

PART II – GENERAL LEGISLATION

Chapter 154 – Noise Control

[Adopted September 1, 1986, Amended and Adopted, December 27, 2012, as Chapter 154 of the Code]

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Article I – Short Title, Policy and Definitions

Section 154-1.01 – Short Title – This chapter shall be known as the Noise Control Law of the Village of Marcellus

Section 154-1.02 – Policy

The psychological effect of noise is commonly described as annoyance. Among the physical factors that determine when a noise is annoying are its intensity, tonal content, duration and variability with time, the background sound level, and time of day. Some of the psychological variables are the predictability of occurrence, the context in which the noise occurs and the activities affected, the meaning of the noise and whether it causes feelings of stress, the relative importance of the noise source and whether the listener believes the noise is avoidable. Because of the complex subjective nature of these factors, compliance with the requirements of a local noise law will not necessarily guarantee that all individuals in a community will be willing to accept a particular sound. That is, depending upon the particular local circumstances a public nuisance condition may still exist, due to unquantifiable subjective factors, even though the sound level values incorporated in a noise law are not exceeded.

It is hereby declared to be the policy of the Village of Marcellus to prevent excessive, unnecessary or unusually loud noise. It is further declared that the provisions and prohibitions hereinafter contained and enacted re in pursuance of and for the purpose of preserving, protecting and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the Village of Marcellus and its inhabitants.

This chapter shall be liberally construed so as to effectuate the purposes described in this section. Nothing herein shall be construed to abridge the emergency powers of any health department or the right of such department to engage in any necessary or proper activities. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this chapter.

Section 154-1.03 – Definitions – Unless otherwise indicated by context, the following terms and phrases shall mean:

Activity - shall mean any act or combination of acts, which causes the production of sound.

Administrator - shall mean Code Enforcement Officer or Police Officer.

Air compressor - shall mean a mobile device that draws in air or gas, compresses it, and delivers it at a higher pressure to another device.

Air conditioning and air handling devices shall mean any device that is designed to be used or is actually used to cool, move or condition air, including but not limited to air conditioners, cooling towers, fans and blowers.

Authorized emergency vehicle shall mean every ambulance, police vehicle, fire vehicle and civil defense emergency vehicle.

Best practical noise control measures means any device or method which reduces the generation or transmission of noise and is determined by the administrator to be feasible, taking into consideration the age of the equipment and facilities involved, the cost of such measures, the processes employed and the non-noise control environmental impact.

Burglar alarm shall mean any sound signal device designed and intended to produce an audible sound signal upon an attempted unauthorized entry into a building or motor vehicle.

Commercial operation means any business or commercial activity that involves the purchase or utilization of goods or services.

Construction shall mean any activity necessary or incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private highways, roads, premises, parks, utility lines or other property, including but not limited to related activities such as land clearing, grading, earthmoving, excavating, blasting, filling and landscaping, but not including agriculture.

Construction material means any material, regardless of its composition, designed and customarily used in construction.

Container shall mean any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper or any other material whatsoever, including but not limited to any barrel, basket, bale, box, crate, tub, bottle, can or refuse container.

Device shall mean any machine, mechanism or equipment which is intended to or which actually produces sound or vibration.

Emergency shall mean a public calamity, utility services failure, or an exposure of any person or property to actual or imminent danger

Emergency warning device shall mean any sound signal device that is designed to be used, and is actually used to warn of an emergency.

Industrial operation shall mean the production, fabrication and storage of durable and nondurable manmade goods.

Law/Chapter shall mean this noise control law of the Village of Marcellus.

Motor vehicle shall be as defined in the Motor Vehicle Law whether licensed or unlicensed.

Off road recreational vehicle shall mean any vehicle, which is propelled by any power other than muscular power that is designed for or capable of cross-county travel such as a motorcycle, trail bike, but not a snowmobile.

Owner shall mean any person who has regular control of a device or site, including but not limited to the owner of the legal title of the premises or lesser estate therein, including a tenant or lessee, or agent of such person.

Person shall mean any individual, partnership, company, public or private corporation, association, firm, organization, political subdivision, governmental agency, administration or department, municipality, trust, estate, group of individuals, or any other legal entity whatsoever.

Public highway shall mean any highway, road, street, avenue, alley, public place, public driveway or any other public way.

Real property boundary shall mean an imaginary line exterior to any structure, along the ground surface, which separates the real property owned by one person from that owned by another person, and the vertical extension of such line.

Refuse collecting vehicle shall mean any vehicle that is designed to be used, or is actually used to collect and transport refuse, garbage or trash.

Snowmobile shall mean any self-propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats.

Sound reproduction device shall mean any device that is designed to be used, or is actually used for the production or reproduction of sound, including but not limited to any

musical instrument, radio, television, tape recorded, phonograph or other sound amplifying device.

Sound signal device means any device that is designed to produce a sound or transmit nonverbal information.

Sound source site means any land under the ownership or control of a person in or upon which one or more sound sources are located. The sound source site includes all individual sound sources that are located on each site, whether stationary, movable or mobile.

Unnecessary noise shall mean any excessive or unusually loud sound or any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a person, or which causes injury to animal life or damages to property or business; standards to be considered in determining whether unnecessary noise exists in a given situation, including but are not limited to the following:

- (i) The intensity of the noise.
- (ii) Whether the nature of the noise is usual or unusual.
- (iii) Whether the origin of the noise is associated with nature or manmade activity.
- (iv) The intensity of the background noise, if any.
- (v) The proximity of the noise to sleeping facilities.
- (vi) The nature and the zoning district of the area within which the noise emanates.
- (vii) The time of the day or night the noise occurs.
- (viii) The time duration of the noise.
- (ix) Whether the sound source is temporary.
- (x) Whether the noise is continuous or impulsive.
- (xi) Whether alternate methods are available to achieve the objectives of the sound producing activity.

Zoning district shall have the same meaning as provided by the zoning ordinance of the Village of Marcellus.

Article II – General Provisions

Section 154-2.01 – General Powers of the Administrator – Subject to the provisions of this chapter, the administrator may take such action as may be necessary to abate a sound source which causes or may cause, by itself or in combination with any other sound or sources, an unnecessary noise. The administrator may exercise or delegate any of the functions, powers and duties vested in him or in the administration by this chapter.

Section 154-2.02 – Investigations and Studies by the Administrator – The administrator may make or cause to be made any investigation or study which in his opinion is desirable for the purpose of enforcing this chapter or controlling or abating an unnecessary noise. For such

purposes, the administrator may make tests, conduct hearings, compel the attendance of witnesses, and take their testimony under oath and may compel the production of books, papers, and other things reasonably necessary to the matter under consideration.

Section 154-2.04 – Inspection

(a) The administrator may inspect at any reasonable time and in a reasonable manner any device or site, which creates or may create unnecessary noise including but not limited to the premises where the device is used.

(b) The administrator may inspect at any reasonable time and in a reasonable manner any record relating to a use of a device or site, which creates or may create unnecessary noise.

(c) No person shall refuse entry or access into the public area of multiple dwellings or a place of business to the administrator who presents appropriate credentials nor shall any person refuse entry or access into any other portion of a premise to the administrator who presents appropriate credentials and a search warrant.

Section 154-2.05 – Display of Required Notices – Any notice required by this chapter shall be displayed in the vicinity of the device as designated on the notice or displayed in the vicinity of the place where the device will be operated or supervised.

Section 154-2.06 – Enforcement by Other Than Compulsory Means – The administrator may take action to obtain voluntary compliance with the provisions of this chapter by way of warning, notice or educational means. Such non-compulsory methods need not be used before proceeding by way of compulsory enforcement.

Section 154-2.07 – Service of Papers – Service of any written notice, order or decision required by this chapter shall be made to a person as follows:

(a) Either by mailing the notice, order or decision directed to the person at the address listed in his application, permit or operating certificate or at the address where the sound source is located; or,

(b) By leaving the notice, order or decision with the person, or if the person is not an individual, with a member of the partnership or group concerned or with an officer of managing agent of the corporation.

Section 154-2.08 – Other Laws and Regulations – Nothing in this chapter shall restrict any right which any person may have under any statute, including but not limited to, Environmental Conservation Law, Vehicle and Traffic Law, Labor Law and the Industrial Code, or common law, to seek enforcement of any noise control requirement or to seek any other relief.

Section 154-2.09 – Severability – If any provisions of this chapter are held invalid, such invalidity shall not affect other provisions, which can be given effect without the invalid provisions.

Section 154-2.10 – Pre-existing Unnecessary Noise – Unnecessary noise existing from any source not exempt hereunder shall not be grandfathered, permitted or classed as non-conforming under this chapter.

Article III – Prohibitions

Section 154-3.01 – General Prohibition – No person shall make, continue or cause or permit to be made any unnecessary or unreasonable noise. The following acts are declared to be prime facie evidence of a violation of this article and are prohibited, but said enumeration shall not be deemed to be exclusive.

Section 154-3.02 – Commercial Operation – No person shall permit or permit to be operated a commercial operation, which produces an unnecessary noise as defined herein.

Section 154-3.03 – Churches, Courts, Hospitals and Schools – No person shall cause or permit the creation of any unnecessary noise through the use of any device on any street, sidewalk or public place adjacent to any church, court, or school while such church, court or school is in use, at any time, provided that signs are displayed so as to identify such church, court, or school.

Section 154-3.04 – Construction

(a) Except as otherwise provided herein, no person shall conduct or permit to be conducted construction, alone or in combination with other construction conducted or permitted by such person in a manner as to cause unnecessary noise between 9:00 p.m. and 7:00 a.m. Monday to Saturday, inclusive or at any time on Sundays or legally declared holidays.

(b) The provisions of this section shall not apply to the following:

1. Emergency work, and safety protective devices
2. Domestic power tools subject to Section 154-3.12 herein.

Section 154-3.05 – Emergency Warning Devices – No person shall operate or cause to be operated any emergency warning device, except

- (a) To give notice as a warning of an emergency,
- (b) On an authorized emergency vehicle when such vehicle is engaged in emergency operations provided that such device shall not be operated so as to create unnecessary noise or for a period of time longer than is necessary to respond to such emergency,
- (c) When such device is under test.

Section 154-3.06 – Defect in Vehicle or Load – No person shall operate or permit the operation of any motor vehicle in such manner or so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling or other noise.

Section 154-3.07 – Exhausts – Except as otherwise provided in this chapter, no person shall cause or permit the discharge into the open air of the exhaust of any device, including but not limited to any steam engine, diesel engine, internal combustion engine or turbine engine, so as to create unnecessary noise.

Section 154-3.08 – Loading and Unloading – No person shall load, unload, handle or transport any containers, materials and solid waste being disposed in such a manner as to create unnecessary noise between the hours of 9:00 p.m. and 6:00 a.m. the following day.

Section 154-3.09 – Loudspeakers and Public Address Systems

(a) No person shall use, operate, or permit the use or operation of any loudspeaker, public address system, or similar device for any non-commercial purpose between the hours of 9:00 p.m. and 7:00 a.m. of the following day, such that the sound therefrom creates unnecessary noise across a residential real property boundary.

(b) No person shall use, operate, or permit the use or operation of any loudspeaker, public address system, or similar device for any commercial purpose:

1. Such that the sound therefrom creates unnecessary noise across a real property boundary,
2. Between the hours of 9:00 p.m. and 7:00 a.m. of the following day on a public highway.

Section 154-3.10 – Modification of Noise Control Devices – No person shall operate or permit to be operated, any device that has been modified so as to cause the sound emitted from such device to be greater than that emitted by such device as originally manufactured so as to create unnecessary noise.

Section 154-3.11 – Off Road Recreational Vehicles

(a) No person shall operate or permit to be operated an off-road recreational vehicle unless such vehicle shall at all times be equipped with an adequate muffler and exhaust system in constant operation and properly maintained to prevent any unnecessary noise; no such muffler or exhaust system shall be equipped with a cut-out, bypass, or similar device.

(b) No person shall modify or cause to be modified the muffler, exhaust system or other noise control device on an off-road recreational vehicle in a manner, which will increase the noise emitted by such vehicle above that emitted by the vehicle when newly manufactured, regardless of the date of manufacture. No person shall operate or permit to be operated an off-road recreational vehicle so modified if it creates unnecessary noise.

Section 154-3.12 – Powered Equipment and Tools – No person shall operate or permit to be operated any domestic power tool including but not limited to mechanically powered saws, sanders, grinders and, lawn and garden tools used outdoors in residential areas between the hours of 10:00 p.m. and 7:00 a.m. of the following day so as to cause unnecessary noise across a residential real property boundary.

Section 154-3.13 – Sound Reproduction – No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:

(a) Between the hours of 10:00 p.m. and 7:00 a.m. of the following day in such a manner as to create unnecessary noise across a real property boundary; except for activities open to the public and for which a permit has been issued by the Board of Trustees upon application,

(b) In such a manner as to create unnecessary noise at 50 feet from such device when operated in or on a motor vehicle on a public highway

Section 154-3.14 – Sound Signal Devices – No person shall operate or cause to be operated any sound signal device so as to create unnecessary noise, except,

(a) As required by the Vehicle and Traffic Law of the State of New York,

(b) To give notice of the time to start and stop work,

(c) As attendant to educational and/or religious activities.

Section 154-3.15 – Squealing Tires – No person shall operate a vehicle in such a manner as to cause unnecessary noise by spinning or squealing the tires of such vehicle.

Section 154-3.16 – Street Sales – No person shall offer for sale or sell anything by shouting or outcry within any residential or commercial area.

Article IV – Enforcement

Section 154-4.01 – Powers of the Administrator – The administrator pursuant to the provisions of this chapter shall have the power to:

(a) Order the owner of any device which causes or is maintained or operated so as to cause a violation of any provision of this chapter or any order or regulation promulgated by the administrator to install any apparatus which can reasonably be expected to correct the violation, or to repair, properly maintain, replace or alter such device in a manner which can reasonably be expected to correct the violation

(b) Seal any device, which causes or is maintained or operated so as to cause a violation of any provision of this chapter or order or regulation promulgated by the administrator.

(c) Order any person to cease and desist from any activity, which causes or is conducted so as to cause, a violation of any provision of this chapter or any order or regulation promulgated by the administrator.

(d) Impose a civil penalty in such instance in an amount no greater than Fifty Dollars against any person who violates a provision of this chapter or any order or regulation promulgated by the administrator. Each day during which such violation continues shall constitute a separate violation. The administrator may remit, in whole or in part, such civil

penalty if such person is no longer in violation of a provision of this chapter, or any order or regulation promulgated by this administrator.

(e) Impose a civil penalty in an amount no greater than Five Hundred Dollars (\$500) on any person who willfully breaks a seal placed on a device pursuant to this chapter.

(f) Conduct administrative and public hearings pursuant to this chapter and by the issuance of a subpoena, compel the attendance of witnesses and the production of any books, papers or other things relating to the matter under investigation.

Section 154-4.02 – Notice of Violation

(a) Notice, required by this article, shall be given by issuance of a notice of violation.

(b) Whenever the administrator has reasonable cause to believe that a violation of any provision of this chapter or any order or regulation promulgated by the administrator may exist, he shall cause to have a notice of violation issued and served on:

1. The person in violation, or,
2. An owner with an equity interest in the device in violation, if any, or
3. If an owner with an equity interest in the device in violation cannot be located with due diligence, any other owner of said device.

(c) A notice of violation shall:

1. Specify the section or sections of this chapter, order or regulation that such person or device has violated; and,
2. Indicate the amount of the civil penalty that applies; and,
3. Contain a brief statement of the nature of the violation; and,
4. Require a written response within a stated time, but no less than ten (10) days, and,
5. Require such person or owner of a device to appear at an administrative hearing at a time and place designated to answer the allegations in the notice of violation, and,
6. Prepare a written decision or, findings within ten (10) days of the hearing which shall be filed with the Village Clerk and served upon the person notified of the violation within said time by certified mail or personally.

Section 154-4.03 – Appeals

(a) Appeals of the decision or findings of the administrator may be taken to the Zoning Board of Appeals in the following instances:

1. By the owner of the noise source who is affected by the administrator's decision or finding in the event the administrator determines same to be unnecessary noise; or
2. By any five (5) persons residing in at least two separate living units or residences in the event the administrator determines that the sound is not unnecessary noise.

(b) An appeal may be taken by filing a written notice of appeal with the Village Clerk within twenty (20) days of the date of the administrator's decision or finding signed by all the appealing parties stating the nature and grounds of the appeal.

(c) Such appeal shall be conducted by the Zoning Board of Appeals at a public hearing conducted on ten (10) days notice in the official newspaper of the Village. This appeal shall be

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done at which time the record will be reviewed and additional evidence may be received by the Zoning Board of Appeals in its discretion and it may engage consultants to assist in its determination. The Zoning Board of Appeals may sustain, reject or modify the administrator's decision or findings and shall do so in writing.

(d) Publication costs for the notice of the hearing on the appeal shall be paid by the appealing party or parties and paid to the Village Clerk prior to the hearing on the appeal.