



# *Town of Winchester*

Town Manager's Office  
71 Mt. Vernon Street  
Winchester, MA 01890  
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Board of Selectmen Meeting  
Wednesday, July 6, 2016

## BUSINESS

Docket Item G - 1:

Noise Bylaw Briefing

### Supporting Documents:

G - 1:

Attachments from May 23<sup>rd</sup> packet:

Memo from Town Manager;

Email from Town Manager re: withdrawal of

Article from Warrant

Memo from David Heinold, Chair, Board of Health

DRAFT of proposed Spring 2016 Town Meeting Article

### Action Required:

G - 1:



# Town of Winchester

Richard C. Howard,  
Town Manager

Docket Item:  
G - 1:  
July 6, 2016

Board of Selectmen  
71 Mt. Vernon Street  
Winchester, MA 01890  
Phone: 781-721-7133  
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townmanager@winchester.us

## MEMORANDUM

May 20, 2016

TO: Board of Selectmen  
FROM: Richard C. Howard, Town Manager  
SUBJECT: Noise ByLaw

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For your consideration, attached please find the following documents pertaining to the Noise Bylaw that was proposed for consideration at the Spring 2016 Annual Town Meeting and ultimately withdrawn.

/pcm

## Howard, Richard

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**From:** Howard, Richard  
**Sent:** Wednesday, March 30, 2016 9:36 AM  
**To:** Murphy, Jennifer  
**Cc:** Tassi, Patricia; David Heinold ; dheinold@comcast.net; Kerry Bartlett; Shannon Bottari (shannonbottari@hotmail.com); Cafarella, Jennifer; Peter Haley (Peter.Haley@nelsonmullins.com)  
**Subject:** RE: BOH Chair comment re: Noise ByLaw

All – I apologize for having caused this level of surprise. The topic has been under consideration for a while and I assumed that that folks may have been more aware that something substantive was forthcoming. My error. I'm happy to withdraw the Article until the Board of Health has had an appropriate amount of time to consider the subject matter. I'm also happy to appear before the Board, perhaps sometime after Spring Town Meeting, to discuss the elements of the proposed by-law with a goal of bringing the matter forward at Fall Town Meeting.

Jennifer, please omit the Article from the Warrant before publication.

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**From:** Murphy, Jennifer  
**Sent:** Tuesday, March 29, 2016 12:08 PM  
**To:** Howard, Richard  
**Cc:** Tassi, Patricia; David Heinold ; dheinold@comcast.net; Kerry Bartlett; Shannon Bottari (shannonbottari@hotmail.com)  
**Subject:** BOH Chair comment re: Noise ByLaw

Richard –  
This memo is from David Heinold, Chair, BOH.

The memo is cc'd to the BOS. Patti could you please forward to the BOS?  
Thank you,  
Jennifer

Board of Health  
71 Mt. Vernon Street  
Winchester, MA 01890



Tel: 781-721-7121  
Fax: 781-729-1794

David Heinold, CCM, Chair  
Kerry Bartlett, MHS, Vice-Chair  
Shannon Bottari, MD

Jennifer Murphy, MPH, Director  
Kathy Whittaker, RN, Public Health Nurse

TO: Richard Howard, Town Manager  
Cc: Board of Selectmen

FROM: David Heinold, Chair Board of Health

DATE: March 28, 2016

RE: Draft ARTICLE 14: Noise Mitigation Bylaws

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On Friday March 25<sup>th</sup>, Health Director Jennifer Murphy forwarded to the Board of Health members the draft of the spring 2016 Town Meeting warrant articles for our review. Ms. Murphy brought our attention to *Article 14: Noise Mitigation Bylaws*, proposed by the Town Manager, which identifies the Board of Health as the regulatory authority. Given that the Town election is on March 29<sup>th</sup>, the late timing has put the Board at a disadvantage as we have not been able to discuss the provisions of the proposed bylaws or deliberate if the Board should either endorse or oppose Article 14 at Town Meeting. Pending certification of the election results, a re-constituted Board will hold its first meeting in early April. At that time the Board is likely to take-up Article 14 and may then be able to provide formal feedback to the Town Manager. However, because Ms. Murphy has indicated that the Town Manager's objective is to finalize the warrant articles this week, it is appropriate for me, as present Chair of the Board of health, to briefly share with you some of my personal observations on draft Article 14, as listed below.

- The existence of this article and the proposed role of the Board of Health were made known at such a late date that it effectively subverted due process by not allowing time for the Board to review and provide input. Whether or not this breach of courtesy displayed was deliberate or simply the result of expediency, the appropriate procedure would be for the article's proponent to have requested a spot on the Board of Health's agenda, at which time an opportunity would have been provided for the proponent to explain the need, scope and provisions of the article, and why the Board should have a role in its implementation and enforcement.
- Article 14 in its present form does not advance or protect public health. The draft article states: "*This by-law is not intended to maintain public health and safety with respect to noise*". Given this stated limitation, it is not straightforward to see why the Board of Health should have a role in its administration and enforcement.
- The Board of Health was not consulted in the development of the noise criteria. As such, we cannot confirm the legitimacy of specified noise criteria in meeting "*acceptable noise conditions from the receiver's perspective*".
- The Reasonable Person Determination concept is insufficiently objective. The provision in the article for a member of the Board of Health (or designee) to determine what level of noise is deemed excessively loud to a "reasonable person" is inherently flawed because the level is entirely subjective and therefore, indeterminate.
- Considerable and unwarranted resources could be required to interpret and carry out the provisions. The logistics of determining of whether a violation has occurred and enforcement would be very difficult and divert resources from important matters that directly affect public health.

Please consider these issues regarding Article 14 prior to finalizing the spring 2016 Town Meeting warrant and if possible delay this article until the re-constituted Board of Health is provided the opportunity for legitimate input in its development.

## Howard, Richard

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**From:** Murphy, Jennifer  
**Sent:** Tuesday, March 29, 2016 12:08 PM  
**To:** Howard, Richard  
**Cc:** Tassi, Patricia; David Heinold ; dheinold@comcast.net; Kerry Bartlett; Shannon Bottari (shannonbottari@hotmail.com)  
**Subject:** BOH Chair comment re: Noise ByLaw  
**Attachments:** BOH to TMBOS re NoiseByLaw 3-16.pdf

Richard –  
This memo is from David Heinold, Chair, BOH.

The memo is cc'd to the BOS. Patti could you please forward to the BOS?  
Thank you,  
Jennifer

## Howard, Richard

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**From:** Murphy, Jennifer  
**Sent:** Friday, March 25, 2016 12:15 PM  
**To:** Howard, Richard  
**Cc:** Szekely, Brian  
**Subject:** FW: Spring and Special Town Meeting Warrant  
**Attachments:** 16 Warrant S.doc

So, the noise by-law now puts the enforcement on the Health Dept. My concerns are:

-manpower. I'm it.

-I can name "designees" but that becomes my internal battle to get other depts to agree. Why not name others outright – like police, zoning officer, etc to share enforcement power?

Thanks.

**From:** Cafarella, Jennifer  
**Sent:** Friday, March 25, 2016 10:59 AM  
**To:** Szekely, Brian <bszekely@winchester.us>; Murphy, Jennifer <jenmurphy@winchester.us>; Heather von Mering <hvonmering@yahoo.com> <hvonmering@yahoo.com>; helenphilliou@comcast.net; Mariano Goluboff <goluboff@gmail.com> <goluboff@gmail.com>  
**Cc:** Twogood, Mark <mtwogood@winchester.us>; Howard, Richard <rhoward@winchester.us>; lgrenzeback@comcast.net; mbettencourt@mac.com; slpowers@bonnelford.com; ejwhitehead@verizon.net; jmsjfo@yahoo.com; wwelch@welchdonohoe.com  
**Subject:** Spring and Special Town Meeting Warrant

All,

Attached is the draft warrant for the Spring and Special Town Meeting. I am hoping to have this to the printer on Thursday, March 31<sup>st</sup>.

Thank you,  
Jenn

**ARTICLE 14.** To see if the Town will vote to add Chapter 20 to the Town's By-laws as follows: Noise Mitigation Bylaws: An Act Limiting the Levels of Noisiness Activities within Town Limits:

**CHARTER: Section 20: Noise**

**1. Purpose**

The purpose of this Noise By-law is to allow the Town of Winchester, Massachusetts (the Town) to establish reasonable guidelines, restrictions and limitations to maintain acceptable noise conditions within the Town.

This by-law defines noise criteria limits and restrictions for the purposes of (1) maintaining acceptable existing conditions, equipment operations, social interactions, and avoidance of disruption of the peace, and (2) managing and controlling potential future noise conditions in the Town stemming from development of properties, equipment operations, and infrastructure.

This by-law is intended to maintain the quality-of-life within the Town from an acoustical perspective. This by-law addresses so-called "community noise" by establishing acceptable noise conditions from the receiver's perspective in order to support the continued use and enjoyment of the receiving property for its intended purpose.

This by-law is not intended to define safe noise levels to protect people's hearing or avoid auditory damages from excessively loud noises either within the workplace or from private activities. As such, this by-law is not intended to maintain public health and safety with respect to noise. The remedies for maintaining acceptable noise conditions as outlined in this by-law are intended to be in addition to, and not excluding of, such other laws, regulation and rules of the Commonwealth, the Town of Winchester, and its agents departments.

*Therefore, it shall be unlawful for a person or persons to knowingly generate, or allow continued generation of, noise levels which either (1) exceed the criteria limits found in Section 3, except under conditions defined in Section 5, when measured at a receiving party's property line or at any location on the receiving property, OR (2) are deemed to be excessively loud to a "reasonable person" as defined to be a Member of the Board of Health of the Town, and/or their designee, as defined in Section 4.*

**2. Acoustical Terms and Definitions**

Community noise is generated by natural and man-made sources such as transportation systems, industrial processes, construction operations, building air handling systems, power generation, agricultural processes, landscaping machinery, human activities, meteorological conditions, etc. In general, noise can be quantified by its magnitudinal (loudness), tonal (frequency) and temporal (time) characteristics. The following are definitions to terms typically used to describe community noise.

**Sound** – Sound is a physical parameter which is produced when a vibrating surface transfers energy in the form of air pressure waves which fluctuate above and below barometric pressure to such a degree and within a frequency range that it can be perceived by the human auditory system (i.e. sound can be heard).

**Noise** – Noise is defined as "unwanted sound" which can occur when a source is either too loud, uncontrollable, conveys unwanted information, masks-out other desirable sound, occurs at unacceptable times, or has annoying characteristics.

**Decibels (dB)** – The magnitude or loudness of noise is expressed in units of decibels (dB). Decibels relate the actual fluctuating air pressure levels against a standardized reference air pressure level of 20 micro-pascals. Human beings can hear noise over a tremendously large range of air pressure so the use of a decibel scale (from about 0 dB to 140 dB) is used for convenience. Zero decibels represents the "threshold of hearing", while at the other extreme, pain and hearing damage can occur at noise levels of about 140 decibels.

**Audible Frequency Range (and A-weighting)** – Human beings can perceive noise only if the fluctuating air pressure waves are within the so-called “audible frequency range” of about 20 Hz to 20,000 Hz (Hertz, or cycles-per-second). However, people do not hear noise equally well at all frequencies. As such, a frequency weighting adjustment has been standardized in ANSI Standard S1.42 to account for humans responding less sensitively to lower and higher frequency ranges. This frequency weighted adjustment is referred to as “A-weighting”, with results expressed as A-weighted decibels, or dBA.

**Time Constant (RMS Slow)** – The speed with which the electronic root-mean-square (RMS) detector of a sound level meter responds to changes in instantaneous noise levels has been standardized in ANSI Standard S1.4. A “fast” time constant is defined as a rise-time of 0.125 seconds, while “slow” is defined as a rise-time of 1 second. For the purpose of this by-law, all noise levels and limits are expressed in units of A-weighted decibels using an RMS “slow” time constant (dBAs).

**Background (Bkgd) Noise** – The background noise is the prevailing or pre-existing noise conditions that can be measured at a given location of interest *without* the contribution of the noise source of concern.

**Nuisance Noise** – Nuisance noise is defined as noise which can annoy or disturb individual listeners. When measured, nuisance noise levels may or may not exceed specified noise criteria limits so nuisance noise is often defined qualitatively by listing specific examples, as in Section 3.A of this by-law.

**Equivalent Sound Level (Leq)** – The Leq represents the energy-averaged noise level over some time period of interest. The Leq is expressed in dBA, and the time period over which the Leq value applies should also be stated (i.e. Leq(1min) represents a one minute average; Leq(24h) represents a 24-hour average, etc.).

**Maximum and Minimum Sound Levels (Lmax and Lmin)** – The Lmax and Lmin represents the absolute loudest and quietest noise levels experienced for just an instant during some time period of interest. The Lmax and Lmin levels are expressed in dBA.

**Noise Percentile Levels (Ln)** – Ln levels are a statistical representation of changing noise levels indicating the noise level that was exceeded *n* percent of the time. For example, the L10, L50, and L90 represent the noise levels exceeded 10%, 50%, and 90% of the time, respectively. The L10 is often used to identify an intrusive noise level, while the L90 is considered to represent the steady background noise level.

**Reasonable Person** – Acting on behalf of the greater good of the public, a reasonable person is able to judge in an unbiased manner the appropriateness of a given situation. A reasonable person is appropriately informed, rational, capable, aware of the law, and fair-minded when applications of the law is sought, compatible with planning, working, or getting along with others. For the purpose of this by-law, a reasonable person shall be defined as a Member of the Town, and/or their designee, as further described in Section 4.

**Sound Level Meter (SLM)** – A sound level meter is a calibrated electrical device used to measure the loudness of noise. For the purposes of this by-law, a SLM must be capable of measuring and expressing noise levels in A-weighted decibels using an RMS “slow” time constant in accordance with Type 1 or Type 2 accuracy requirements of ANSI Standard S1.4. In addition, an “integrating” SLM must be used if any time-averaged noise metrics (such as Leq or Ln percentiles) are to be reported.

**Stationary Noise Sources** – Sources that emit noise on a continuous or repeatable basis and that are located in fixed positions. Example stationary noise sources would include, but are not limited to, building mechanical (HVAC) systems, power transformers, commercial processing machinery, etc.

**Construction Noise Sources** – Sources, activities, vehicles and/or equipment that emit noise as part of a construction or demolition project. Typically some form of engine power is required such as diesel or gasoline motors, hydraulic or pneumatic pressure, or electric power.

*Designee* – A person, who after due consideration, is selected by the Winchester Board of Health to respond in their place to investigate noise complaints. The designee becomes an authorized representative of the Board of Health only for matters involving this by-law. A designee should work for the Town in some capacity such as, but not limited to, the Building Department, or a consultant hired by the Town to act in these regards.

### 3. Noise Criteria Limits

Noise criteria limits in this by-law are based on the type of noise being produced, the sensitivity of the receiver and land-use being affected, the time of day during which the noise is generated, and the existing background noise level. Except where noted, the following noise criteria limits and restrictions are based on noise propagating to and affecting the receiver's location.

#### 3.A. Nuisance Noise

Noise which has the potential to annoy or disturb can be described as nuisance noise. Nuisance noise can vary significantly from person to person, and typically exhibit aspects such as pure tone squealing or whining, loud impulsive noises, repetitive thumping, low-frequency air-borne vibrations, etc.

For the purposes of this by-law, nuisance noise shall be qualitatively defined by listing specific examples which are deemed to be annoying.

Therefore, it will be prohibited for persons or equipment to generate the following nuisance noises:

- The use of excessively loud radios, public address systems, shouting, or other noises associated with communications or advertisement, that have the potential to disturb nearby residents during the nighttime hours of 10:00 PM to 7:00 AM.
- The emptying and/or replacing of waste dumpsters during the nighttime hours of 10:00 PM to 7:00 AM.
- The use of powered landscaping tools, such as but not limited to lawn mowers and leaf blowers, during the nighttime hours of 10:00 PM to 7:00 AM.
- The use of truck Jake-brakes (other than emergency vehicles).
- The use of noise enhancing exhaust muffler systems (i.e. glass packs, sport mufflers) on motor vehicles and motorcycles at any time of day or night.
- The use of excessively loud automobile sound systems (i.e. radios, CD players, etc.), as judged by a reasonable person as defined in Section 4, at any time of day or night.
- The unreasonable extended use of vehicle horns under non-emergency conditions.
- The unnecessary (i.e. false) sounding of vehicle security alarm systems.

Comment [SB1]: Make separate times for weekends

Comment [SB2]: Question for Erik regarding enforcement.

### 3.B. Stationary Noise Sources

Stationary sources of noise may include, but are not limited to, building HVAC systems, power generation facilities, industrial equipment, water or sewage pump stations, railroad and subway lay-over facilities, electric power transformers, commercial factories and plants, truck depots, and recreational events. The noise level emitted by stationary noise sources shall not exceed the limits contained in Table 1 when measured at the property line of the receiving property.

**Table 1.**  
**Noise Criteria Limits from Stationary Noise Sources**

Receiver Land-Use	Daytime Noise Limit (7 AM to 6 PM)	Evening Noise Limit (6 PM to 10 PM)	Nighttime Noise Limit (10 PM to 7 AM)
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater	50 dBAs Leq(1min) or Background Leq(1min), whichever is greater	45 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater

Notes: Background Leq(1min) noise levels should be measured without the noise source in question operating.  
Average noise levels measurements can be estimated if an integrating Leq noise meter is not available.

### 3.C. Construction Noise Sources

In general, construction and/or demolition activities shall only be permitted to occur within the town during the hours of 7:00 AM to 10:00 PM. However, it is understood that construction and demolition are inherently noisy activities which will likely be heard by adjacent residents and business operators during short periods of time. As such, the intent of this section is to balance the needs for the necessary construction work to be performed with the needs of the community for peace and quiet.

Therefore, cumulative noise generated by construction and/or demolition activities and operations shall not exceed the limits contained in Table 2, when evaluated at the property line of the receiving property, nor shall the noise emission level of any individual piece of construction equipment exceed the noise emission limits contained in Table 3 when measured at a distance of 50 feet from the loudest side of the piece of equipment.

**Table 2.  
Construction Noise Criteria Limits**

<b>Receiver Land-Use</b>	<b>Daytime Noise Limit (7 AM to 6 PM)</b>	<b>Evening Noise Limit (6 PM to 10 PM)</b>	<b>Nighttime Noise Limit (10 PM to 7 AM)</b>
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	65 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	60 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	70 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	80 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited

Notes: Criteria approach taken from FHWA Roadway Construction Noise Handbook (FHWA, 2006).

L10 noise levels shall be measured over a period of 20 minutes.

Background (Bkgd) L10 noise levels should be measured prior to construction commencing in the field or without the noise source in question operating.

L10 noise levels measurements can be estimated if an integrating noise meter is not available by determining the average or Leq noise level plus 3 dB(A).

Table 2 noise limits do not apply to roadway construction activities.

(\*) Except when determined necessary by the Board of Selectmen to protect public safety.

**Table 3.  
Construction Equipment Noise Emission Criteria Limits**

Generic Type of Construction Equipment	Noise Emission Limit at 50 feet
Blasting -- as well as explosive tools such as concrete nail guns	95 dBAs Lmax
Pile Drivers -- including impact and vibratory type drivers	95 dBAs Lmax
Impact Devices -- such as hoe rams, jackhammers and pavement breakers	90 dBAs Lmax
Saws and Drills -- including chain saws, concrete saws and vermeer saws, rock drills, and auger drill bits	90 dBAs Lmax
Demolition Equipment -- such as grapples and shears	85 dBAs Lmax
Earth Movers -- including excavators, backhoes, bull dozers, gradalls, front end loaders, scrapers and vacuum excavators	85 dBAs Lmax
Trucks and Tractors -- including dump trucks, concrete mixers, concrete pump trucks, flatbed trucks, and street sweepers	85 dBAs Lmax
Finishing Equipment -- including graders, rollers, pavers and compactors	80 dBAs Lmax
Support Equipment -- such as cranes, compressors, generators and pumps	80 dBAs Lmax
Tools -- including pneumatic and gas-powered hand tools	80 dBAs Lmax
Any other equipment not listed above	85 dBAs Lmax

Notes: Criteria limits consistent with FHWA Roadway Construction Noise Handbook (FHWA, 2006). Lmax noise emission levels shall be measured 50 feet from the loudest side of the equipment while the equipment is engaged in its intended activity.

In addition to the construction noise criteria limits shown in Tables 2 and 3, the following restriction(s) shall apply to any and all pieces of construction and/or maintenance equipment.

- The use of standard vehicle backup alarms, whose noise level exceeds 105 dBAs at a distance of 4 feet behind the vehicle, shall be prohibited. Alternatively, quieter-type manually-adjustable or automatically-adjustable backup alarms, or the use of observers used in lieu of audible backup alarms, are permitted for use in accordance with applicable OSHA Guidelines (29 CFR Part 1926, Subpart "O", 1926.601.b.4 and 1926.602.a.9.).

**4. Reasonable Person Determination**

It shall be unlawful to knowingly generate, or allow continued generation of, noise levels which a reasonable person would consider to be excessively loud. For the purposes of interpretation and enforcement, a *reasonable person* shall be defined in this by-law as Member of the Board of Health and/or their designee.

To be applicable, the Member, and/or their designee, must hear for him/herself the noise source in question. The Member, and/or their designee, must take conditional, circumstantial and extenuating factors into account, including but not limited to, the following:

- The necessity of the noise source to continue to operate.
- The extent to which the noise propagates to, and is heard by, noise-sensitive receivers.

- The time of day or night that the noise is occurring.
- The duration of time that the noise is expected to continue.

## 5. Exceptions

The following cases shall be exceptions to the restrictions and criteria limits contained in this noise by-law. The Town shall maintain the right to modify, add or remove any or all of these exemption cases.

- Grandfathering - All existing residential, commercial, industrial and/or agricultural stationary noise sources, which have been operating on a lawful basis prior to the effective date of this by-law, shall be allowed. However, this exception does not apply to any new or upgraded sources of noise subsequently brought into operation at an existing location.
- Noise generated by transportation systems in motion, such as vehicular traffic traveling on public roadways, aircraft overflights, commuter and freight trains, public transit systems and buses, are generally not regulated by local ordinances, and as such, shall not be a part of this noise by-law (however, specific motor vehicle noise-enhancing devices, as described in Section 3.A, will still be subject to this by-law). Commercial deliveries involving idling trucks and/or idling freight trains will be subject to this by-law after a period not to exceed 20 minutes.
- Noise emitted by utility or Town service crews and equipment performing emergency repairs to restore supply of and/or operation of critical public utilities such as natural gas, electrical power, steam, potable water, telecommunications, sewerage removal, etc.
- Any noise emitted by public safety or emergency response vehicles while performing their intended duties. Specific examples of emergency equipment include sirens, horns, generators, pumps, public address systems, etc.
- Noise generated by sources intended for public entertainment, when said sources are part of a legal activity such as, but not limited to, parades, sporting events, public concerts, fireworks display, etc.
- All snow clearance activities at any time of day evening or night.
- The performance of Town-sponsored street sweeping operations at night on public ways which are otherwise inaccessible during daytime hours.
- Due to the continuously progressing nature of roadway work, the cumulative property line construction noise limits shown in Table 2 shall not apply for roadway construction (however, individual pieces of equipment used for roadway construction will still be subject to the 50 foot emission limits shown in Table 3).
- The use of hand tools, powered lawn equipment and small motorized vehicles for construction, maintenance or repair of properties between the hours of 7:00 AM to 10:00 PM.

Comment [SB3]: DEP idling law lookup

Comment [SB4]: Consolidate this section and take out.

## 6. Noise Compliance Measurements

Quantitative noise level measurements performed to demonstrate compliance or exceedance of the various noise criteria limits contained in this by-law must be collected in accordance with accepted practices and procedures as recommended in ASTM Standards E1686-03, E1780-04, and E1014-84, using a sound level meter (SLM) capable of meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy. Noise data shall be collected using a calibrated SLM using a "slow" time

constant with results expressed in A-weighted decibels (dBAs). The minimum information necessary to collect and report shall include the following:

- (1) The make and model of SLM and portable calibrator used for the noise readings.
- (2) The date which the SLM was last certified by the manufacturer, or other independent calibration laboratory, as meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy requirements (should be within previous two years).
- (3) The SLM calibration readings obtained prior to, and immediately following, performing the compliance noise measurements.
- (4) The type of windscreen used to cover the microphone.
- (5) The height at which the noise readings were collected (should be at least 5 feet above ground), and an estimate of the distance (in feet) from the noise source to the SLM.
- (6) The time of day, date, and duration of noise data collected by the SLM.
- (7) An indication of the background noise level collected in the absence of the noise source in question.
- (8) A brief description of the meteorological conditions during the noise readings including wind speed and direction, air temperature, precipitation, and ground cover conditions.
- (9) A clear and concise comparison of the measured noise level data (expressed in dBAs) versus the applicable noise criteria limits contained in Section 3 of this by-law.
- (10) The findings and conclusions to be drawn from the noise compliance measurements.

## 7. Enforcement, Penalties, Appeals

### 7.A. Enforcement

In the event a noise complaint is received from a resident or business owner, or at any time at the discretion of the Town, a representative of the Winchester Board of Health, and/or their designee, shall respond and investigate the circumstances surrounding the noise issue. Noise levels may be judged excessively loud by a "reasonable person" standard as defined in Section 4 or may be measured at the receiving party's property line by a properly designated investigating agent. If measurements are deemed necessary, the investigating agent shall first have been trained in the proper use of, and equipped with, a calibrated sound level meter meeting the requirements described above in Section 6. The investigating agent shall collect all relevant information, perform noise compliance measurements (if available), and prepare a written report summarizing their findings in a manner consistent with the procedure described in Section 6.

If the investigating agent's findings indicate a violation of the noise criteria limits or restrictions contained in Section 3, except in those cases as described in Section 5, then the producer(s) of said noise shall be found in violation of this noise by-law and will be cited to a civil penalty consistent with the guidelines in Section 7.B together with such relief as outlined in Section 34 of Chapter 8 of the Town's by-laws.

### 7.B. Penalties

1. The first violation of this by-law shall result in the issuance of a *written warning* indicating the reason(s) for the violation and stating, at the investigating agent's discretion, a time period within which the offender(s) must cease production of the noise, or mitigate (reduce) the noise down to acceptable levels which will then comply with the restrictions and noise criteria limits in this by-law.

2. The second violation of this by-law stemming from the same noise issue within any 12 month period shall be punished by a fine of one hundred dollars (\$100.00).
3. Further violations of this by-law within any 12 month period shall be punished by a fine of one thousand dollars (\$1,000.00), together with a loss of permit or license applicable to any stationary or construction noise source as defined in 2 above.
4. Each such act in violation of this by-law which either continues or occurs more than one hour after issuance of a written warning of violation of this by-law shall be deemed a *separate* offense and shall be prosecuted as such, unless it occurs within the time period granted for correcting the original offense.
5. If the violation occurs on the premises of rental property which is not owned by the offender, then in the interest of assisting property owners in exercising responsible property management, the Town will notify the owner-of-record in writing that the violation has occurred, including the nature and circumstances of the violation.

#### 7.C. Appeals

An offender who has been cited and/or fined under the terms and procedures of this noise by-law can *appeal* the citation within 30 days after receiving it by presenting to the Board of Selectmen's appointed Hearing Officer any alternative information, situational evidence, noise measurement data, extenuating circumstances, or explanation to the contrary of the investigating agent's findings. The Hearing Officer will serve in judgment of the appeal, and will have full discretion to reject, request additional details, reduce the severity of the penalties, continue, or enforce as issued the violation under appeal. The ruling of the Hearing Officer shall be final and not subject to further appeals within the Town's governance system.

#### 8. Invalidity

If any provision of this by-law shall be determined to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction, the remaining provisions of this by-law shall continue in effect to the fullest extent permitted by law.

(Town Manager)

**ARTICLE 15.** To see if the Town will vote to transfer a certain parcel of land, located off High Street, Winchester, for nominal consideration to the Wright-Locke Land Trust, as shown on the plan entitled "Plan of Land 78 Ridge Street Winchester, MA" containing 7,630 square feet more or less, dated February 8, 2016 by Schofield Brothers, LLC. This parcel is currently part of the land leased to the Wright-Locke Farm Conservancy by the Town. The purpose of the transfer to the Wright-Locke Land Trust is to correct the encroachment of the building located at 82 High Street and to be leased by the Land Trust from the Conservancy. The land to be transferred is currently under lease to the Conservancy. This proposed transfer was approved by the Board of Selectmen and ratified by Town Meeting in the Development Agreement that was incorporated in the documents of transfer from the Town to the Land Trust or take any other action in relation thereto.

(Town Manager)

**ARTICLE 16.** To see if the Town will vote to authorize the Treasurer, with the approval of the Town Manager and the Board of Selectmen, to borrow money from time to time in anticipation of revenue for the fiscal year beginning July 1, 2016 in accordance with Massachusetts General Law, Chapter 44, Section 4 as amended and to issue a note or notes therefore, payable within one year, and to renew any note or notes as may be given for a period of less than one year in accordance with the provisions of Massachusetts General Law, Chapter 44, Section 17, or take any other action in relation thereto.

(Town Manager)