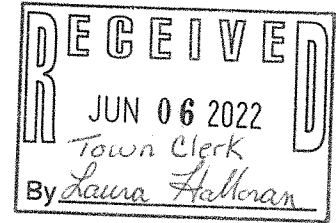


Morris Ordinance Committee

**Agenda**  
**REVISED**  
**Hybrid Meeting**  
**Monday, June 06 2022**  
**4:30 p.m.**  
**Community Hall**



Join Zoom Meeting

<https://us02web.zoom.us/j/81200433244?pwd=UkhmZ050ekxMOUJWMVdtRVFHNDh6QT09>

Meeting ID: 812 0043 3244

Passcode: 498439

+1 929 205 6099 US (New York)

- **Call to order**
- **Minutes of May 09, 2022**
- **Discuss proposed "Noise Ordinance"**
- **Adjourn**

**Reply To Noise Ordinance Inquiry**  
**Morris Ordinance Commission**  
**December 2021**

Per our phone conversation on Monday, on behalf of the Morris Ordinance Committee, below are the main questions we would like to address with Atty. Rybak at our December meeting.

1. What are the allowable parameters for a noise ordinance, especially for towns of similar size and character as Morris?

Gen. Stat. 22a-73 governs local noise ordinances. Any municipality may adopt, amend and enforce a noise control ordinance which may include the following:

- (1) Noise levels which will not be exceeded in specified zones or other designated areas;
- (2) designation of a noise control officer and the designation of an existing board or commission, or the establishment of a new board or commission to direct such program;
- (3) implementation procedures of such program and the relation of such program to other plans within the jurisdiction of the municipality;
- (4) procedures for assuring compliance with state and federal noise regulations;
- (5) noise level restrictions applicable to construction activities, including limitation on on-site hours of operation

DEEP must approve the ordinance before it can become effective. This is generally done in a two-step process: the final draft of the ordinance is sent to DEEP for review and comment. DEEP may accept the ordinance or call for changes. If need be, the ordinance is modified by the Committee and then sent for PZC, BoS and Town meeting approval. The Town meeting will accept, amend, or reject the ordinance. Then what the Town Meeting approves is sent for final approval to DEEP. DEEP would generally approve if the ordinance is the same as what they OK'd before. If the Town Meeting makes changes, DEEP may not approve.

2. What have the courts allowed in connection with noise ordinances?

The courts would require DEEP approval of any ordinance, as noted above. (*Lime Rock Park, LLC v. Plan. & Zoning Comm'n of Town of Salisbury*, 335 Conn. 606 (2020)). The courts will also require that the ordinance substantially conform to the state-wide noise control plan, which is at Gen. State. 22a-69. This contains a long list of requirements and exceptions as regulations.

The courts have ruled that the 22a-67 *et seq.*, including 22a-69 and 22a-73, form the noise pollution control plan for the state and if you do a noise ordinance, you have to use and comply with those particular statutes. (*Berlin Batting Cages, Inc. v. Plan. & Zoning Comm'n of Town of Berlin*, 76 Conn. App. 199, 218 (2003)).

The courts also would be skeptical of an ordinance that denies all use of a class of properties such that the property is effectively rendered useless. For example, exceptions often appear for lawn mowers and snow removal equipment during certain hours, which serves basic access and safety purposes on the property. This is a very unlikely scenario because the ordinance would have to be so strict that it forms a denial of all economically viable private property uses (*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)).

It is safest to use as a model an ordinance already approved by DEEP that is effective in another town. We have included a couple of ordinances from other towns that have been approved by DEEP. DEEP also keeps a database of approved ordinances in other towns here: <https://portal.ct.gov/DEEP/Air/Planning/Noise-Control>

3. Does Atty. Rybak have any suggestions as to language (what works and what doesn't)?

We suggest here starting with an ordinance already approved by DEEP (see <https://portal.ct.gov/DEEP/Air/Planning/Noise-Control>) that the Commission particularly likes. Ordinances follow different formats, and some are simpler than others. But starting with something we know DEEP has already approved is a good beginning point.

The ordinance will need some sort of definitions section to address the technical terms used in the ordinance. It will also have to define each noise receptor zone (e.g., residential, commercial, industrial, etc.). You will probably want to crib definitions from your zoning regulation definitions and classifications for residential, commercial, and industrial areas.

4. How detailed should the ordinance be?

The noise ordinance must be relatively detailed, at least compared to many other ordinances in a small town. The ordinance should have a list of definitions for key terms in the ordinance, specific limits for received noise based on zone, and then a relatively long list of exceptions to the noise limits. DEEP will review the ordinance, and in our experience, the state tends to favor more specific over more general terms, definitions, and requirements in the ordinance. Also, given that the penalty for violation is a fine, the courts will require some specificity because a penalty attaches. Attached are a couple samples, and more are available on the DEEP website listed above.

5. According to most ordinances, sound must be contained on the emitting property. In the absence of a sound meter, how can that be determined and how far off the property should the sound be measured?

With most noise ordinances, measurement is going to be taken at the edge of a neighboring property. This is usually where the complaints emerge, and far-off properties usually have a much lesser degree of noise receipt.

It's very difficult to totally contain noise to the emitting property such that there is no noise at the adjoining property, and in any event, that appears to go beyond the state noise pollution control plan.

The meter comes in to show what the level of noise pollution reaching the adjoining property is and compare it to the applicable standard set down in the ordinance. This is where the various limits based on zoning come into play. We generally look to the zone of the *receiving property* (not the emitting property) for what the standard is in a particular case. For example, if the emitting property is commercial but the neighbor receiving the noise is residential, then we use the residential standard.

What often happens is a complaint of excessive noise comes from a neighbor, then the operator and machine are set up at the boundary of the complainant's property and the noise is measured. The operator has to be trained and the machine calibrated. However, the noise ordinance can (and should) stipulate that enforcement can take place *with or without complaint*.

6. Who is qualified to measure and enforce noise levels?

The Noise Ordinance must specify who is measuring and enforcing. In larger towns and cities, it might be the police department (e.g., Torrington uses its police department to enforce with or without complaint). In a smaller town there might be a town employee trained in the use of the machine, and that person is the noise enforcement officer. (Bethlehem's does it that way, though lacks zoning). Gen. State. 22a-73 would also permit the formation of a noise control commission, though a full commission may not be needed in a small town.

The noise enforcement officer, whether it's the ZEO, or another officer, would report to a the noise enforcement commission, BoS, or P&Z. I recommend that your Committee also discuss this with other nearby municipalities that have noise ordinances. They may give you some idea as to what they are doing as to enforcement practices.

7. There are apps for iPhones that comply with NIOSH and OSHA standards... would these be acceptable?

I am not aware of that. My impression is that you still need the special, calibrated machine and the trained operator – that it's not just any town employee with an iPhone there. This is something to take up with DEEP's noise ordinance expert (we dealt with Paul Kritzer at DEEP when we did Bethlehem's ordinance). Whatever the device and training, it needs to comply with the state-level control plan and have DEEP approval under 22a-73.

8. Should we differentiate between Commercial for profit Concerts operating on a weekly schedule, to the occasional entertainment by amateur musicians, outside parties, etc.

No, it is safer to avoid adding special conditions like this. Generally, what is done is that the acceptable noise level is determined by the zoning designation of the *receiving property*. The state-level plan created by the statutes, and therefore the local ordinances, generally focus on noise as a form of pollution received by a property.

Also, adding something like this to the ordinance introduces a new variable in that you would have to decide how often is "too often" and thereby invoke the stricter noise standard – weekly; twice monthly; once monthly; donations versus admission fees; etc. And then what if a previously commercial venue starts calling the fees "donations" to get around this, etc.? I think it safer to stick to the path set down by previous noise ordinances in other small towns and the DEEP program, which is to say, stick to the zoning designation of the receiving property in each case.

## **Draft Submitted to Ordinance Committee**

**08/25/21**

### **1. Legislative intent.**

The Residential Districts in the Town of Morris are intended to provide suitable areas primarily for residential uses and development appropriate to the environmental characteristics of the land and harmonious character of the neighborhood. Government is instituted to protect life, liberty and property. Loud, excessive and unreasonable noise is an interference with a person's right to the use and enjoyment of his property, especially in residential areas where human beings sleep or areas where serenity and tranquility are essential to the intended use of the land. The purpose of this chapter is to provide an objective standard and procedure for enforcing property rights.

### **2. Definitions.**

As used in this chapter, the following items shall have the meanings indicated:

DAYTIME HOURS: The hours between 7:00 a.m. and 8:00 p.m.

DECIBEL: A logarithmic unit of measure in measuring magnitudes of sound. The symbol is "dB."

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

EMITTER: A person who creates, causes to be created or allows the noise.

IMPULSE NOISE: Sound of short duration (generally less than one second) with an abrupt onset and rapid decay.

NOISE: Any sound, the intensity of which exceeds the standards set forth in Section 5 of this chapter.

NOISE LEVEL: The sound pressure level, as measured with a sound level meter.

PERSON: Any individual, including the singular and plural, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency or political administrative subdivision of the state or on other legal entity of any kind.

PREMISES: Any building structure, land or portion thereof, including all appurtenances, and shall include yards, lots, courts, inner yards and real properties without buildings or improvements, owned or controlled by a person. The emitter's premises includes contiguous publicly dedicated street and highway rights-of-way and waters of the state.

PROPERTY LINE: That real or imaginary line along the ground surface and its vertical extension which:

- A. Separates real property owned or controlled by another person; and
- B. Separates real property from the public right-of-way.

RECEPTOR: The person who receives the noise impact.

SOUND: The transmission of energy through solid, liquid or gaseous media in the form of vibrations which constitute alterations in pressure or position of the particles in the medium and which, in the air, evoke physiological sensations, including but not limited to an auditory response when impinging on the ear.

SOUND LEVEL METER: An instrument used to take sound level measurements.

### **3. Excessive noise prohibited.**

It shall be unlawful for any person to emit or cause to be emitted any noise from such person's property beyond the boundaries of his property lines in excess of the noise levels set forth in Section 5, except in those incidences provided for in Section 8 and Section 9.

### **4. Noise level measurement procedures.**

Measurements shall be taken at a point that is located at least one foot beyond the boundary of the emitter's property line within the premises of the complaining receptor. The emitter's premises includes his/her individual unit of land or group of contiguous parcels under the same ownership as indicated by public land records.

### **5. Noise level standards.**

No person shall emit noise exceeding 55 dB, except in those incidences provided for in Section 8 and Section 9 of this chapter

### **6. Administration and enforcement.**

The Chief of Police shall be responsible for enforcing the provisions of this chapter upon the complaint of any person and shall, upon such complaint, carry out the intent of this chapter. Upon receiving the first complaint, the police shall make the required sound level reading. If the sound level exceeds the standards enumerated in Section 5, a verbal warning shall be given to the emitter. If such noise does not cease, and upon receiving a second complaint, the police shall follow the procedures as set forth in Section 7. Notwithstanding that enforcement of this chapter shall be initiated by such complaint, no signed complaint shall be required by the Police Department to enforce or administer any of the provisions of this chapter.

### **7. Penalties for offenses.**

Any person found in violation of the provisions of this chapter shall be given an infraction notice which incorporates a fine of \$1000.00 for each offense. Each minute that the offender remains in violation of this chapter shall constitute a separate offense. Failure to pay the fine in the time prescribed in the infraction notice will result in the issuance of a summons to appear in Superior Court.

### **8. Exceptions.**

The noise level standards defined in Section 5 shall not apply to any noise emitted by or related to:

- A. Natural phenomena.
- B. Any bell or chime from any building clock, school or church.
- C. Any siren, whistle or bell lawfully used by emergency vehicles or any other alarm systems used in emergency situations; provided, however, that burglar or fire alarms not terminating within 30 minutes after being activated shall be unlawful.<sup>3</sup>
- D. Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.

### **9. Exemptions.**

The following shall be exempt from these regulations, subject to special conditions as spelled out:

- A. Noise created as a result of or relating to an emergency.
- B. Noise created by construction equipment, lawn care equipment, or snow-removal equipment during daytime hours, provided that noise discharged from exhaust is adequately muffled to prevent loud and/or explosive noises therefrom.
- C. Noise created by certificated aircraft operating under the control of the Federal Aviation Administration.
- D. Noise created as a result of or relating to maintenance and repairs conducted by public utilities.
- E. Noise generated from swimming pool pumps, air-conditioning systems, and heating systems which are in good working order and which meet the specifications accepted by federal, state and Town agencies designated to govern their installation and standards of performance