

Local Law Filing

12231

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

FILED
STATE RECORDS
JUN 17 2019
DEPARTMENT OF STATE

County _____
City of Cooperstown
Town _____
Village _____

Local Law No. 2 of the year 2019

A local law _____ amend Noise Law Regulations (Chapter 172) _____
(Insert Title)

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County _____
City of Cooperstown as follows:
Town _____
Village _____

See attached sheets

Chapter 172

Noise

GENERAL REFERENCES

Animals — See Ch. 28.

Outdoor eating areas — See Ch. 178.

Vending, peddling and soliciting — See Ch. 277.

Zoning — See Ch. 300.

§ 172-1 Short title.

This chapter shall be known as the "Cooperstown Noise Ordinance."

§ 172-2 Legislative intent.

- A. It is hereby declared to be the policy of the Village of Cooperstown to prevent unreasonably loud, disturbing, and unnecessary noise and sounds and to reduce noise and sound levels within the Village so as to preserve, protect, and promote the public health, safety, and welfare and to foster harmony and comfort within the Village by inhabitants and visitors.
- B. The Village of Cooperstown welcomes weddings, dining, and other similar outdoor activities, festivities, and celebrations. Such activities may include music, sound amplification, and other noises that require the issuance of a sound permit or sound level variance.
- C. Certain noises, such as sirens and alarms, are necessary to promote public welfare, as well as the maintenance and improvement of buildings and property. Such noises shall not be prohibited, but limits may be instituted in a manner that is appropriate with their function.

§ 172-3 Definitions.

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

A-WEIGHTED SOUND LEVEL

The measurement of sound approximating the auditory sensitivity of the human ear as measured with a sound-level meter using the A-weighting network. The level so read is designated "dB."

DECIBEL (dB)

The unit of sound measurement, on a logarithmic scale, of the ratio of the magnitude of a particular sound pressure to a standard reference pressure which for the purpose of this section shall be 0.0002 microbar.

MULTIPLE DWELLING UNIT BUILDING

Any building wherein there are two or more apartments or dwelling units.

NOISE

Any sound of such level and duration as to be or tend to be injurious to human health or welfare or that would reasonably interfere with the enjoyment of life or property.

REAL PROPERTY LINE

The boundary line, including the vertical extension thereof, that separates legal ownership of one parcel

of real property from another, or the vertical and horizontal boundaries of a dwelling unit that is part of a multiple dwelling unit building.

RESIDENTIAL PROPERTY

Any structure used or intended for human habitation.

SOUND DEVICE OR APPARATUS

Any machine, equipment, electronic device, or other apparatus or device that creates, reproduces or amplifies sound of any type.

SOUND LEVEL

The sound pressure level measured in decibels with a sound-level meter set for A-weighting. Sound level is expressed in dB.

SOUND-LEVEL METER

An instrument for the measurement of noise and sound.

SOUND MEASUREMENT

The reading produced by the decibel meter held at chest level when pointed in the apparent direction of the source of the sound. The sound measurement shall be the average of two readings, each taken from a location specified in Subsection 172-5 below. Reading locations shall at least 30 feet apart and with a minimum of at least one minute separation between readings when the meter is set for slow sound readings.

§ 172-4 Standards for determination.

The standard or standards to be considered in determining whether a noise is an unreasonable noise which constitutes a prohibited noise shall include but not be limited to one or more of the following:

- A. The volume of the noise.
- B. The intensity of the noise.
- C. Whether the nature of the noise is usual or unusual.
- D. Whether the origin of the noise is natural or unnatural.
- E. The volume and intensity of the background noise, if any.
- F. The proximity of the noise to residential sleeping facilities.
- G. The nature and the zoning district of the area within which the noise emanates.
- H. The time of the day or night the noise occurs.
- I. The time duration of the noise.
- J. Whether the sound source is temporary.
- K. Whether the noise is continuous or impulsive.
- L. The presence of discrete tones.

§ 172-5 Sound creation and amplification.

A. Maximum permitted sound levels.

- (1) Except as otherwise expressly permitted in this section, no person shall cause, suffer, allow, or permit the operation of any sound device or apparatus within the Village of Cooperstown with volume which is annoying, causes alarm, unreasonably causes public inconvenience, or unreasonably disturbs the use and enjoyment of one's life and property.
- (2) Except as otherwise expressly permitted in this section, it shall be prima facie evidence of a violation of this chapter if the sound level emanating from any sound device or apparatus is measured at a decibel level that exceeds 70dB within Residential Districts or 80dB within the Business and Commercial Districts between 7:00 a.m. and 10:00 p.m. or 60dB between 10:00 p.m. and 7:00 a.m. in any District from one or more of the following locations:
 - a) Upon a public sidewalk adjacent to the premises upon which the sound device or apparatus is being operated or used; and/or
 - b) Upon any property adjacent to the premises upon which the sound device or apparatus is being operated or used; and/or
 - c) At a distance of 30 feet or more from such sound device or apparatus when used or operated in a public park or other public place.
- (3) Use of a sound device or apparatus that produces sound in excess of the decibel level set forth in Subsection (2) above, but in no event greater than 88dB, shall be permissible if such sound is produced within the limitations of a sound permit issued by the Village at least seven business days prior to the event as provided herein. A sound permit application may be obtained from the Village Office. Application for multiple planned events may be made in a single application subject to the conditions set forth below. Sound permit applications shall be signed by at least one owner (if the premises are owner occupied) or at least one tenant (if the premises are not owner occupied) of the premises. Applications may be approved by the Village Administrator or a designee of the Village Administrator after consultation with the Village Police. Sound permits may be subject to payment of an application fee which may be determined from time to time by the Board of Trustees. Approval of sound permits shall be subject to demonstrated conformance to the following additional criteria and limitations:
 - a) Permits shall be for events beginning no earlier than 9:00 a.m.
 - b) The maximum effective duration of any sound permit shall be four (4) continuous hours.
 - c) On Fridays and Saturdays, all sound permits shall expire no later than 11:00 p.m. on the day of the event for which the sound permit is issued. On all other days (Sunday through Thursday), all sound permits shall expire no later than 9:00 p.m.
 - d) No sounds emanating from the premises upon which the event is occurring may exceed the 88dB maximum at the distances stated in Subsection (2) above.
 - e) No sound permit shall be issued for an event to be held upon any premises, or by any applicant, which is the subject of a pending citation for a violation of any provision of this chapter, or which has been the subject of a conviction for a violation of this section, within the immediately preceding three-month period.
 - f) No more than three events requiring a sound permit shall be issued for any single location in any given calendar week. This limitation may be exceeded only upon the issuance of a sound

level variance as set forth in Subsection **B.** below.

- g) Permits may be applied for on a one time, seasonal, or annual basis.
- h) No sound permits will be issued for an event which the Village Administrator or Village Police reasonably believe would be in violation of any other state or local law, code or regulation.

B. Sound level variances. Notwithstanding the provisions of Subsection **A.** above, to promote a positive image of the hospitality of the Village of Cooperstown, written applications for sound level variances will be considered by the Board of Trustees for outdoor dining, outdoor weddings, and other activities which may include music, sound amplification, and other noises that exceed any of the limits prescribed under Subsection **A.** above. Such sound level variances may be obtained only upon approval by the Board of Trustees and may be approved upon such terms and conditions as the Board of Trustees, in its discretion, deems appropriate. Prior to the issuance of a sound level variance, the Village Police shall be consulted so that the Board of Trustees may take into consideration prior sound and other complaints at the location of the planned event.

(1) Any person seeking a variance pursuant to this Subsection shall file a written application with the Village Clerk no later than 21 days prior to the date of the planned event and shall pay an application fee as may be determined from time to time by resolution of the Board of Trustees.

(2) Unless a specific application form is prescribed and provided by the Village, the application shall consist of a letter signed by the applicant(s) containing information which demonstrates the benefit of the event to the community, if any, the benefit of the event to the applicant, and also the hardship that compliance with this section would create on the part of the applicant, the community, or other persons. Said application shall describe the sources and purposes of the sounds to be created and set forth other pertinent information such as the direction and placement or location on the property of speakers, highest anticipated decibel level that is expected if a variance is granted, the address of the event, expected attendance, and the hours, days and duration of the event for which the variance is requested. The Board of Trustees may require that additional information be submitted as deemed by the Board of Trustees to be necessary to make an informed decision. Noncompliance with any granted variance shall immediately terminate the variance and shall subject the applicant and all other persons to the provisions of this chapter.

(3) No sound level variance shall be issued for an event to be held upon any premises, or by any applicant, which is the subject of a pending citation for a violation of any provision of this chapter, or which has been the subject of a conviction for a violation of this section, within the immediately preceding three-month period, except and unless the Board of Trustees deems that sufficient measures have been implemented by the applicant or others to minimize the likelihood of future violations.

C. Public notice. Notice that a sound permit or a sound level variance has been issued, including the address of the event, the name of the person(s) to whom the permit or variance was issued, and the date and hours of the event, along with a copy of the application, will be posted by the Village on the Village website and by the property owner at the property from which the noise emanates. Failure of the Village to post such notice shall not affect the validity of the permit or variance issued, nor shall such failure to post create any liability on the part of the Village.

§ 172-6 Prohibited acts.

The following acts are declared to be prima facie evidence of a violation of this chapter. This enumeration shall not be deemed exclusive.

A. Noise from a dog or other animal or fowl that is continuous and exceeds 15 minutes.

- B. Noise from a burglar alarm system or other alarm system of any building, motor vehicle or boat that is continuous or repetitive and exceeds 15 minutes. This section shall not apply to audible alarm systems that are designed to detect heat or smoke or in instances where the alarm system is working as intended and an actual or attempted burglary has occurred.
- C. The sounding of any horn or signaling device of any motor vehicle, motorcycle, train, or boat, except when required by other statute, which is continuous or repetitive or is apparently being sounded or being used for the purpose of advertisement.
- D. The making of improper or unnecessary noise by operating a motor vehicle in such a manner as to cause the excessive squealing or other excessive noise of the tires.
- E. The operation of an audio device from any motor vehicle at sound levels which may be heard at a distance of 60 feet from the vehicle.
- F. The operation of a motor vehicle that is not equipped with an adequate muffler and exhaust system in constant operation and properly maintained to prevent any excessive or unusual noise, or the operation a motor vehicle with a muffler or exhaust system modified in a manner that will amplify or increase the noise emitted by the motor or exhaust system of such vehicle above that emitted by the muffler or exhaust system originally installed on the vehicle.
- G. The operation of an engine compression brake to slow or stop a motor vehicle in the Village.
- H. The hawking, peddling, or sale of anything by shouting or outcry or by using horns, whistles, bells or any other instrument to attract attention for that purpose within any area of the Village.

§ 172-7 Exceptions.

The following sounds shall be exempt from the restrictions and prohibitions of this section and shall not be deemed a violation of this chapter:

- A. Church bells: sounds created by bells or chimes emanating from religious institutions between the hours of 7:00 a.m. and 10:00 p.m.
- B. Warning devices: sounds created by any government agency, or by the use of public agency warning devices.
- C. Fireworks: the professional display of fireworks that has been approved by the Village Board of Trustees.
- D. Sporting events and public entertainment: sounds emanating from sporting events of any public or private schools and/or any Village-authorized carnival, fair, exhibition, outdoor concert, parade, and/or athletic contest, conducted between 7:00 a.m. and 11:00 p.m.
- E. Construction activities: sounds created by activities associated with site improvements and building construction, repair and maintenance between the hours of 7:00 a.m. and 10:00 p.m. Sounds created by construction activities between the hours of 10:00 p.m. and 7:00 a.m. shall be subject to the limitations of this section, except that in the event of an emergency, so declared by the Fire Department or Police Department, construction activities directly connected to the abatement of such emergency may be undertaken without regard to the prohibitions and limitations of this section for a period not to exceed 72 hours from the commencement of such construction activities, during which time application for a sound permit or sound level variance shall be made.
- F. Residential property maintenance: sounds produced by the use of lawn mowers, hedge trimmers, leaf blowers, chain saws, tillers, mulchers, chippers, and other similar residential power tools and devices

used in the care and maintenance of lawns, yards, and vegetation between the hours of 7:00 a.m. and 10:00 p.m.

- G. Snow removal operations: sounds produced by snow blowers, snow throwers, and snowplows when used in their customary manner, provided that all equipment is equipped with exhaust mufflers recommended by the manufacturers thereof.
- H. Governmental operations: sounds produced by vehicles, equipment, and machines engaged in the conduct of governmental functions of any federal, state or local municipal entity.
- I. Federally preempted activities: sounds produced by activities which are beyond the jurisdiction of the Village to regulate based upon the federal interstate commerce clause.

§ 172-8 Enforcement.

This chapter shall be enforced by the Cooperstown Police Department and/or the Village Code Enforcement Officer. Upon the issuance of a citation for violation of this Chapter, the conduct in violation shall immediately cease, and the sound permit or sound level variance, if applicable, shall be deemed to be immediately revoked.

- A. All persons applying for a sound permit or variance, and all individuals and organizations involved in the staging and conduct of the planned event as listed on the application, shall be subject to citation or arrest for each violation of this chapter that occurs upon the premises for which the sound permit or variance was issued, and all such persons shall be subject to the penalties provided herein upon conviction. Notwithstanding the foregoing, and regardless of whether a sound permit or variance was applied for or issued, all persons creating sound in violation of this chapter, shall be subject to citation and/or arrest for violation of this chapter.
- B. The Village of Cooperstown Police Department or Code Enforcement Officer shall notify the record owner of the property (as listed in the most recent Village assessment roll and any applicable permit application) in writing by regular U.S. mail, as soon as practical, of each citation for a violation of this section that was written by a law enforcement or code enforcement officer and that the incident will be a factor for consideration for future permits of any sort issued by the Village of Cooperstown.

§ 172-9 Penalties for offenses.

- A. Any person who violates any provision of this Chapter shall, upon conviction thereof for a first offense, be deemed guilty of a violation, punishable by a fine not to exceed \$250, 15 days' imprisonment, or both. In addition, upon such conviction, the convicted person(s) and the premises upon which said violation occurred shall not be eligible for the issuance of a sound permit or sound level variance for a period of three months following the date of the conviction.
- B. Upon conviction of any subsequent violation within six months of a previous violation, such person shall be deemed guilty of an unclassified misdemeanor, punishable by a fine not to exceed \$1,000, 30 days' imprisonment, or both. In addition, upon such subsequent conviction, the convicted person(s) and the premises upon which said violations occurred shall not be eligible for the issuance of a sound permit or sound level variance for a period of one year following the date of the second conviction.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2019 of the ~~(County)~~(City)~~(Town)~~(Village) of Cooperstown was duly passed by the Board of Trustees on May 28, 2019, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20___, and was (approved)(not approved)(repassed after *(Name of Legislative Body)* disapproval) by the _____ and was deemed duly adopted on _____ 20____, *(Elective Chief Executive Officer*)* in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after *(Name of Legislative Body)* disapproval) by the _____ on _____ 20____. Such local law was submitted *(Elective Chief Executive Officer*)* to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after *(Name of Legislative Body)* disapproval) by the _____ on _____ 20____. Such local law was subject to *(Elective Chief Executive Officer*)* permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

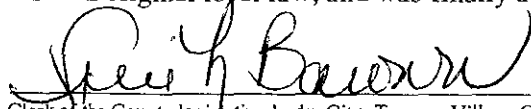
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.



Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

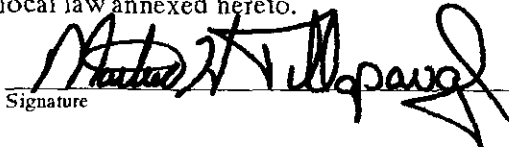
Date: June 7, 2019

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF OTSEGO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Village Attorney
Title

County
City
Town of Cooperstown
Village

Date: June 7, 2019