

THE FOLLOWING RESOLUTION WAS OFFERED BY
COUNCILMAN JENDROWSKI, WHO MOVED ITS ADOPTION,
SECONDED BY COUNCILMAN DUGAN, TO WIT:

WHEREAS, the Town Board of the Town of Newstead, New York, previously repealed and replaced its Noise Law by passage of Local Law Number 7 of the Year 2014 (the "Noise Law"); and

WHEREAS, the Town Board has determined that it is in the best interest of the Town of Newstead to update the Noise Law; and

WHEREAS, Councilman Jendrowski introduced the following proposed "Local Law No. 2 of the Year 2023" known as "2023 Amendment No. 1 to the Noise Law" and presented a copy to each member of the Town Board, a copy of which is attached hereto and made a part hereof:

A Local Law known as Local Law No. 2 of the Year 2023 entitled "2023 Amendment No. 1 to the Noise Law."

Be it enacted by the Town Board of the Town of Newstead as follows:

SECTION 1. TITLE

This Law shall be known as Local Law No. 2 of the Year 2023 entitled "2023 Amendment No. 1 to the Noise Law."

SECTION 2. PURPOSE

The purpose of this local law is to update the Town's Code regarding noise for clarity when read in conjunction with other code sections.

SECTION 3. AMENDMENT OF PRIOR LAW

Chapter 450-89 of the Code of the Town of Newstead, which was originally incorporated into the Code of the Town of Newstead by Local Law No. 8 of the Year 2012 and most recently repealed and replaced by Local Law No. 7 of the Year 2014 is amended as follows:

Section 450-89(C)(2) is amended to read as follows:

Sound measurements shall be made from the specific position of the complainant on the premises from which noise complaints are received and shall be made at a height of at least three feet above the ground and three feet away from walls, barriers, obstructions or other sound-reflective surfaces. Measurements shall be taken per the sound level meter conditions specified in Subsection E. Measurements shall be taken by the Code Enforcement Officer or other person designated by the Town Board.

Section 450-89(D)(1) is amended to read as follows:

No person shall make, continue or cause to be made, or continued, any excessive electronically generated and/or amplified noise after the time limitations listed in this section.

Section 450-89(D)(2)(a) is amended to read as follows:

Bands, musical instruments, radios, etc., producing electronically generated and/or amplified sound at a level in excess of the dBC limits outlined in this chapter. The electronic generation and/or amplification of music by any band, orchestra, radio, phonograph, musical instrument, or other device for the production or reproduction of sound at a level in excess of the dBC limits outlined in this chapter.

Section 450-89(F)(3) is amended to read as follows:

The production of music in connection with a military parade, funeral procession, or religious ceremony.

Section 450-89(F)(4) is amended to read as follows:

Sounds emanating from any publicly sponsored sporting, entertainment, or other public event such as carnivals, fairs, exhibitions, picnics, parades, or fireworks displays provided that such events shall take place between the hours of 9:00 a.m. and 11:00 p.m. local time.

Section 450-89(F)(5) is amended to read as follows:

Activities in Town parks or public buildings under permission or authority of the Town provided such event takes place between the hours of 9a.m. and 11p.m.

Section 450-89(F)(8) is amended to read as follows:

Any activity for which the Town Board grants an exception upon application by the proponent thereof. Issuance of a Special Event Permit alone is insufficient.

Section 450-89(G) is amended to read as follows:

G. Penalties for offenses.

(1) Any person who violates any portion of this section or uses any device which creates a violation of this section, shall be guilty of a violation and, upon conviction, shall be punished by a fine of not less than \$250 nor more than \$500 or by imprisonment for up to 15 days, or both.

(2) The owner of any property and any person, firm, association or corporation in control of the real property where the violation(s) of this chapter occur(s) shall be guilty of a separate violation and, upon conviction thereof, shall be fined or imprisoned as herein provided above in Subsection G(1). If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

(3) Other remedies. No provision of this section shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from any other law.

(a) Abatement orders: In lieu of issuing a summons, the Code Enforcement Officer, after consultation with the Town Board, may issue an order requiring abatement of any source of sound alleged to be in violation of this section within a reasonable time period and according to guidelines which the Code Enforcement Officer may prescribe.

(i.) An abatement order shall not be issued when the Code Enforcement Officer has reason to believe that there will not be compliance with the abatement order.

Section 450-89(H) is deleted in its entirety.

SECTION 4. SEVERABILITY

If any portion, subsection, sentence, clause, phrase or portion thereof of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

SECTION 5. WHEN EFFECTIVE

This Local Law shall become effective immediately upon its filing in the office of the Secretary of State.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS;

A hearing before the Town Board of the Town of Newstead, in the County of Erie shall be held at the Town Hall, 5 Clarence Center Road, Akron, New York at 7:25 p.m. on the 13th day of March 2023, for the purpose of hearing all persons interested in the proposed Local Law No. 2 of the Year 2023; and

BE, IT FURTHER ORDERED, that the Town Clerk is directed to (a) publish a notice of public hearing in the Akron Bugle, designated as the official newspaper for this publication, such publication to be not less than ten days before the date of the public hearing; and post as required by law one copy of the Notice of Public Hearing no later than the day such Notice is published; (b) notify by mail all parties of interest pursuant to the General Municipal Law and the Town Law of the Public Hearing, not less than ten days before the date of the Public Hearing; and (c) send notice to Erie County Department of Environment and Planning as required under Section 239-m of the General Municipal Law; and

BE, IT FURTHER ORDERED, that the Town Clerk is to make copies of the proposed "Local Law No. 2 of the Year 2023, entitled "2023 Amendment No. 1 to the Noise Law," available at her office for inspection and distribution to any interested person during business hours.

The question of the adoption of the foregoing order was duly put to roll call vote at a regular meeting of the Town Board on February 20, 2023, the results of which were as follows:

Councilmember	Pope	Voted	AYE	
Councilmember	Burke	Voted	AYE	
Councilmember	Dugan	Voted	AYE	
Councilmember	Jendrowski	Voted	AYE	
Supervisor	Cummings	Voted	ABSENT	CARRIED

LEGAL NOTICE
NOTICE OF PUBLIC HEARING
TOWN OF NEWSTEAD, NEW YORK

PLEASE TAKE NOTICE, that there has been presented to the Town Board on January 30, 2023, for adoption a proposed Local Law to be known as “Local Law No. 2 of the Year 2023” entitled "2023 Amendment No. 1 to the Noise Law." The proposed Local Law will update the Town’s Code regarding Noise.

THEREFORE, pursuant to the Municipal Home Rule Law Rules and Local Law No. 2 of the Year 2023, the Town Board of the Town of Newstead shall hold a Public Hearing on the aforesaid Local Law at the Town Hall, 5 Clarence Center Road, Akron, New York at 7:25 p.m. on the 13th day of March 2023, at which time persons interested may be heard. Copies of the aforesaid proposed Local Law are available at the office of the Town Clerk for inspection and distribution to any interested person during business hours. The meeting room is wheelchair accessible. Those needing special arrangements should call the Town Hall at 542-4573 by March 8, 2023.

Dated: February 20, 2023

BY ORDER OF THE TOWN BOARD
OF THE TOWN OF NEWSTEAD

RESOLUTION ADOPTING
DETERMINATION OF NON-SIGNIFICANCE
OF
LOCAL LAW

Motioned by Councilman Jendrowski, seconded by councilman Dugan

WHEREAS, the Town Board of the Town of Newstead is considering adoption of a Local Law which would update the Town's code regarding Noise; and

WHEREAS, the Town Board has reviewed the Short Form EAF submitted and has determined that the proposed action will not have a significant impact on the environment.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Newstead, after considering the action proposed herein, reviewing the criteria contained in Section 617.11 of the Rules and Regulations of the SEQR Regulations and thoroughly analyzing the project with respect to potential environmental concerns, determines that the proposed action will not have a significant effect on the environment and that no further action is required by the Town Board under SEQR.

The question of the adoption of the foregoing negative declaration was duly put to a roll call vote at a regular meeting of the Town Board on February 20, 2023 the results of which were as follows:

Councilmember	Pope	Voted	AYE	
Councilmember	Burke	Voted	AYE	
Councilmember	Dugan	Voted	AYE	
Councilmember	Jendrowski	Voted	AYE	
Supervisor	Cummings	Voted	ABSENT	CARRIED

COUNCILMAN JENDROWSKI MOVED THE ADOPTION OF THE
FOLLOWING LOCAL LAW NO. 2 OF THE YEAR 2023,
SECONDED BY COUNCILMAN DUGAN

WHEREAS, the Town Board of the Town of Newstead is seeking to update its Local Law regarding Noise; and

WHEREAS, the Town Board requested comments from the Planning Board, which were received on March 6, 2023 and considered; and

WHEREAS, a public hearing was held on March 13, 2023, at which time interested persons were heard; and

WHEREAS, the Town Board requested comments from Erie County Planning and was advised on March 23, 2023 that no recommendations were made; and

WHEREAS, the Town Board previously determined that the proposed action would not have a significant impact on the environment and a determination of non-significance was adopted; and

NOW, THEREFORE, BE IT

RESOLVED, that the following local law as set forth fully below is hereby adopted:

A Local Law known as Local Law No. 2 of the Year 2023 entitled "2023 Amendment No. 1 to the Noise Law."

Be it enacted by the Town Board of the Town of Newstead as follows:

SECTION 1. TITLE

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SECTION 2. PURPOSE

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SECTION 3. AMENDMENT OF PRIOR LAW

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Section 450-89(G) is amended to read as follows:

G. Penalties for offenses.

(1) Any person who violates any portion of this section or uses any device which creates a violation of this section, shall be guilty of a violation and, upon conviction, shall be punished by a fine of not less than \$250 nor more than \$500 or by imprisonment for up to 15 days, or both.

(2) The owner of any property and any person, firm, association or corporation in control of the real property where the violation(s) of this chapter occur(s) shall be guilty of a separate violation and, upon conviction thereof, shall be fined or imprisoned as herein provided above in Subsection G(1). If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate and distinct offense.

(3) Other remedies. No provision of this section shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from any other law.

(a) Abatement orders: In lieu of issuing a summons, the Code Enforcement Officer, after consultation with the Town Board, may issue an order requiring abatement of any source of sound alleged to be in violation of this section within a reasonable time period and according to guidelines which the Code Enforcement Officer may prescribe.

(i.) An abatement order shall not be issued when the Code Enforcement Officer has reason to believe that there will not be compliance with the abatement order.

Section 450-89(H) is deleted in its entirety.

SECTION 4. SEVERABILITY

If any portion, subsection, sentence, clause, phrase or portion thereof of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

SECTION 5. WHEN EFFECTIVE

This Local Law shall become effective immediately upon its filing in the office of the Secretary of State.

The above local law was duly put to a roll call vote at a regular meeting of the Town Board held on March 27, 2023, the results of which were as follows:

Councilmember Dugan	AYE
Councilmember Burke	AYE
Councilmember Jendrowski	AYE
Councilmember Pope	NO
Supervisor Cummings	ABSENT