

**SOUTHEAST TOWN BOARD
PUBLIC HEARING NOTICE**

PLEASE TAKE NOTICE that the Town Board of the Town of Southeast shall hold a Public Hearing at the Town Hall, 1360 Route 22, Brewster, NY, on December 23, 2021 at 7:00 PM or as soon thereafter as interested parties may be heard, pursuant to the Municipal Home Rule Law to consider a proposed local law which would amend Chapter 96 of the Town Code entitled “Noise” to provide certain definitions regarding noise levels and duration, noise disturbance, amplified noise, audible, and unreasonable noise; to clarify regulations regarding plainly audible and prohibited noise and outdoor amplified noise; amend exemptions for use of certain gas powered lawn maintenance devices; and provide additional specifications for noise measuring devices. Copies of the full text of the proposed local law are available from the Town Clerk during normal business hours. All persons having an interest in the foregoing matters will be given an opportunity to be heard at this time.

BY ORDER OF THE TOWN BOARD
Hon. Michele Stancati, Town Clerk

Town of Southeast, Putnam County, NY

Local Law No. __ of 2021

A LOCAL LAW entitled: "A Local Law to Amend Chapter 96 of the Town Code, 'Noise'."

Be it enacted by the Town Board of the Town of Southeast, Putnam County, New York, as follows:

SECTION I: LEGISLATIVE INTENT

The purpose of this local law is to prevent the generation of excessive, unnecessary or unusually loud noise within the Town of Southeast, for the purpose of preserving protecting and promoting the public health, comfort, convenience, safety, welfare, and prosperity of its inhabitants.

SECTION II: AMENDMENTS TO ARTICLE I GENERAL PROVISIONS

Section 96-4, "Definitions" is hereby amended, in part, as follows:

A. Certain words used in this chapter are defined and explained in definitions which follow, and the other words in this chapter shall have the meanings commonly attributed to them. Doubts as to the precise meaning of words in this chapter shall be determined by the Code Enforcement Officer, in a written letter, giving due consideration to the expressed intent and purpose of the chapter.

B. For the purpose of this chapter, the following definitions shall apply:

A-WEIGHTED SOUND LEVEL — The sound pressure level measured with a meter using an "A-Weighted" frequency response as prescribed by the American National Standards Institute (ANSI), or its successor. A-Weighting is used to approximate the average human ear's response to a range of sound frequencies.

AMBIENT NOISE — The background average noise level within an area exclusive of any extraneous sounds.

AUTHORIZED EMERGENCY VEHICLE — Every ambulance, police, fire or civil ~~defence~~ defense emergency vehicle.

CALIBRATION — The checking of the calibration of the microphone and electronics of a sound level measuring device using an appropriate calibrator traceable to National Institute of Standards and Technology (NIST) criteria.

CLASS A (RESIDENTIAL) — Lands and structures which are used by people for living and sleeping overnight on a regular basis. This class shall include lands within the RMF, R-20, R-40, R-60, R-80, R-160, and LTW Zoning Districts.

CLASS B (RETAIL/COMMERCIAL) — Lands intended primarily for retail and commercial uses. "Class B" shall include lands within the ~~RC, NB-1, NB-2, GC-1, GC-2, HC-1, and RT22 Zoning Districts.~~ RC, RC-2, NB, GC, HC, SR-6, and SR-22 Zoning Districts.

CLASS C (OFFICE/WAREHOUSE/LIGHT INDUSTRIAL) — Lands intended primarily for office, warehouse, and light industrial uses. "Class C" shall include lands within the ED, OP-1, OP-2, and OP-3 Zoning Districts.

COMMERCIAL OPERATION — Any business or commercial activity that involves the purchase or utilization of goods or services.

CONSTRUCTION — Any activity necessary or incidental to the erection, demolition, assembly, alteration, or equipping of buildings, public or private highways, roads, premises parks, utility lines or other property.

CONSTRUCTION ACTIVITY — Any activity necessary or incidental to the erection, demolition, assembly, alteration, or equipping of buildings, public or private highways, roads, premises, parks, utility lines or other property.

CONSTRUCTION WORK — All work performed by one or more employees and/or independent contractors pursuant to an oral or written agreement for compensation and involving the construction, reconstruction, demolition or removal of buildings or major repairs to buildings, the excavation, clearing, filling or grading of land or the placement or removal of earth, stone or building material of any kind, whether or not the work involves the use of machinery or power tools. The term "construction work" shall not mean the performance of necessary emergency repairs.

CONTINUOUS SOUND — Any sound that is not an impulsive sound.

DAYTIME — From 7:00 a.m. to 8:00 p.m.

DBA — The abbreviation for A-weighted sound level in decibels.

DEVICE — Any machine, mechanism, or equipment which is intended to or which actually produces sound or vibration.

DISCRETE TONE — A sound wave whose instantaneous sound pressure varies essentially as a simple sinusoidal function of time. Such sound wave may exist alone or as a component of a complex sound wave.

EMERGENCY — A public calamity, utility services failure, or an exposure of any person or property to actual or immediate danger.

EMERGENCY OPERATIONS — The operation or parking of an authorized emergency vehicle, when such vehicle is engaged in response to an emergency. "Emergency operations" shall not include return from such service.

EMERGENCY WARNING DEVICE — Any sound-generating device that is designed to be used to warn of an emergency.

EMERGENCY WORK — The work or activity that is necessary to prevent or recover from an emergency, including but not limited to, work to repair electric, gas, water, sewer, or telephone services.

EQUIVALENT SOUND PRESSURE LEVEL (Leq) — The steady sound level that, over a specified period of time, would produce the same energy equivalence as the fluctuating sound level actually occurring.

FAST RESPONSE — The characteristics of a sound level meter which allows for accurate measurement of impulsive sound such as horn blasts, firearm discharge or vehicle pass-by.

GENERATING LAND — The land whereon the sound is being generated or emitted.

IMPULSIVE SOUND — A sound characterized by excursions of the sound pressure which exceed the ambient sound, by six or more decibels, but last two seconds or less.

INDUSTRIAL OPERATION — The production, fabrication, and storage of manmade goods, and the production, transformation and storage of energy in all forms.

L1 – The sound pressure level that is exceeded 1 percent of the time during the measurement period.

LEQ — See "equivalent sound pressure level".

LEQ(1hr) — The Leq noise level for a specific one-hour period.

MAXIMUM SOUND LEVEL — The recorded or noted maximum RMS (root-mean-square) sound pressure level noted using an instrument which meets the requirements of the ordinance.

- (1) Maximum impulsive sound level shall be measured using the "fast response" setting.
- (2) Maximum continuous sound level shall be measured using the "slow response" setting.

NIGHTTIME — From 8:01 p.m. to 6:59 a.m.

NOISE DISTURBANCE – Any sound which:

- (1) Is of a kind or nature that has the reasonable possibility of endangering or injuring the safety or health of humans or animals; or
- (2) Intends to cause public inconvenience, annoyance or alarm that a person of normal sensitivities would not tolerate; or
- (3) Endangers or injures personal or real property.

OUTDOOR AMPLIFIED NOISE – Any sounds that are projected mechanically or electronically emanating from a property, including announcements, music, or entertainment intending to be broadcast to other properties from the source.

OWNER — Any person who has regular control of a device or site, including, but not limited to, the owner freehold of the premises or lesser estate therein, or an agent of such person.

PERSON — 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.

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 outdoor amplified noise from a home stereo system 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 noise is sufficient to constitute a plainly audible sound.

PUBLIC HIGHWAY — Any highway, road, street, avenue, alley, public driveway, or any other public way.

PUBLIC PLACE — Any real property or structures thereon which are owned or controlled by a governmental entity.

REAL PROPERTY BOUNDARY — An imaginary line exterior to any structure, along the ground surface, which separated the real property owned by one person from that owned by another person, and the vertical extension of such line.

RECEIVING LAND — The property line of the real property where the sound is being heard, and where appropriate level of restrictions apply. In the case of an apartment, townhouse, or condominium, the point-of-measurement is within the affected unit.

SOUND LEVEL — The quantity, in decibels, measured using an instrument satisfying the requirements of ANSI S1.4-1983 (R2006). "Sound level" is the frequency-weighted (see "A-weighting") or 1/3-octave band sound pressure level obtained with "fast" or "slow" response.

SOUND LEVEL METER — An instrument designed to detect and measure sound pressure levels and display this information in decibels, in an analog or digital form. An instrument meeting the requirements of this code shall conform to the requirements of ANSI S1.4-1983 (R2006), Type 1 or Type 2.

UNREASONABLE NOISE

Any sound which by reason of its duration, intensity, or the hour of the day or night inappropriately interferes with the quiet enjoyment and repose of nearby properties and the reasonable expectations of privacy of inhabitants of such properties.

SECTION III: AMENDMENTS TO ARTICLE II PROVISIONS

Article II, "Provisions" is hereby amended, in part, as follows:

§ 96-5. Noise Emanating from real property.

It shall be unlawful for the owner or occupant of any parcel of land to create or permit the creation of unreasonable noise or sound which exceeds the levels shown on the following table for receiving land use:

- A. Continuous Sound. Maximum sound level in dBA: slow response receiving land use category:

Class	Day	Night
Class A (Residential)	65	55
Class B (Retail/commercial)	70	60
Class C (Office/warehouse/light industrial)	80	70

- B. Impulsive Sound. Maximum sound level in dBA: fast response receiving land use category:

Class	Day	Night
Class A (Residential)	75	65
Class B (Retail/commercial)	80	70
Class C (Office/warehouse/light industrial)	90	80

- C. With impulsive noise, the following adjustment in the allowable maximum levels shall apply:

- (1) From three to 10 repetitions per hour, deduct one dBA.
- (2) From 11 to 20 repetitions per hour, deduct two dBA.
- (3) From 21 to 60 repetitions per hour, deduct three dBA.
- (4) For over 60 repetitions per hour, deduct four dBA.

- D. General conditions.

- (1) For the purposes of evaluating sections 96-5(A) and 96-5(B) above, Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be taken at the property line for twenty-minute durations. The calculated time-weighted one-hour average [Leq(1hr)] shall be the measurement parameter used to identify any violations of these subsections this chapter.
- (2) In the event that the background noise (ambient) level for a given land use exceeds the standards above, the following maximum sound levels, measured using the criteria above, shall apply:
 - (a) Any continuous sound which exceeds the ambient by five dBA or more.

- (b) Any impulsive sound which exceeds the ambient by 10 dBA or more, with the above adjustment applied.

E. Plainly Audible Unreasonable Noise Prohibited.

Notwithstanding the above, no person shall make, cause, allow, or permit to be made any plainly audible unreasonable noise within the geographical boundaries of the Town except as otherwise provided herein. The standards to be considered in determining whether a plainly audible unreasonable noise exists include the following:

- (1) The volume of the noise;
- (2) The frequency of the noise;
- (3) The periodicity of the noise;
- (4) Whether the noise is unusual and incongruous with the surrounding environment;
- (5) The volume and frequency of the ambient noise, if any;
- (6) The proximity of the noise source to any residential, educational, medical, institutional, or religious;
- (7) The use, nature and character of the zoning district of the immediate area where the noise source exists;
- (8) The time of day or night the noise occurs; and
- (9) The duration of the noise.

F. Outdoor Amplified Noise.

- (1) Unless expressly granted authority to do so by special license issued by the Code Enforcement Officer pursuant to criteria specified in this chapter, no person shall commercially or privately generate outdoor amplified noise, as defined herein, at any time of day.
- (2) For the purposes of evaluating outdoor amplified noise, sound levels shall be determined at a receiving land. Sound measurements shall be taken at the receiving land for between two and five minutes. The L1 shall be the measurement parameter used to identify any violations of this subsection.
- (3) No person shall operate or use or cause to be operated any loudspeaker, public address system or similar amplification device at a sound level in excess of 55 dBA or in excess of 45 dBA in any 1/3-octave band having a center frequency between 63 Hz and 500 Hz (ANSI bands numbers 18 through 27, inclusive) when measured at or within the real property line of the receiving property between the hours of 8:01 p.m. to 6:59 a.m.

§ 96-6. Exceptions.

The following activities shall be exempt from the provisions of this code:

- A. Operation of lawn mowers, leaf blowers, power washers, brush cutters, chainsaws, and weed whackers between the hours of 8:00 a.m. and 9:00 p.m.
- B. Operation of snowblowers.
- C. Operation of agricultural equipment or devices between the hours of 6:00 a.m. and 10:00 p.m.
- D. Construction activity or work Monday through Friday, 7:00 a.m. to 8:00 p.m., and Saturday from 9:00 a.m. to 5:00 p.m.
- E. Emergency work or emergency operations, as defined in § 96-4 of this code.
- F. A sound agricultural practice regardless of the hour of the day.
- G. Emergency backup generators in operation during a power outage or during periods of cycling or periodic maintenance.
- H. An individual may perform construction activities him/herself on a residential property on which such individual resides on Sunday from 9:00 a.m. to 5:00 p.m.

§ 96-6.1. Prohibitions.

- A. Any construction activity or work outside of the hours identified in § 96-6 shall be prohibited. Furthermore, construction activity or work is prohibited at all times on the following federal holidays:
 - (1) New Year's Day.
 - (2) Memorial Day.
 - (3) Independence Day.
 - (4) Labor Day.
 - (5) Thanksgiving Day.
 - (6) Christmas Day.

§ 96-7. Sound-measuring equipment to be used.

- A. Enforcement of this code shall be effected using a sound pressure level meter (sound level meter) or logging dosimeter meeting or exceeding the requirements of ANSI S1.4-1983 (R2006) Type 1 or Type 2, with a dynamic range consistent with the measurements being taken, A-scale weighting, 1/3-octave band analysis, ~~and~~ a fast and slow response constant, and the capability for measuring statistical noise levels (e.g., L1). If used, a logging dosimeter shall have the ability to operate on an exchange rate of three.

- B. The meter shall be calibrated using a calibrator properly fitted to the sound measuring instrument being used, traceable to NIST, and having an accuracy of +/- 0.4 dBA or better.
- C. Enforcement officers shall be trained in the proper calibration and use of the instrument.

§ 96-8. Special license.

The Code Enforcement Officer is authorized to issue a license for an activity which would otherwise create an unlawful noise level under this chapter.

- A. Such license may be issued only upon the written application of the owner or legal occupant of the land or premises where the sound is to be generated, such application specifically stating:

- (1) The source of the anticipated sound.
- (2) The anticipated level of the sound at the property line of both the closest and the highest class receiving land use within one mile.
- (3) The times of day or night when the noise is to occur.
- (4) The land class from when the noise is to emanate.
- (5) The anticipated duration of the noise.
- (6) Whether the noise is impulsive or continuous in nature.
- (7) The presence of discrete tones.
- (8) Whether alternate methods are available to achieve the objective of the sound-producing activity.
- (9) What sound abatement steps have been taken.
- (10) The benefit of the activity to the Town of Southeast and its residents.

- B. Such license will be issued at the sole discretion of the Code Enforcement Officer, so as to minimize the inconvenience and disturbance of the affected residents.

SECTION IV. VALIDITY

The invalidity of any word, section, clause, paragraph, sentence, part, provision of this Local Law shall not affect the validity of any other part of this Local Law that shall be given effect without such invalid part or parts.

SECTION V. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.