sound-producing device between the hours of 11:00PM and 6:00AM **and** is plainly audible from 200 feet of the sound source, in such manner as to disturb the quiet or repose of any person or persons in the vicinity thereof, unless issued a special use permit by the Town of Alburgh Select Board.

6) Vocal Disturbances

Yelling, shouting, whistling, singing or making any other loud vocal disturbance so as to disturb, destroy or endanger the peace of persons in the immediate vicinity of the noise or disturbance. This section shall not be construed to prohibit a vocal disturbance by spectators or participants in a political protest or rally, an athletic event or assembly sponsored by a public or private school or recognized organized recreational activities.

7) Noise in General

Any noise which is deemed objectionable because of volume, frequency or beat and which is not muffled or otherwise controlled. Occurs between the hours of 11:00pm and 6:00am and is plainly audible at a distance of 200 feet from the sound source.

EXEMPTIONS AND EXCLUSIONS

Sounds from the following sources shall be exempt from the prohibitions specified in this Ordinance -

- 1) Any person or organization may appear before the Alburgh Select Board to request a temporary waiver of a specific section(s) of the Ordinance, i.e. parade, block party, fireworks display. etc.
- 2) Any siren or other warning device used for public safety.
- 3) Any vehicle or equipment owned by and operated by any governmental body or a utility in the performance of its duties.
- 4) Emergency vehicles operated by fire, police or rescue personnel.
- 5) Any government or utility emergency repair. Any construction activity, other than government or utility emergency repairs, to occur between the hours of 11:00pm and 5:00am and that is deemed to be in the best interest of the public health, safety and welfare.
- 6) Musical, recreational and athletic events conducted by and on the site of a school or educational facility or municipal facility or are sponsored by the municipal, state or federal government.
- 7) Noise associated with routine snow removal or snow grooming activities where customary practices and equipment are used and are operated within the manufacturer's specifications and in proper operating condition.
- 8) Noise associated with standard agricultural operations.
- 9) Sound created by bells, carillons or chimes associated with specific religious observances.

PROCESS

- 1) Citizen to citizen contact to resolve the complaint peacefully.
- 2) Report the complaint to a Municipal official so that he or she may investigate the complaint and resolve the issue. Upon findings of validity, Municipal official may issue a verbal warning.
- 3) Report to a Law Enforcement official so that he or she may investigate the complaint and resolve the issue. Upon findings of validity, the Law Enforcement official may issue a verbal warning.
- 4) A complaint is lodged with the Sheriff's Department. Sheriff's Department will investigate and handle appropriately by law.
- 5) Tickets will be issued by the Law Enforcement official if other steps have been taken and the disturbance continues.

ENFORCEMENT AND PENALTIES

8.1. Enforcement - Any certified Vermont Law Enforcement officer shall be the designated enforcement officer. Such Officer may issue complaints and may be the appearing officer at any hearing.

8.2. An Enforcement officer may issue a Vermont Civil Violation Complaint to the individual responsible for any sound in violation of this ordinance including the driver of a motor vehicle, or the first registered owner of the vehicle, the owner of record or a resident of a single family home, or apartment, the proprietor of a business or the person who is in physical control of the sound emitting device or animal responsible for the unreasonable or excessive noise.

PENALTIES

9.1. First offense - A first offense of any provision of this ordinance by a person shall be deemed a civil violation and shall be punishable by a fine of not more than one hundred and fifty dollars (*\$150.00*). The waiver fee shall be set at one hundred dollars (*\$100.00*).

9.2. Second and subsequent offenses - A second offense during a twelve month period from the date of the first offense, shall be deemed to be a civil violation and shall be punishable by a fine of two hundred fifty dollars (*\$250.00*). The waiver fee shall be set at two hundred dollars (*\$200.00*). Each subsequent offense shall be deemed a civil violation and shall be punishable by a fine of five hundred dollars (*\$500.00*). The waiver fine shall be four hundred dollars (*\$400.00*).

9.3. Payment Deadline - All fees must be paid within thirty (30) days of receipt of notice. If fees are paid after thirty days, an additional fee of \$10.00 will be charged.

9.4. Each day on which a violation occurs or continues after receiving a violation complaint shall be considered a separate violation of this Ordinance.

A violation of this Ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. § 1974a and 1977 ET. Seq. Following a written notice for a first offense, a penalty of not more than \$500 may be imposed for a violation of this Ordinance and the waiver fee shall be set at \$100 for the first offense, \$150 for the second offense within a six-month period and \$200 for each subsequent offense within a six-month period. Each day of a violation shall constitute a separate violation of this Ordinance.

NOTICE AND IMPLEMENTATION

The Alburgh Select Board shall make reasonable efforts to ensure that the public is notified of the existence of the Ordinance.

This Noise Ordinance shall be entered into the Selectmen's minutes, shall be posted in at least five (5) conspicuous places within the Town of Alburgh and the full text of the ordinance or a concise summary of it will be published in the Islander not more than fourteen (14) days following the date specified when this Ordinance is adopted.

This Noise Ordinance is hereby adopted by the Alburgh Select Board on 27th day of August, 2014 and shall unless a petition signed by at least 5% of the voters of Alburgh is filed with the Town Clerk by 12th day of October 2014 asking for a vote to disapprove the ordinance, become effective upon the expiration of sixty (60) days after said date which is the 11th day of December 2014.

Citizens have the right to petition for a vote on this Ordinance at the Annual or Special Town Meeting as provided in 24 VSA § 1973.

If any portion of this Ordinance and/or any amendments are held unconstitutional or invalid by a court of competent jurisdiction the remainder of this Ordinance and/or amendments shall not be affected.

This Ordinance is designated as a Civil Ordinance pursuant to 24 VSA § 1971 (b). Adopted by the Select Board in Alburgh, Vermont on this 27th day of August 2014.

THE ALBURGH SELECTBOARD

Robert Creller Jr: _____ Date: _____

Chairman

Alton Brusco: _____ Date: _____

Guy Palardy: _____ Date: _____

Steve Aubin: _____ Date: _____

Bernard Savage Sr: _____ Date: _____

Attest: _____ Date: _____

Donna L. Bohannon – Alburgh Town Clerk