

# ***Wilmington Noise Ordinance***

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## **Noise Ordinance**

### **Section 1 Purpose of Ordinance**

The purpose of this Ordinance is to preserve the public health, safety, and welfare by prohibiting excessive and disturbing noise and to prevent noise which is prolonged or unsuitable for the time and place and which is detrimental to the peace and good order of the community. It is the goal of this Ordinance to allow all residents of our Town to peacefully coexist in a manner that is mutually respectful of the interests and rights of others.

### **Section 2 Statutory Authority**

This Ordinance has been promulgated under the authority granted the Wilmington Selectboard by 20 V.S.A. §3549, 24 V.S.A §2291 (10), (14 and 15) and 24 V.S.A. Chapter 59.

### **Section 3 Definitions**

- (a) **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 the song, specific words or the artist performing the song. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.
- (b) **Residential Property or Receiver:** Property used for human habitation or sleeping.
- (c) **Commercial/Industrial Property or Receiver:** All other property, e.g. restaurants, schools, churches.
- (d) **Background Level:** The composite of all sounds exclusive of the sound under evaluation.
- (e) **Receiving Property:** The location that is receiving the sound in question.
- (f) **Emergency:** Any occurrence or set of circumstances involving reasonable expectation of actual or imminent physical trauma or property damage.
- (g) **Emergency Work:** Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- (h) **Prohibited Noise:** Any excessive, unnecessary, unreasonably loud noise or disturbance sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

#### **Section 4 Prohibitions**

No person shall make or continue to make any excessive, unnecessary, unreasonably loud noise or disturbance, or any prohibited noise that disturbs, destroys, or endangers the comfort, quiet, repose, health, peace, or safety of others within the immediate vicinity of the noise or disturbance. Without limitations, the commission of one or more of the following acts, if done in such manner, shall be deemed a violation of this ordinance:

(a) **Personal, Mobile, or Portable Sound-producing Devices.** The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 9:00 P.M. and 7:00 A.M. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

(b) **Vocal Disturbances.** It shall be unlawful for any person who is participating in an activity or social event to actively make unreasonably loud noise. An activity or other social event is defined as a gathering upon the premises of one or more persons who is not a full-time resident of the premises. Unreasonably loud noise is noise that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 9:00 P.M. and 7:00 A.M. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of any premises to allow an activity or social event occurring in or about the premises to produce unreasonably loud noise. There is a rebuttable presumption that all residents of the premises have allowed such activity or social event to occur in or about the premises. All residents of the premises, whether full-time residents or part-time residents are responsible for such unreasonable noise made, each having joint and several liability.

(c) **Devices to Attract Attention.** The use of any drum, musical instrument, loud-speaker, amplifier, or other instrument or device for the purpose of attracting attention.

(d) **Construction and Maintenance Sounds:** The excavation, erection, demolition, alteration, or repair of any buildings, structure, property or street between the hours of 9:00 P.M. and 7:00 A.M except for necessary emergency construction and maintenance to protect property or persons.

(e) **Motor Vehicles:** Sounding of vehicle horns, sirens, security alarm or other devices to attract attention that are not required in an emergency situation.

(f) **Outside musical performances:** Outside musical performances, either amplified or non-amplified, at a public or private event between the hours of 9:00 P.M. and 7:00 A.M.

(g) A motor vehicle, including a motorcycle, moped, snowmobile, all-terrain vehicle, or other vehicle equipped with and propelled by engine, whether operated on a public street or on private property, shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. A person shall not remove, destroy or damage any of the baffles contained in the muffler, nor shall a person use a muffler cutout, bypass or similar device upon any such vehicle. Such vehicle shall at all times be equipped with a properly operating exhaust system which shall include a tail pipe and a resonator on a vehicle where the original design included a tail pipe and a resonator.

### **Section 5 Evidence of Violations**

For the purposes of subsections (a), (b), (c), (d) and (e) of *Section 4*, a prohibited noise or disturbance of such magnitude so as to be plainly audible in another building or in another dwelling unit located in the same building, or in the street or public way shall be deemed prima facie evidence of a violation of this ordinance.

### **Section 6 Enforcement**

(a) No owner or occupier of premises, or any person who has been given lawful permission to use or control any premises, shall knowingly permit a violation of this ordinance by another person on such premises.

(b) The first offense for any person violating the provisions of this ordinance within a twelve-month period, shall be punished as provided in (penalties section).

(c) A second and subsequent offense for violating this ordinance within a twelve-month period, shall be punished as provided in (penalties section).

(d) Each time a police officer is called to a scene of a noise complaint shall be deemed to be a separate offense.

### **Section 7 Penalties**

7-1 First offense of a violation of Section 4 subsection (a), (b), (c), (d), (e), (f) and (g)- A written warning issued by a police officer or public health officer shall be issued for the first offense within a twelve-month period.

7-2 Second offense of a violation of Section 4 subsection (a), (b), (c), (d), (e), (f) and (g)- The penalty for a second offense within a twelve-month period shall be \$300.00 issued by a police officer or public health officer. The waiver fee shall be established \$200.00.

7-3 Third offense of a violation of Section 4 subsection (a), (b), (c), (d), (e), (f) and (g)- The penalty for a third offense within a twelve month period shall be \$500.00 issued by a police officer or public health officer. The waiver fee shall be established \$300.00.

7-4 Fourth offense and subsequent offenses of a violation of Section 4 subsection (a), (b), (c), (d), (e), (f) and (g)- The penalty for a fourth or subsequent offense within a twelve month period shall be \$750.00 issued by a police officer or public health officer. The waiver fee shall be established \$500.00.

### **Section 8 Exemptions**

Sounds from the following sources shall be exempt from the prohibitions specified herein and shall not be included in any measurements performed to determine compliance with ordinance:

(a) All safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work including but not limited to police, fire and medical/rescue vehicle sirens.

(b) The repair and maintenance of municipal facilities, services or public utilities when such work must be accomplished outside of daytime hours.

(c) Snow removal equipment operated within the manufacturer's specifications and in proper operating condition.

(d) Musical, recreational and athletic events conducted by and on the site of a school or education institution and municipal institutions.

(e) Events conducted by or permitted by, or approved by the Wilmington Selectboard. Persons operating an event under the authority of a parade, street event, or special use permit shall comply with all conditions of such permits with respect to noise control issues.

(f) Construction or repair work which must be done to address an emergency health or safety concern which is not work which includes normal maintenance and repair.

(g) Equipment for maintenance of lawns and grounds during the hours of 7:00 A.M. to 9:00 P.M. (including but not limited to lawn mowers, hedge trimmers, weed whackers, chain saws and leaf blowers).

### **Section 9 Notification by property owners of rental housing**

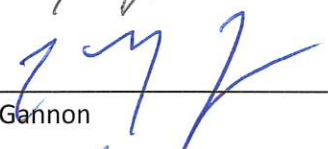
Owners of rental housing shall be required to provide a copy of this ordinance to a tenant at the start of the tenancy. However, the failure of an owner to provide a copy of the ordinance shall not be a defense to a violation of this section.

**Section 10 Adoption / Effective Date**

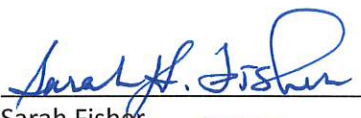
This Ordinance is hereby adopted by the Selectboard of the Town of Wilmington on the eighteenth day of April, 2023, and shall, unless a petition is filed as provided by law, become effective June 17, 2023, which is sixty (60) days from this date.


**Wilmington Selectboard**

  
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Thomas Fitzgerald

  
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John Gannon

  
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Vince Rice

  
\_\_\_\_\_  
Sarah Fisher

  
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Tony Tribuno