

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

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Memo

To: City Council
Bill Bridgeo, City Manager
Mike Duguay, Director of Development Services

From: Matt Nazar, Deputy Director of Development Services

Date: July 30, 2010

Re: Map 87, Lot 1 Rezoning on Town and Country Road

The owner of the property petitioned the Planning Board for a modification of the zoning on her split zoned property at the end of Town and Country Road. Under the current ordinance, the zoning line splitting a parcel is a hard line. The uses from each zone can be conducted on the portion of the parcel in the zone in which it is located. Prior to August 1, 2005, split zoned parcels were allowed to conduct uses across the entire property from either zone in which the property was located.

On July 13, 2010, the Planning Board held a public hearing regarding the rezoning of a portion of a split zoned property off Town and Country Road (off Capitol Street). The applicant stated that the intended use of the property would be for office development. Several renderings of possible buildings for the site were shown to the public and the Board. The renderings showed structures similar in design to the office buildings in the area, with clapboard siding and a pitched roof.

The board heard from residents in the Ganniston neighborhood, with most, but not all, expressing agreement with the proposed rezoning, provided the remainder of the parcel continues to be zoned Residential A (RA).

The staff review that the Planning Board received regarding this proposal included the following analysis of the criteria for rezoning outlined in the Land Use Ordinance.

1. Consistency with the 2007 Comprehensive Plan

The property is located in Augusta's Westside Residential District which is identified in the 2007 Comprehensive Plan. It is a mix of neighborhoods and commercial corridors. Commercial corridors, such as Capitol Street, are important places of commerce. These corridors should generally be limited in depth to one to two lots deep. The lot that the applicant proposes to rezone is the second lot back from Capitol Street. The proposal is consistent with the 2007 Comprehensive Plan.

2. Consistency with Established Land Use Patterns

There are office buildings along Capitol Street and high density apartment buildings adjacent to the site. An office park would blend in well with the existing land uses in the area.

3. Creation of an Isolated District Unrelated to Adjacent Districts

The proposed rezoning would move a zoning line that crosses the parcel to expand the area that is in the BP zone. The proposed rezoning would not create an isolated district unrelated to other districts.

4. Potential Impact on Utilities, Roads, and Services

Electric power, private roads, and services exist adjacent to the subject parcel. Michael Morey of the Greater Augusta Utility District comments that "Development will require an extension of the existing water main from the intersection of Alton Road and Town & Country Road at the owner's expense. All sanitary sewers will be private and will utilize an existing private sanitary sewer pump station at the intersection of intersection of Alton Road and Town & Country Road. It will be the developer's responsibility to make sure the pump station is adequately sized to handle the additional flow."

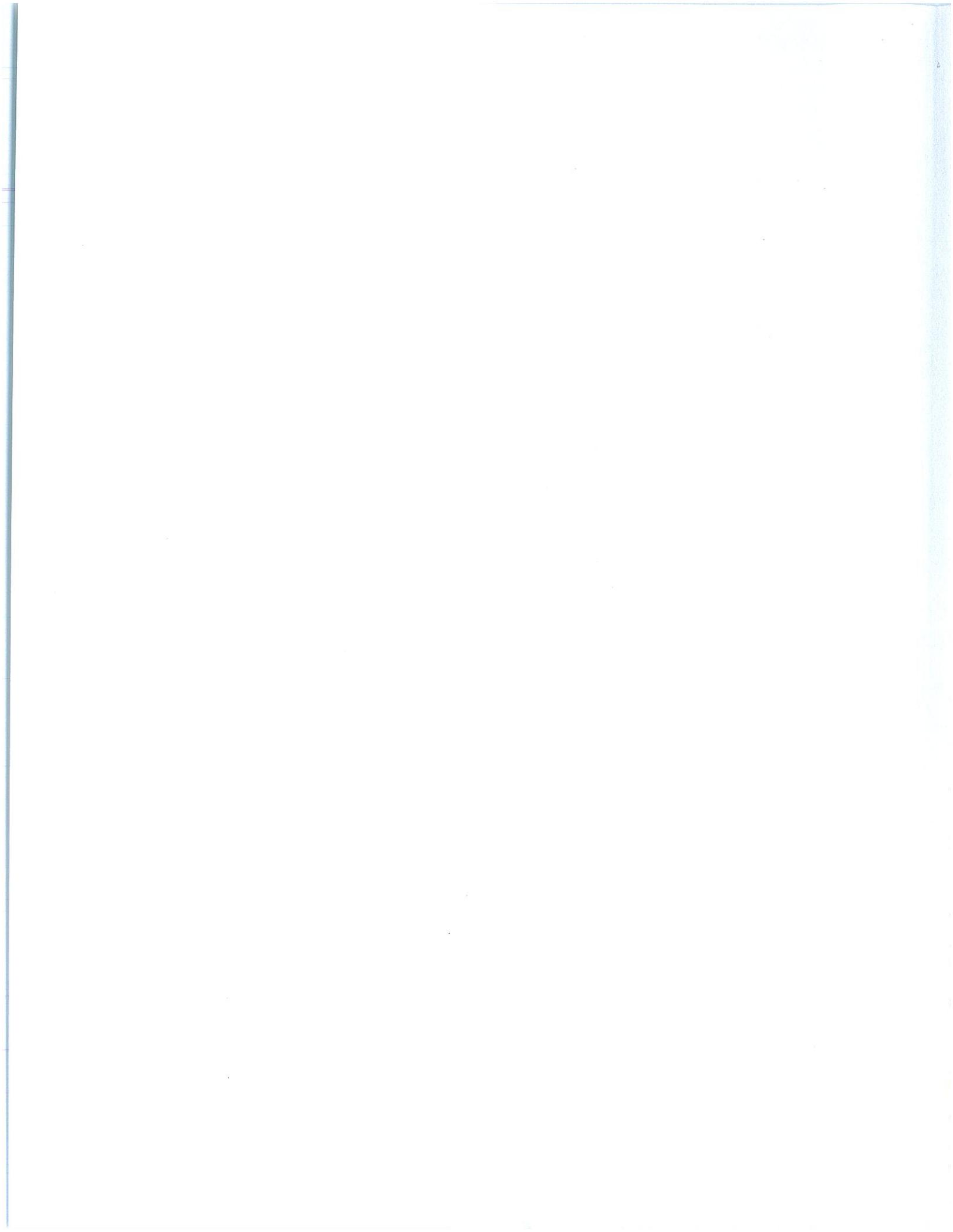
5. Changed or Changing Neighborhood Conditions

It is not clear whether this criterion has been met. Staff recommends that the Planning Board discuss whether this criterion has been met.

After reviewing the rezoning criteria outlined in the Land Use Ordinance and deliberating, the Planning Board voted unanimously to recommend approval of the proposed rezoning. The Board recommended the following language for Council review.

Potential Map Amendment Language

A portion of the lot known as Assessor's Map 87, Lot 1, as shown on the attached map entitled "Proposed Rezoning of a Portion of Map 87, Lot 1", dated November 25, 2009, shall be rezoned in accordance with Section 1.6.1(A)(iv)(a) of the Augusta Land Use Ordinance. The zoning line shall be moved to a stream that runs across the property. The new zone shall be Institutional/Business/Professional (BP).





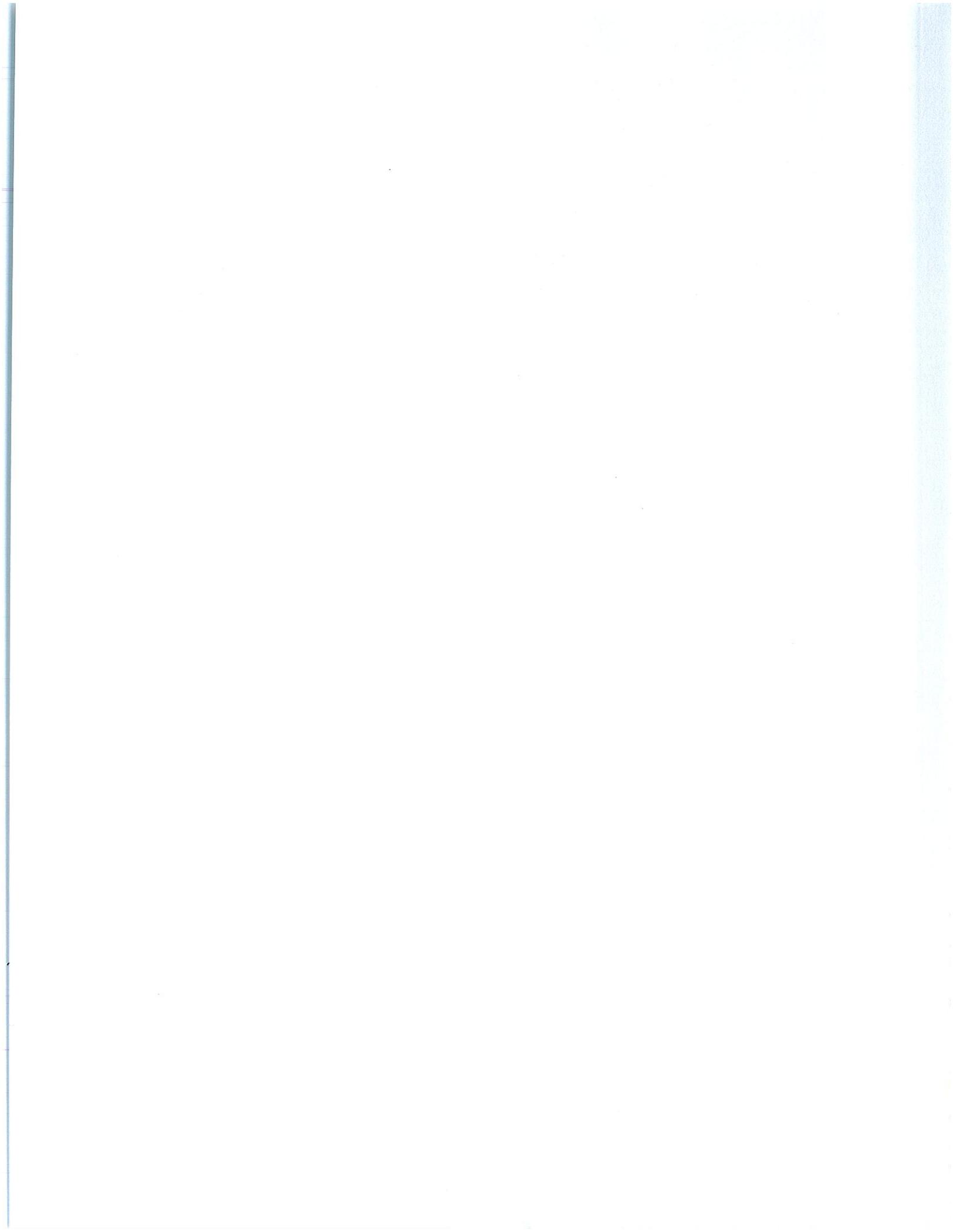
Proposed Rezoning of a Portion of Map 87, Lot 1
 November 25, 2009



Proposed BP Zone

1 inch equals 200 feet





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Memo

To: City Council
Bill Bridgeo, City Manager
Mike Duguay, Director of Development Services

From: Matt Nazar, Deputy Director of Development Services

Date: August 9, 2010

Re: Noise Ordinances

The City of Augusta currently regulates noise in the following ways:

1. Land Use Ordinance section 5.1.15.1.1 provides a fairly detailed commentary on noise issues and regulates site-specific noise, most commonly from commercial developments. Please read that commentary for some information about the problems of regulating noise related to volume, pitch, frequency, beat, etc. The noise regulations in this section of the Land Use Ordinance are identified as enforceable by either the Code Enforcement Office or the Police Department, primarily to deal with noise occurring during hours when a Code Enforcement Officer is not working.

2. The Augusta Code of Ordinances contains the following provision:

Sec. 13-4. Creating noise in public places, streets, sidewalks.

No person shall, in any street, sidewalk or public place, wilfully or mischievously make any loud or unusual noise, either by the voice, the discharge of firecrackers, pistols, guns or other firearms, or by the beating of drums, sounding of trumpets or other means, or sing loud, improper or boisterous songs, or in any manner conduct noisily so as to disturb the quiet and good order of the city.

(Code 1970, § 15-5)

This provision can be enforced by the

3. The Augusta Code of Ordinances also states the following related to motor vehicles:

Sec. 18-1. Unnecessary noise.

(a) Within the city limits no bell, horn or other device for signalling shall be sounded so as to make unreasonable noise.

(b) No operator of a motor vehicle on any public street within the city limits shall make any unnecessary noise by cutting out the muffler or spinning the wheels.

(Code 1970, § 22-1)

State law references: Similar provisions, 29 M.R.S.A. § 1364.

Noise specifically from nighttime garbage collection has been identified in a number of conversations with the City Council in the past. The City of Portland, OR, conducted a four year study on noise from garbage collection and made a significant set of conclusions and recommendations regarding the issue for their city. Attached is their final report.

Additional information is available online at

<http://www.portlandonline.com/bds/index.cfm?c=39497>

Also attached to this memo is the noise ordinance for the Town of Scarborough, the Town of York. Scarborough's ordinance specifically exempts noise from solid waste collection and timber harvesting.

Finally, I also attached sections of the City of Portland's Code of Ordinances related to noise. They address certain types of noise, but do not appear to directly discuss the issue of noise from garbage collection.

5.1.15 Air and Water Quality Standards.

5.1.15.1 Air Quality.

(1) NOISE STANDARDS:

Commentary: Facts about Noise. (SOURCE: Site Planning by Kevin Lynch and Gary Hack, 3rd edition.)

The usual problem with noise is to reduce either the level of the noise, its pitch, or its information content. Most modern noise is a form of wasted energy. Noise levels are measured in decibels, a logarithmic scale that is zero (0) at the threshold of hearing and one hundred forty (140) at the threshold of pain. Each interval of ten (10) decibels indicates a level of sound energy ten (10) times greater than before, an increase that the human ear will usually distinguish as being roughly twice as loud.

In most locations, we like to keep noise levels below fifty-five (55) decibels in any outdoor area, forty (40) decibels indoors, and thirty-five (35) decibels in rooms devoted to study or to sleep.

Noises are annoying or noticeable as much because of their frequency (pitch) as because of their loudness. High-pitched noises or those that interfere with the frequencies of human speech are particularly obnoxious.

We are more aware of sudden noises, that occur at unpredictable times, or those at night, when we hope to sleep, or those that are full of information, the human voice in particular. Thus we are upset by a sudden backfire, a distant high-pitched scream, or the soft murmur of talk next door, while far louder and more continuous sounds, such as of the sea, the wind, of heavy (continuous) street traffic, may be ignored.

It is sometimes useful to make a site survey of existing noise whenever the issue is controversial. The survey records the actual variation of sound level over some chosen period of time, using standard recording devices. But these extended recordings, varying constantly by loudness and pitch, must then be converted into the index that corresponds to a common level of annoyance. Some common sources and perceptions scale roughly as follows:

Decibels

- 0 Threshold of hearing.*
- 10 Rustle of leaves.*
- 20 Inside a quiet country house; a soft whisper.*
- 30 Inside a quiet city apartment.*
- 40 A quiet office.*
- 50 A noisy office; ambient noise of a normal kitchen; interference with sustained conversation.*
- 60 Level of ordinary conversation; noise becomes intrusive.*
- 70 80 km / hr (50 mph) auto at 15m (50 ft); difficult to talk on the telephone.*
- 80 Busy city street; noise is clearly annoying.*

90 Noisy kitchen; some possibility of hearing damage if there is long enough exposure.

100 Power mower; freight train close by; danger of hearing loss.

110 Pneumatic hammer; thunder close at hand.

120 Amplified rock music.

130 Jet airplane at 30m (100ft).

135 Threshold of pain.

Further explanation of the conduct and construction of such a study is outlined in Appendix F of Site Planning, by Kevin Lynch and Gary Hack, 3rd edition.

More facts on noise are listed in Appendix C of this ordinance.

- (a) Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness, or volume.
- (b) Attention shall be given to site planning to deal with audial quality. The site planner shall consider and where appropriate implement the following measures to mitigate the impact of noise (in order of preference):
 - (i) Suppression of noise source or putting distance between it and receiving uses.
 - (ii) Use of buildings, walls, or berms as partial barriers and arrangement of openings away from conflicting uses.
 - (iii) Deliberate introduction of background noise in order to mask the noise level, pitch or information content.
 - (iv) Completely sealing the building and operating entirely indoors.
- (c) No activity will be permitted with a noise level or vibration normally perceptible above street noise within one hundred (100) feet of a residential property line or residential district boundary line, and in the rural districts, within one hundred (100) feet of a residential or business/professional property line.
- (d) The Planning Board and/or Code Enforcement Officer may require that a noise impact study be conducted. The noise impact study may be either one or a combination of the following:
 - (i) Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.2-1962 "American Standard Meter for Physical Measurements of Sound."

Source: Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development, Mass. Dept. of Environmental Management, Center for Rural Massachusetts.
 - (ii) If no meters are at hand, a rough survey can be conducted without special equipment by two (2) people of normal hearing and average voice.
 - A. It is based on the fact that the point at which conversation just becomes impossible to understand is rather sharply defined. One person stands and

reads something unfamiliar to both parties in a normal voice. The other gradually backs away and notes the distance at which he/she just no longer understands the gist of what is being read to him/her, that is, when he/she catches a scattered word or two in a ten-second period.

- B. The trial is repeated rotating reader and listener, and the distances averaged.
 - C. If the distance is over twenty (20) m (65 feet), the noise level is less than forty-five (45) dBA and the site is good for housing and outdoor use.
 - D. If it lies between eight (8) and twenty (20) m (25 and 65 feet), the noise lies between forty-five (45) and sixty (60) dBA, and so the location is acceptable for housing.
 - E. Distances between two (2) and eight (8) m (7 and 25 feet) indicate levels of sixty (60 to seventy-five (75) dBA, and the site can only be used for housing if the latter will have special insulation.
 - F. Distances under two (2) m (7 feet) means levels over seventy-five (75) dBA, and the location is simply unusable for residence.
- (iii) If the use proposed is nonresidential, the noise impact study, if required, may utilize data from one (1) or more existing sources which roughly correspond (density, existing traffic volume, location of neighborhood, type of equipment used, other similar noise generators) with the proposed use.
- (e) Guidelines: One (1) or more of the following noise muffling mechanisms may be required by the Planning Board and/or Code Enforcement Officer:
- (i) Orientation of structure including placement of windows and major entryways shall be such that noise impact is directed away from less intensive neighboring uses.
 - (ii) Operation of equipment/processes which generate noise shall be required to take place indoors.
 - (iii) Pagers or a similar alternative shall be preferred over PA systems.
 - (iv) Block heaters shall be preferred over idling vehicles.
 - (v) If the original noise is not too powerful, masking mechanisms which add desirable random noises between conflicting land uses may be used. An example of such a masking mechanism is the play of water.
 - (vi) Surfaces with absorption capacity shall be placed between conflicting land uses.
 - (vii) Air turbulence to disperse sound may be used.
 - (viii) Barriers between noise generator and receiver such as berms, walls, buildings etc., may be used.

- (f) No person shall engage in construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 7:00 a.m. Otherwise, the following activities shall be exempt from these regulations:
 - (i) Sounds emanating from construction, development and maintenance activities conducted between 7:00 a.m. and 10:00 p.m.
 - (ii) Sounds emanating from safety signals, warning devices, emergency pressure relief valves and other emergency activities.
- (g) Any development within the sixty (60) LdN noise contours of the Augusta State Airport shall submit a copy of an "intent to build" letter submitted to the Augusta State Airport. Applications for development within the sixty (60) LdN noise contour shall also attach any written comments from the authorities of the Augusta State Airport.
- (h) These noise regulations are enforceable by law enforcement officers and/ or by the Code Enforcement Officer.

(2) SMOKE, ODORS, DUST, FUMES:

- (a) Emission of dust, dirt, flyash, fumes, vapors or gasses which could be injurious to human health, animals, or vegetation, detrimental to the enjoyment of adjoining or nearby properties, or which could soil or stain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall be prohibited. In addition, no land use or establishment shall be permitted to produce harmful, offensive, or bothersome odors, scents, or aromas (such as, but not limited to, those produced by manufacturing processes, food preparation, food processing, fish sales, rendering, fermentation processes, decaying organic matter, and incinerators) perceptible beyond their lot lines, either at ground or habitable elevation. The location and vertical height of all exhaust fans, vents, chimneys, or any other sources discharging or emitting smoke, fumes, gasses, vapors, odors, scents or aromas shall be shown on the plan, with a description of the source materials.

The Planning Board or Code Enforcement Officer may require a developer to submit detailed plans showing how this standard will be met.

5.1.15.2 Water Quality.

(1) GENERAL DRAINAGE AND EROSION CONTROL STANDARDS:

(a) INTENT/APPLICABILITY.

—All development in the City is required to control runoff and prevent erosion and sedimentation. An adequate drainage and erosion control system shall be provided including temporary and/or permanent appurtenances as necessary such as swales, ditches, mulch, hay bales, erosion control mesh, sedimentation basins, detention/retention basins, culvert/underdrain/stormwater conveyance pipes, catch basins, and manholes to assure that stormwater and other surface flows are effectively conveyed from the development and that groundwater is intercepted and conveyed



Report and Recommendations of the Noise Review Board on Reducing Nighttime Noise from Garbage and Recycling Collection – September 8, 2004

Executive Summary

During the Noise Control Task Force and the Noise Review Board's four-year study of noise issues within our city, the pervasive noise of nighttime garbage and recycling collection was identified as a growing cause of citizen complaint.

In concentrated study of this issue, it was found that the sound levels associated with nighttime collection are in a decibel range significant enough to impact the health of the community.

The Board finds that our current system of responding to complaints is neither effective nor efficient in resolving community concerns related to nighttime collection. The system, jointly operated by the Office of Neighborhood Involvement and the Office of Sustainable Development, relies primarily on requests from the City for voluntary action on the part of garbage haulers and their commercial customers to resolve complaints.

After reviewing the work of the Noise Control Task Force (2001) and the research and findings of city staff, the Noise Review Board recognizes that the most effective way to eliminate this source of nighttime noise would be the most obvious: to simply ban collection at night. If noise were the only consideration, that would be the Noise Review Board's straightforward recommendation. However, it appears that the effects of such a ban could go far beyond nighttime noise reduction, with impacts that the Noise Review Board and its staff are not equipped to evaluate. Among the unintended consequences could be increased daytime traffic congestion in those busy neighborhoods as garbage trucks operate and double-park, as well as an interruption of pedestrian traffic as haulers roll dumpsters across sidewalks.

Because of these considerations, the Noise Review Board recommends that a thorough evaluation of the option of a nighttime garbage and recycling collection ban be made should it be found that no other solution is adequate.

A second far-reaching solution would be to institute some form of franchising of commercial collection in Portland. The Noise Review Board felt that franchising would offer an immediate improvement to the noise impact on the community. The Board respectfully recommends that City Council implement a Commercial Franchising system for recycling and garbage collection. The Noise Review Board learned that all of the communities surrounding the City of Portland use a commercial franchise system, as do many major cities in other states. The idea is not unusual and should not be regarded as unfriendly to business, since this model is used throughout Oregon and is common elsewhere.

The final option for City Council is the implementation of the full body of mitigation techniques outlined by the Garbage Truck Noise Subcommittee in their April 16, 2004 report to the Board. These include a list of items that both commercial haulers and the City should implement immediately and one item that city planners should incorporate in Title 33. A second list of 8 other items, which would be applied on an individual complaint basis, is included in the body of work from the Subcommittee. All of these items are further detailed in the full body of the Noise Review Board's report.

Public Input and the General Process

In arriving at its recommendations, the Noise Review Board reviewed the work done over the previous four years by all study participants:

- Interested citizens and citizen groups
- Noise Control Task Force
- Garbage Noise Subcommittee
- Noise Control staff at the Office of Neighborhood Involvement
- Solid Waste and Recycling staff at the Office of Sustainable Development

The Board, its Garbage Noise Subcommittee, and city staff used an extensive mailing list, contacted some business groups directly, held a public hearing and several public committee meetings to discuss the study's progress and recommendations.

This report and recommendations document includes the following attachments. In many instances, this report will refer to an attachment rather than repeating the content of the attachment.

- A. Recommendations of the Noise Review Board Subcommittee on Garbage Collection (April 16, 2004)
- B. Minutes of Noise Review Board Public Comment Hearing (May 3, 2004) and any additional public comments
- C. Daly-Standlee & Associates, Inc. Report on Investigation of Dumpster Noise Controls
- D. Daly-Standlee & Associates, Inc. Report on Investigation of Garbage Truck Fork Noise Control Treatment
- E. Noise Control Task Force Final Report, Garbage Section

Issues & General Conclusions

Current trends in planning and development are creating more neighborhoods of mixed uses and high density within Portland. This makes efficient use of many public resources, including transportation and utility systems, and reduces certain environmental impacts. In terms of livability, residents of a mixed-use neighborhood may appreciate its liveliness during their waking hours, but be badly stressed by nighttime noise emanating from nearby businesses. Too often, urban planners and engineers fail to account for the issue of environmental noise pollution.

During the Noise Control Task Force's and Noise Review Board's four-year study of noise issues within our city, the pervasive noise of nighttime garbage and recycling collection was identified as a growing cause of citizen complaint.

In concentrated study of this issue, it has been found that the sound levels associated with nighttime collection are in a decibel range significant enough to impact the health of the community.

A few examples of such impacts include elevated blood pressure levels, elevated respiratory levels, and the obvious impact of arousal from a state of sleeping. Indeed, it was found that in some areas, residents may be awakened multiple times during the night, affecting not only

individual physical and mental health but also possibly endangering the public safety should that sleep-deprived individual operate a motor vehicle or work in the health care system, for example.

The Board also finds that our current system of responding to complaints is neither effective nor efficient in resolving community concerns related to nighttime garbage and recycling collection.

The current system, operated jointly by the Office of Neighborhood Involvement and the Office of Sustainable Development relies primarily on requests from the City for voluntary action on the part of garbage haulers and their commercial customers to resolve complaints. This system places too much discretion in the hands of businesses, which may choose to mitigate a noise disturbance, or simply to ignore the request for action.

After reviewing the work of the Noise Control Task Force and the research and findings of city staff, the Noise Review Board recognizes that the most effective way to eliminate this source of nighttime noise would be the most obvious: to simply ban collection at night. If noise were the only consideration, that would be the Noise Review Board's straightforward recommendation. However, it appears that the effects of such a ban would go far beyond nighttime noise reduction, with impacts that the Noise Review Board and its staff are not equipped to evaluate. Among the unintended consequences could be increased daytime traffic congestion in those busy neighborhoods as garbage trucks operate and double-park, as well as an interruption of pedestrian traffic as haulers roll dumpsters across sidewalks.

Because of these considerations, the Board recommends that a thorough evaluation of such a ban be completed if the time arrives that no other solution is adequate.

A second effective response would be to institute some form of franchising of commercial collection. Historically, Portland's commercial garbage collection system has not been franchised; it is open and competitive. Currently more than 50 haulers offer garbage and recycling collection for businesses and apartment owners. Those customers are free to choose their hauler, to negotiate rates, and to agree on the services to be provided, including the hours of service.

The Board learned that all of the communities surrounding the City of Portland use a commercial franchise system. Many major cities in other states use systems, such as franchise, contract, or municipal service, which do not allow customer choice but provide for government-set rates and service standards, in a type of public utility model. This idea should not be regarded as unfriendly to business since the model is used throughout Oregon and elsewhere.

The effect of allowing multiple haulers to collect at night within any single neighborhood results in large numbers of trucks collecting in most dense mixed-use neighborhoods. Under the current non-franchised system, neighboring businesses often sign up with different haulers. Given that each hauler must use one truck for garbage and another one or two trucks for recycling, a neighborhood with several haulers has many trucks in circulation. Businesses generating food waste, such as restaurants, need frequent, sometimes daily, collection.

Again, if reducing nighttime noise were the only consideration, the Board would expect a recommendation for instituting a franchise system to be an easy topic to raise. However, it is

generally accepted that many Portland business owners are opposed to losing their choice of hauler and the ability to negotiate rates, and may appear before Council to argue that view. While the Board views franchising as a means of creating a balance between the needs of urban dwellers and the needs of the business community, businesses may feel that this is another example of Portland's being heavy handed with its commercial community. Based on the wide extent of other communities using a commercial franchise model, this argument seems unfounded.

The Board recognizes the challenge in requesting that the City Council further evaluate the benefits of creating commercial franchising in Portland. Although the City Council advised the Board to look for other options, after four years of examining the issue and its possible solutions from many perspectives, the Board finds that the benefits of franchising strongly outweigh any detriments.

Recommendations

The Noise Review Board recommends that there be a thorough evaluation of a ban on nighttime collection if the time arrives that no other solution has been found to be adequate.

At this time however, the Board endorses a franchise system as an effective means of reducing the number of noisy trucks operating at night, and thus of protecting public health and neighborhood livability.

During the four-year study of nighttime noise from garbage and recycling collection, the majority of time was spent researching specific noise-generating activities of collection, and evaluating methods of mitigating the noise.

The Board recommends that the following be implemented immediately whether or not franchising is adopted. These recommendations fall into two categories. The first four are provisions that should be instituted by all commercial haulers and the City.

1. **"Best Practices" training for all drivers who operate collection vehicles at night.** In nighttime fieldwork, staff observed that driver behavior appeared to be the single most important factor affecting noise generation.
2. **"Smart" back-up alarms on all collection vehicles operating at night (adopted by the Office of Sustainable Development July 1, 2002).** These alarms sense the level of ambient noise and adjust appropriately. In quiet conditions the alarm beeps at much quieter levels.
3. **Promotion by the city of its complaint process** for nighttime collection noise problems. Citizens' anger is increased because they feel they have no access to a complaint system.
4. **The Bureau of Development Services should take nighttime noise generation into account when reviewing pickup locations** proposed in development site plans. One way to address this concern is incorporating new language in Title 33.

The second group of recommendations includes provisions to be applied once a complaint has been received by the city about a specific location and/or operation. Each of these is discussed in more detail in Attachment A, the Noise Review Board Subcommittee on Garbage Collection Report.

5. **Restrict hours of glass collection at the site (adopted by the Office of Sustainable Development as of September 2, 2002).** If a complaint is received regarding glass recycling collection at night at a specific site, the glass recycling collection there will need to occur during the day.
6. **Treat lid supports with a sound-deadening coating (adopted by the Office of Sustainable Development as of September 2, 2002).** This is a small metal arm that is anchored on one end so it can be rotated so as to support the lid in an open position. During container lifting, the arm swings freely and can strike other metal objects.
7. **Treat the containers ("dumpsters") with sound-deadening material.** The reverberation of the sides of the metal containers creates loud noises. See Attachment C, Daly-Standlee & Associates, Inc. Report on Investigation of Dumpster Noise Controls.
8. **Treat the forks on the trucks with sound-deadening material.** A great deal of noise is generated by metal forks on the truck within metal sleeves on the container, when the truck lifts a container and rocks it back and forth to empty it completely. See Attachment D, Daly-Standlee & Associates, Inc. Report on Investigation of Garbage Truck Fork Noise Control Treatment.
9. **Use plastic lids or plastic dumpsters, where the Fire Marshal will allow their use.**
10. **Individual case review by the Office of Sustainable Development and the Office of Neighborhood Involvement to solve unique cases.** Additional policy development will be required for issues that arise in these reviews. For example, who pays the costs of recommended/required changes? Should the hauler pay, or the entity contracting the hauler's services, or both?
11. **Change collection hours and/or location of garbage/recycling containers.**
12. **Apply new technologies as they become available.** These features are expected to reduce truck engine noise associated with generating the power to lift containers. Some possibilities include low rpm, high output pumps; or pumps with speed control; or engine rpm, throttle limits.

In order to apply new technologies as they become available, ongoing city staff time, and perhaps other resources, will be required for research and evaluation.

With the implementation of the measures recommended in this report, the Board believes that the quality of life in our City will be greatly improved and we will continue to demonstrate Portland's leadership on urban livability issues.

The Board recommends that Council provide the necessary financial support for researching these new technologies and more importantly adequately fund enough staff to review and resolve citizens' concerns related to noise throughout the city including night-time garbage and recycling collection . The Board feels that the City currently has inadequate staff in the Office of Neighborhood Involvement and the Office of Sustainable Development to effectively administer the recommendations, if they are approved by Council.

ATTACHMENTS

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|--|---------------------------------------|
| A. Recommendations of the Noise Review Board Subcommittee on Garbage Collection (April 16, 2004) | Canary Cover Page
7 pages |
| B. Minutes of the Noise Review Board Public Comment Hearing on May 3, 2004 and Additional Public Comments | Green Cover Page
16 pages |
| C. Daly-Standlee & Associates, Inc. Report on Investigation of Dumpster Noise Controls | Blue Cover Page
30 pages |
| D. Daly-Standlee & Associates, Inc. Report on Investigation of Garbage Truck Fork Noise Control Treatment | Salmon Cover Page
20 pages |
| E. Noise Control Task Force Final Report, Garbage Section | Orchid Cover Page
5 pages |

CHAPTER 614

TOWN OF SCARBOROUGH

NOISE ABATEMENT ORDINANCE



ADOPTED NOVEMBER 7, 2007

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CHAPTER 614
TOWN OF SCARBOROUGH
NOISE ABATEMENT ORDINANCE

Section 1. Loud, offensive noises prohibited.

No person shall make, continue or cause to be made or continued any loud, boisterous, unnecessary or unusual noises which shall annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others.

Section 2. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section:

Daytime hours means the hours between 7:00 a.m. and 9:00 p.m. Monday through Thursday; between 7:00 a.m. and 10 p.m. Friday through Saturday; and between 9:00 a.m. and 9:00 p.m. on Sunday.

Domestic power equipment means but is not limited to power saws, drills, grinders, lawn and garden tools and other domestic power equipment intended for use in residential areas by a homeowner.

Nighttime hours means the hours between 9:00 p.m. and 7:00 a.m. Sunday evening through Friday morning; between 10:00 p.m. and 7:00 a.m. Friday evening through Saturday morning; and between 10:00 p.m. and 9:00 a.m. Saturday evening through Sunday morning.

Property line means that line along the ground surface and its vertical extension which:

- (1) Separates real property owned or controlled by any person from contiguous real property owned or controlled by another person; or
- (2) Separates real property from the public right-of-way.

Section 3. Enforcement.

- (a) This ordinance may be enforced by any officer of the Scarborough Police Department.
- (b) No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this ordinance while such person is engaged in the performance of his duty.
- (c) Violations of this ordinance shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this ordinance, a written notice shall be given the alleged violator which specifies the time by which the condition

shall be corrected. No complaint or further action shall be taken on the initial violation if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice. If the cause of the violation is not removed or the condition abated or fully corrected within the time period specified in the written notice, or if the same person commits a subsequent violation of the same provision or provisions, of this ordinance specified in the written notice, then no further action is required prior to prosecution of the civil violation.

- (d) If the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice.

Section 4. Penalties.

Any person who violates any section of this ordinance or fails to obey any lawful order of any officer charged with the enforcement of the provisions contained herein commits a civil violation and shall be fined not less than \$100 for each day such violation continues after the time for correction of the violation specified in the notice under Section 3(c) has expired. Every day of continued violation constitutes a separate violation, and the amount of the fine shall be doubled for each day the violation continues, up to a maximum of \$400.00 per day.

Section 5. Exclusions.

This ordinance shall not apply to noise emitted by or related to:

- (1) Any bell or chime from any building clock, school or church.
- (2) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms or car alarms not terminating within 30 minutes after being activated shall be unlawful.
- (3) Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
- (4) Farming equipment or farming activity.
- (5) Noise from domestic power equipment, such as but not limited to power saws, sanders, grinders, lawn and garden tools or similar devices operated during daytime hours.
- (6) Timber harvesting (felling trees and removing logs from the woods).
- (7) Noise generated by any construction or demolition equipment which is operated during daytime hours. Emergency construction or repair work by public utilities shall also be exempted. The police department may allow construction during nighttime hours if it is

demonstrated that the extenuating circumstances disallow construction during the daytime hours.

- (8) Noise created by refuse and solid waste collection.
- (9) Municipal, public works or utility projects.

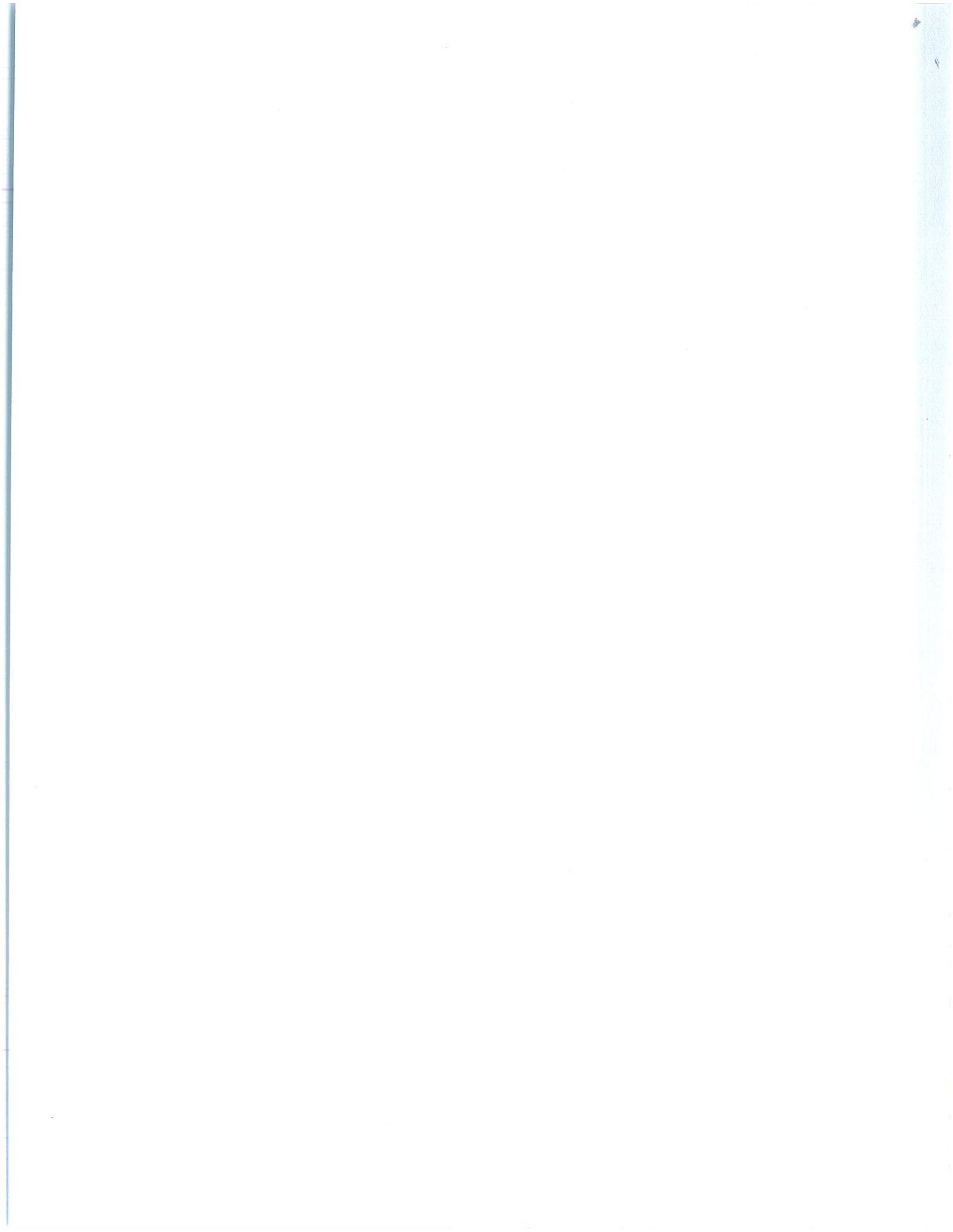
Section 6. Specific prohibitions.

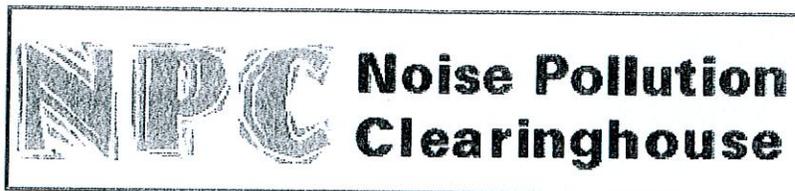
The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this ordinance, but such enumeration shall not be deemed to be exclusive:

- (1) Owning, possessing or harboring a barking dog or any animal or bird which, frequently and repeatedly or for continued duration, makes sounds which create a noise disturbance across a property line onto residential property. For the purpose of this ordinance, a barking dog shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of ten minutes or barks intermittently for one-half hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property; provided, however, that a dog shall not be deemed a "barking dog" for purposes of this ordinance if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated.
- (2) The using or operating or the permitting to be played, used or operated of any radio, receiver, electronically amplified musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of music or sound which is audible outside of any structure during the nighttime hours or which broadcasts the sound in a loud and unreasonable manner during day-time hours which is audible a minimum of 200 feet from the source of the noise except as otherwise permitted, licensed or sponsored by the Town.
- (3) The use of any automobile, motorcycle or other vehicle, nonessential to safe and reasonable operation, in one or more of the following ways:
 - a. Revving of motor vehicle engines.
 - b. Squealing of tires.
 - c. Accelerating or braking unnecessarily so as to cause a harsh, objectionable or unreasonable noise.
 - d. Operating audio equipment clearly audible beyond the confines of a motor vehicle.

Section 7. Severability.

Should any section or provision of this ordinance be determined in a court of law to be unconstitutional, invalid or unenforceable, such determination shall not affect the validity of any other portion of the ordinance or of the remainder of the ordinance as a whole.





"Good Neighbors Keep Their Noise to Themselves"

York, ME Noise Ordinance

(NPC posted this April 2004)

TOWN OF YORK

NOISE ORDINANCE

An Ordinance providing for the reduction and elimination of noise by establishing maximum noise levels upon and between premises, prohibiting certain noise activities, and providing for inspection, offenses and penalties in the Town of York, Maine.

SECTION 1. SHORT TITLE: "The Town of York Noise Control Ordinance".

SECTION 2. PURPOSE: It is recognized that the Town of York has a compelling interest in ensuring for its residents an environment free from excessive noise that may jeopardize their health or welfare or degrade the quality of life. This ordinance is enacted to protect, preserve and promote the health, safety, welfare and quality of life for the citizens of York through the reduction, control and prevention of loud and unreasonable noise. The Town has conducted studies of decibel levels found in York: and this ordinance is referenced to the scientific facts resulting from these studies: Ad Hoc Noise Control Ordinance Committee findings, with Planning Board review, September 10, 1984 and (report from a recognized Scientific Noise Measurement agency).

SECTION 3. NOISE LEVELS:

3.1 It shall be unlawful for any person to emit or cause to be emitted any noise beyond the boundaries of his/her premises in excess of the noise levels established in these regulations.

3.2 NOISE LEVEL STANDARDS

Sound from any source controlled by this ordinance shall not exceed the following limits at the lot line of the "receiving" property:

SOUND PRESSURE LIMITS

(Decibel levels (dB) measured in the A scale).

<u>Zoning Districts</u>	<u>Sunday through Thursday</u>		<u>Friday and Saturday</u>	
	<u>day</u>	<u>night</u>	<u>day</u>	<u>night</u>
<u>Route 1 Ind./Comm.</u> H-1, H-2, H-3	<u>7 am - 11 pm*</u> 68	<u>11 pm - 7 am</u> 55	<u>7 am - 11 pm*</u> 68	<u>11 pm - 7 am</u> 55
<u>Commercial</u> Village B and Harbor B-2	<u>8 am - 10 pm</u> 60	<u>10 pm - 8 am</u> 50	<u>8 am - 11 pm</u> 60	<u>11 pm - 8 am</u> 50
<u>Beach Mixed Use</u> R1, R1A, R1B, RES 5	<u>8 am - 10 pm</u> 65	<u>10 pm - 8 am</u> 50	<u>8 am - 11 pm</u> 65	<u>11 pm - 8 am</u> 50
<u>Resort Commercial**</u> RC	<u>8 am - 11 pm</u> 74	<u>11 pm - 8 am</u> 57	<u>8 am - 11 pm</u> 74	<u>11 pm - 8 am</u> 57

<u>Residential & General</u>				
Vill: A, B-1, B-2, B-3, C-1, C-2, D-1, D-2	8 am - 9 pm	9 pm - 8 am	8 am - 11 pm	11 pm - 8 am
Harbor: A, B-1	55	45	55	45

* The time 7 am to 11 pm corresponds to the two daytime shifts of the 3-shift industrial workday: 7 am - 3 pm, 3 pm - 11 pm, 11 pm - 7 am.
 ** For the purpose of this ordinance, the amusement park portion of York's Wild Kingdom shall be regarded as occupying the Resort Commercial Zone: this does not supersede existing Town zoning or any other new zoning districts that may be formed from time to time.

a. Because the Decibel A Scale (dB(A)Scale) responds most closely to the range of sounds audible to the human ear, the dB(A) Scale shall be used for all sound pressure measurements; and a violation of the standards of Section 3.2 shall be deemed to constitute a violation of this Ordinance.

b. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.

3.3 Resort Commercial Buffer Zone

a. Because the intensity of inimpeded sound naturally decreases proportionally to the inverse square of the distance away from its source, it is deemed reasonable to allow for a buffer strip between the naturally more noisy Resort Commercial (RC) Zone and the naturally less noisy mixed residential zones which surround the RC Zone. The purpose of said buffer zone is to provide sufficient space within which to construct sound barriers, including but not limited to, walls or earth berms to effect a reduction where needed, of sounds emanating from the Resort Commercial and traveling into said surrounding mixed residential zones.

b. The Buffer Zone shall extend 10 feet within the Resort Commercial Zone and 10 feet into the abutting zones. The decibel level at the Buffer Zone boundary within the Resort Commercial Zone shall be 74 dB (A) or less from 8 A.M. to 11 P.M.: 57 dB(A) or less from 11 P.M. to 8 A.M. Within the Buffer Zone at the boundary of the Resort Commercial Zone, the noise limit shall be 69 dB(A) or less from 8 A.M. to 11 P.M.: 54 dB(A) from 11 P.M. to 8 A.M. At the outer edge of the Buffer Zone within the abutting zone, the noise level shall be less than 65 dB(A) from 8 A.M. to 11 P.M.: 50 dB(A) from 11 P.M. to 8 A.M.

3.4 Temporary Exceedance of Sound Pressure Limits

The levels specified in Section 3.2 may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes, in any consecutive 24 hour period.

3.5 EXCLUSIONS

These levels shall not apply to noise emitted by or related to:

- a. Natural phenomena.
- b. Church bells rung as part of any official church ceremony or service, and tower clock bells ringing the hour during daytime hours.
- c. Any siren, whistle or bell lawfully used by emergency vehicles or any other alarm systems used in any emergency situation, provided, however, that burglar alarms not terminated within thirty (30) minutes after being activated shall be unlawful.
- d. Warning devices required by OSHA or other State or Federal regulations.
- e. Lawful emergency maintenance or construction such as, but not limited to, repair of a broken water main or replacement of overhead power lines.
- f. Noise created by any recreational activities which are permitted by law and for which any temporary license or permit required by the Town has been granted, including, but not limited to, parades, special sporting events, occasional public concerts and fire works displays.

SECTION 4. SPECIFIC PROHIBITIONS

4.1 The following acts are declared to be loud, disturbing and unnecessary noises in violation of this ordinance:

a. Owning, possessing or harboring any animal or bird which frequently or for continued duration, makes loud and unreasonable sounds which create a noise disturbance across a real property boundary. For the purpose of this ordinance, a barking dog shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of ten minutes or barks intermittently for one-half hour

or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property; provided, however, that a dog shall not be deemed a "barking dog" for the purpose of this Article, if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog.

b. Using, operating or permitting to be played in a loud and unreasonable manner any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any premise or structure without proper licensing.

c. The loud and unreasonable shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

SECTION 5. BOAT NOISE

Administration of this Ordinance concerning noise originating from any waterway in the Town of York under the jurisdiction of the York Harbor Master shall likewise be under the jurisdiction of the York Harbor Master. In the lawful pursuit of his authority under this Ordinance, the Harbor Master may call upon any Town of York Noise Control Officer or trained State personnel for assistance.

5.1 All watercraft on the waters of the Town of York under the jurisdiction of the York Harbor Master shall use an engine muffler in compliance with the Maine Boat Law, Article 15, as it may be amended from time to time.

5.2 Watercraft on waters under the jurisdiction of the York Harbor Master shall be prohibited from creating excessive noise as a result of being operated at greater than reasonable and prudent speed, as defined in the Maine Boat Law, Article 11, as amended from time to time. Excessive boat noise shall be 65 dB level, A Scale, or greater, measured frequently over a 5 minute period on the boundary of private property abutting the shoreline.

SECTION 6. MEASUREMENT PROCEDURES

For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable.

6.1 All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation according to A.N.S.I. I or II Metering Techniques.

6.2 Instruments used to determine sound level measurements shall conform to Standards of A.N.S.I. Type I or Type II meters.

SECTION 7. RIGHT OF ENTRY FOR INSPECTION

7.1 For the purpose of determining compliance with the provisions of this Ordinance, the Noise Control Officer is authorized to make inspections of all noise sources and to take measurements and make tests whenever necessary to determine the quantity and character of noise. He may enter any property with the consent of the owner or his agent. If consent is not granted, the Officer may seek an administrative warrant from District Court.

SECTION 8. ENFORCEMENT

8.1 The Noise Control Officer is directed to enforce the provisions of this Ordinance, to issue a summons to any person who violates a law or ordinance which the official is empowered to enforce; and

8.2 When specifically authorized by the municipal officers, to represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws which the official is empowered to enforce.

8.3 No person shall interfere with, oppose or resist an authorized person charged with the enforcement of this Ordinance while such person is engaged in the performance of his duty.

8.4 Violations of this Ordinance shall be prosecuted in the same manner as other civil violations, provided,

however, that in the event of an initial violation of the provisions of this Ordinance, a written notice shall be given to the alleged violator which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken in the event the cause of the violation has been removed, the condition abated or fully corrected within the same period specified in the written notice. The notice shall state that unless corrections are made within the allotted time, the violator is subject to prosecution pursuant to provisions of this ordinance.

- 8.5 In the event the alleged violator cannot be located in order to serve the notice of the intent to prosecute, the notice as required herein shall be deemed to be given upon mailing of notice by registered or certified mail, return receipt requested, to the alleged violator at his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice. Subsequent violations of the same offense shall result in the immediate filing of a criminal complaint.

SECTION 9. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

Ambient Noise. Ambient noise is the all-encompassing noise associated with a given environment, being a composite of sounds from many sources near and far.

Compliance Report. The source document prepared by the law enforcement officer after receiving a complaint from a complainant detailing an incident. The report, when duly signed by the officer, shall become a matter of record. The report shall remain on file until its use requires destruction or retirement. Each complaint shall be investigated by the responding officer and attested to as to the validity of said complaint.

Decibel. Decibel shall mean the practical unit of measurement for sound pressure level the number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals), abbreviated dB. The abbreviation dB(A) shall refer to readings taken on the A-weighted scale.

Emergency. Shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency Vehicle. Shall mean any private, Town, State or Federal motor vehicle authorized to have sound warning devices such as sirens and bells which can lawfully be used when responding to an emergency.

Emergency Work. Shall mean work made necessary to restore property to a safe condition following an emergency, or work required to protect persons or property from exposure to imminent danger.

Motor Vehicle. Shall mean any vehicle which is propelled or drawn on land or water by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, racing vehicles, motorcycles, trail bikes or mini-bikes and watercraft. Seaplanes, for the purpose of this Ordinance, shall not be defined as watercraft.

Muffler. Shall mean a device for abating sounds such as escaping gases from an internal combustion engine.

Municipal Officers. Duly elected officials of the Town, commonly known as Selectmen.

Noise Control Officers. Shall mean a municipal employee trained in the use of sound level meters. This Ordinance shall normally be enforced by a police officer, but also may be enforced by the Code Enforcement Officer during normal working hours, or the Harbor Master.

Person. Shall mean any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency or political or administrative subdivision of the State or other legal entity of any kind.

Premises. Shall mean 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.

Property Line. Shall mean that real or imaginary line along the ground surface and its vertical extension which (a) separates real property owned or controlled by any person from contiguous real property owned or controlled by another person, and (b) separates real property from the public right-of-way.

Sound Level Meter. Shall mean an instrument for the measurement of sound levels conforming to A.N.S.I. Type I and Type II Standards.

Summons. An order to comply or appear.

9.1 Words Not Specifically Defined in this Ordinance.

Any words or phrases in this Ordinance not covered under "definition" shall assume their common dictionary definition.

SECTION 10. PENALTIES

10.1 Any person or persons, firm or corporation who violates any of the provisions of this Ordinance, or who fails to conform to any of the provisions thereof, or who fails to obey any lawful order of any officer charged with the enforcement of the provisions of this Ordinance, or other persons who shall assist in the violation of this Ordinance. shall be guilty of a civil violation and upon conviction thereof shall be fined not less than One Hundred (\$100.00) Dollars, but not more than Five Hundred (\$500.00) Dollars. Each violation or failure to comply constitutes a separate offense. The municipality may be awarded reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

SECTION 11. SEVERABILITY

Any provisions of the Zoning Ordinance of the Town of York which are more stringent than those set forth herein shall remain in force. It, for any reason, any word, clause, paragraph or section of this Ordinance shall be held to make the same unconstitutional, the ordinance shall not hereby be invalidated and the remainder of this ordinance shall continue in effect.

SECTION 12. EFFECTIVE DATE

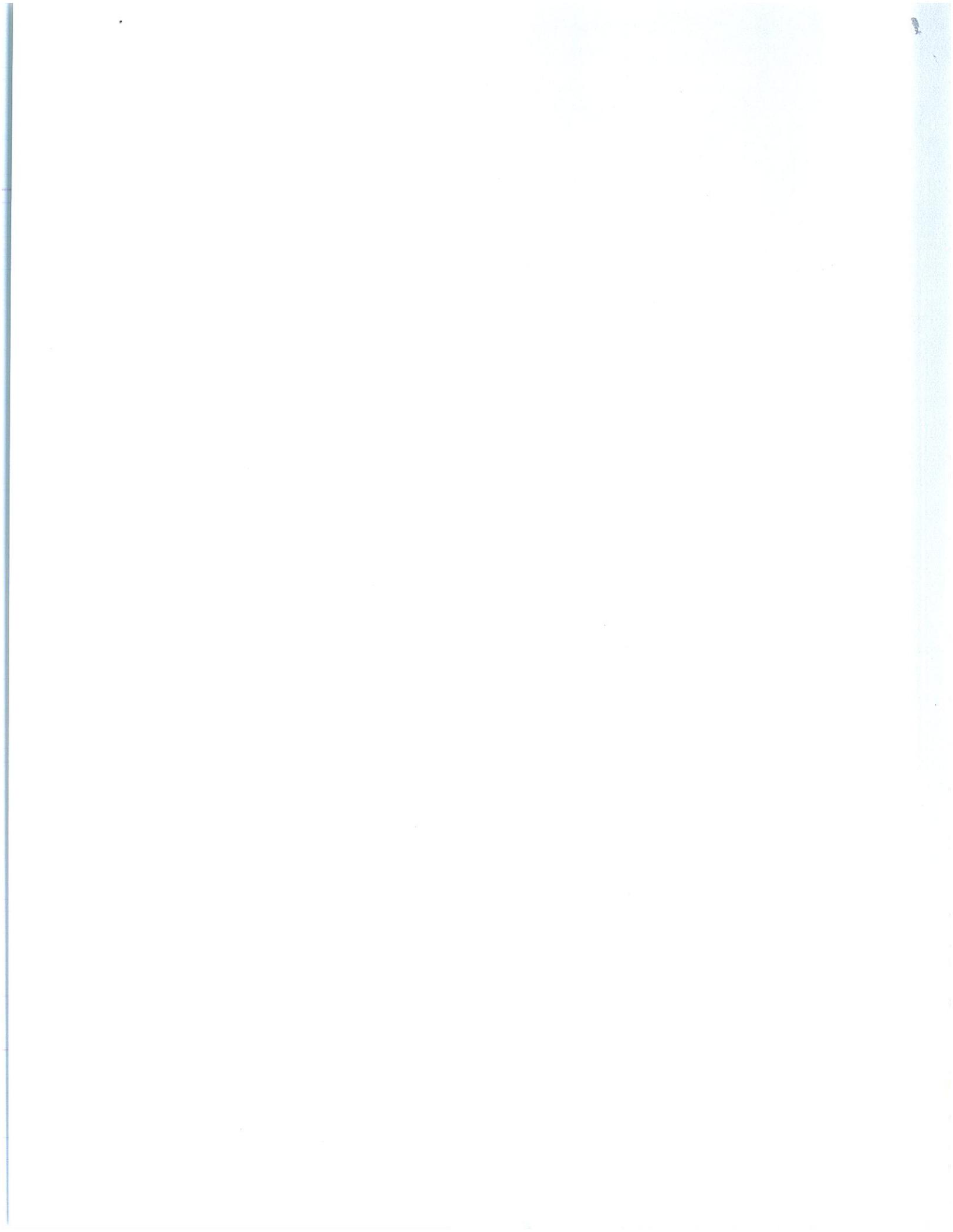
This ordinance shall become effective upon adoption by Town Meeting.

SECTION 13. AMENDMENTS

This ordinance may be amended by majority vote of any Town Meeting.

Adopted at STM 3/30/85





(\$100.00) for a first offense; a minimum fine of three hundred dollars (\$300.00) for a second offense; and a minimum fine of five hundred dollars (\$500.00) for each and every offense thereafter. In any action in which the city prevails, it shall be entitled to attorneys' fees and all costs of prosecution.
(Code 1968, § 703.3; Ord. No. 247-93, 3-22-93)

State law reference(s)--Disorderly conduct, 17-A M.R.S.A. § 501 et seq.

Sec. 17-18. Construction activities.

(a) Within the R-zones, from September 1st to May 31st, no person shall engage in construction activities generating noise exceeding fifty (50) decibels, between the hours of 7:00 p.m. and 7:00 a.m., of the following day within five hundred (500) feet of any building used for residential, hospital or nursing home purposes. From June 1st to August 31st construction activity may continue until 8:00 p.m. Any other language notwithstanding, no construction activity shall begin before 8:00 a.m. on a Saturday, Sunday or legal holiday.

(b) Construction activities shall include, but not be limited to, the following:

- (1) The use or operation of power or heavy equipment in connection with road, street, or bridge construction, reconstruction or repair;
- (2) The use or operation of power or heavy equipment in connection with the installation or repair of utility lines, pipes, wires or cables;
- (3) The use or operation of power or heavy equipment in connection with the construction of buildings, including specifically excavation for foundations or landscaping work of any kind;
- (4) The renovation, repair, remodeling or demolition of the exterior or foundation of any building or structure.

(c) This section shall not apply in the following situations:

- (1) Emergency repair work on any utility line, pipe, wire or cable required to restore normal utility service;
- (2) Situations where the public works authority or the office

of building inspections determines that the construction activity is of a unique character which cannot reasonably be completed or performed during the permitted hours and which is not of a recurring nature, provided that prior to engaging in such activity the contractor or his representatives gives notice of the time and scope of such proposed activity, the notice to be given in a manner approved by the public works authority.

(Code 1968, § 703.3A; Ord. No. 403-71, 8-16-71; Ord. No. 59-05/06, 10-17-05)

Sec. 17-19. Loading of scrap metal.

(a) Between the hours of 9:00 p.m. and 7:00 a.m. the following day, no person shall engage in the loading or unloading of scrap metal into or from ships, vessels, or barges; nor shall any person, during said hours, engage in scrap metal stacking or piling preparatory to such loading or unloading, at the site thereof, or on any property adjacent thereto.

(b) Nothing herein shall be construed to prohibit movement of metal directly related to, and in the course of, the construction, repair or refurbishing of ships, vessels or barges.
(Ord. No. 170-85, 4-1-85)

Sec. 17-20. Creation of Certain Noise Upon Public Right Of Way.

(a) *Purpose.* The Portland City Council finds that excessive noise on public ways may cause distraction to other drivers and preclude the safe operation of motor vehicles to the detriment of the health, welfare and safety of Portland's citizens. Accordingly, it is the policy of the City of Portland to prohibit unnecessary, excessive, annoying and distracting noise on public right of ways within the City of Portland.

(b) *Definitions.* For the purpose of this article, the following words and phrases shall have the following meanings:

- (1) "City" means the City of Portland, Maine.
- (2) "Noise-creating device" means any electrical, mechanical or chemical device or instrument, or combination thereof, that creates noise during its operation by a person.
- (3) "Motorcycle" means an unenclosed motor vehicle, having a saddle for the use of the operator, with two or three wheels in contact with the ground, including, but not

limited to, motorscooters and minibikes.

- (4) "Operation" means actual control by a person.
- (5) "Public right-of-way" means any street, roadway, alley, sidewalk or other area deeded or dedicated for public travel or transportation purposes.
- (6) "Straight pipe exhaust system" means any straight through muffler that does not contain baffles, including, but not limited to, glass packs, steel packs and straight pipes.

(c) Creation of certain noises upon public right of way prohibited.

- (1) No person, while occupying any public right-of-way in the City, shall operate any noise-creating device in such a manner that the public's attention is drawn to the source of the noise.

The prohibition of this section shall include, but not be limited to, the following activity or conduct:

- a. Discharging fireworks or any exploding device,
- b. Firing a starter pistol, air gun, BB gun or a firearm,
- c. Sounding a bell or whistle for so extended a period of time as to cause annoyance to others,
- d. Rapid throttle advance and/or revving of an internal combustion engine resulting in increased noise from the engine,
- e. Operation of motor vehicle, as defined in 29-A M.R.S.A. §101(42), including but not limited to a motorcycle with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to, 29-A M.R.S.A. §1912.

(d) *Exceptions.* The provisions of this section shall not apply to the following activity or conduct:

- (1) Expression or communication protected by the United

States Constitution, including the First Amendment, or the Maine Constitution.

- (2) Any activity or conduct the regulation of which has been preempted by Maine statute.
- (3) Any noise created by a governmental entity in the performance of an official duty.
- (4) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit.
- (5) The sounding of any signaling device permitted by law.

(e) *Penalty.*

- | | |
|-------------------------------------|----------|
| (1) First Offense: | \$50.00 |
| (2) Second Offense: | \$100.00 |
| (3) Third Offense: | \$200.00 |
| (4) Fourth and Subsequent Offenses: | \$500.00 |
- (Ord. No. 182-02/03, 3-17-03)

Sec. 17-21. Motor vehicle alarms.

(a) *Prohibition.* No registered owner of a motor vehicle equipped with an audible burglar alarm shall allow the alarm to operate for more than ten (10) aggregated minutes in any sixty (60) minute period, unless the alarm was triggered by a burglary or attempted burglary in which case the alarm shall operate for no more than twenty (20) aggregated minutes in a sixty (60) minute period. If the owner asserts that a burglary or attempted burglary activated the alarm, the owner has the burden of proving that assertion by clear and convincing evidence.

(b) The registered owner of a motor vehicle is responsible for compliance with this ordinance and for any fines, penalties, fees and costs generated by non-compliance, regardless of who has custody or control of the vehicle at the time of non-compliance, unless at that time the vehicle was stolen and the owner reported that theft to a law enforcement agency within twenty-four (24) hours of the violation of this ordinance.

(c) *Penalties.* After the first offense, a notice of the

violation shall be left on the vehicle in a conspicuous location or mailed to the registered owner at the owner's last known address. Notice shall be complete upon placement on the vehicle or mailing. A subsequent violation of this ordinance shall subject the registered owner of the motor vehicle to the following fines:

- (1) Second offense within a 365 consecutive day period:
\$50.
- (2) Third offense within a 365 consecutive day period:
\$100.
- (3) Fourth or any subsequent offense within a 365 consecutive day period: \$300.
(Ord. No. 159-04/05, 2-23-05)

Sec. 17-22. Reserved.
Sec. 17-23. Reserved.
Sec. 17-24. Reserved.
Sec. 17-25. Reserved.
Sec. 17-26. Reserved.
Sec. 17-27. Reserved.
Sec. 17-28. Reserved.
Sec. 17-29. Reserved.
Sec. 17-30. Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC SAFETY*

*State law reference(s)--Offenses against public order, 17-A M.R.S.A. § 501 et seq.

DIVISION 1. GENERALLY

Sec. 17-31. Selling toy balloons with flammable gas prohibited.

No person shall sell, offer for sale, or have in his possession with intent to sell, any toy balloon inflated with hydrogen or any other flammable or explosive gas.

