

NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on May 18, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 26, Environment, Article I, in General, Article III Noise, Sections 26-56, Section 26- 58 through and including 26-59, Sections 26-62 through and including Sections 26 – 66, and Delete Article II, Litter, is amended by deleting the strikethrough language and adding the underscored language:

Chapter 26 ENVIRONMENT*

***Cross references:** Economic development committee, § 2-261 et seq.; department of planning and development, § 2-472; animals, ch. 14; parks and recreation, ch. 42; solid waste, ch. 46; streets, sidewalks and other public places, ch. 50; utilities, ch. 58; buildings and building regulations, ch. 66; floods, ch. 70; subdivisions, ch. 74; zoning, ch. 78; erosion and sedimentation control, § 78-1856 et seq.; manufactured housing, § 78-2056 et seq.

State law references: Nuisances, 17 M.R.S.A. § 2701 et seq.; abatement of nuisances, 30-A M.R.S.A. § 3104; disposition of abandoned property, 30-A M.R.S.A. § 3106.

Article I. In General

Secs. 26-1--26-~~25~~55. Reserved.

Article II. Litter

~~Sec. 26-26. Definitions.~~

~~Sec. 26-27. Maintenance of property.~~

~~Sec. 26-28. Receptacles.~~

~~Sec. 26-29. Disposal.~~

~~Secs. 26-30--26-55. Reserved.~~

Article III. ~~Noise~~Sound

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ARTICLE I. IN GENERAL

Secs. 26-1--26-~~25~~55. Reserved.

ARTICLE II. LITTER*

~~*State law references: Litter control, 17 M.R.S.A. § 2261 et seq.~~

~~Sec. 26-26. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Litter* means and includes any manmade or man-used waste material which, if deposited within the town otherwise than in a litter receptacle or a state-licensed waste disposal facility, tends to create a danger to public health, safety or welfare or to impair the environment. Litter may include but is not limited to any garbage, trash, refuse, debris including demolition debris, newspaper, magazine, glass, metal, white goods, automobile parts, plastic or paper containers or other matter of any kind or object likely to injure any person or create a traffic hazard.~~

~~*Litter receptacle* means and includes any container which is designed to receive litter and to prevent the escape of litter deposited therein, which is of such size or sufficient capacity to hold all litter generated between collection periods.~~

~~*Public place* means and includes any highway, street, road, way, sidewalk, park, playground, beach or any land, building or other structure frequented by the general public, whether publicly or privately owned.~~

~~(Ord. of 6-18-1980, § 1; Ord. of 2-7-1989)~~

~~**Cross references:** Definitions generally, § 1-2.~~

~~Sec. 26-27. Maintenance of property.~~

~~(a) Every owner, occupant or lessee of a building, structure or parcel of land used for residential, business or commercial purposes shall ensure that all litter is properly containerized in litter receptacles and shall maintain litter collection and storage areas in a clean condition.~~

~~(b) All litter that is subject to movement by the elements shall be secured by the owner, occupant or lessee of the premises where it is found before the litter is allowed to be removed by the elements to adjoining premises.~~

~~(c) Every owner, occupant or lessee of any public place, including but not limited to hotels, motels, restaurants, fast food outlets, shops, stores, office buildings, apartment buildings and indoor or outdoor retail establishments, shall at all times keep the premises clean of all litter and shall take all necessary measures, including regular periodic cleanup of the premises, to prevent litter from being carried by the elements to adjoining premises or to accumulate upon the premises.~~

~~(d) All owners, occupants or lessees of premises shall keep the sidewalks and alleys adjacent thereto free of litter.~~

~~(Ord. of 6-18-1980, § 2)~~

~~Sec. 26-28. Receptacles.~~

- ~~(a) Every owner, occupant or lessee using or occupying any public place shall provide and maintain adequate litter receptacles of sizes, numbers and types as required to contain all litter generated by those persons frequenting that public place.~~
- ~~(b) Every owner, occupant or lessee of private premises shall provide and maintain litter receptacles for collection of litter as necessary and in such a manner that litter will be prevented from being carried by the elements to adjoining premises.~~
- ~~(c) Persons placing litter in litter receptacles shall do so in such a manner as to prevent litter from being carried from the receptacles by the elements.~~
- ~~(d) No person shall cause the removing, upsetting, mutilating, defacing or tampering with litter receptacles or cause the contents thereof to be spilled or to be strewn in or upon any public place or private premises.~~
- ~~(e) Litter receptacles shall not be placed in any location where they may obstruct vehicular traffic or unreasonably obstruct pedestrian traffic.~~
- ~~(Ord. of 6-18-1980, § 3)~~

Sec. 26-29. Disposal.

- ~~(a) No person shall throw, deposit, drop, discard or otherwise dispose of litter in or upon any public place, except:~~
- ~~(1) In an area designated by the state or the town for the disposal of garbage and refuse, if such person is authorized to use such property for such purpose; or~~
- ~~(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such public place.~~
- ~~(b) No person shall throw, drop, deposit, discard or otherwise dispose of litter while traveling in any vehicle or from any vehicle in or upon any public place, except into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements.~~
- ~~(Ord. of 2-7-1989, § 4)~~
- ~~Secs. 26-30--26-55. Reserved.~~

ARTICLE III II NOISE*SOUND *

***Cross references:** Operation of noise-creating devices on public rights-of-way, § 50-271 et seq.

State law references: Disorderly conduct, 17 M.R.S.A. § 501; unnecessary automobile noise, 29-A M.R.S.A. § 2079.

Sec. 26-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient noise level means the all-encompassing noise level associated with the given environment, being a composite of sounds from many distant, individually indistinguishable sources, excluding the alleged offensive noise and excluding noise from isolated identifiable vehicles at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

Daytime hours means the hours between 7:00 a.m. and 10:00 p.m. Monday through Saturday, and the hours 9:00 a.m. through 10:00 p.m. on Sunday's.

dB(A) means the abbreviation designating both the unit of measure sound level, the decibel, and the mode of measurement that uses the A-weighting of a sound level meter.

Decibel (dB) means 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."

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.

Effective Source Noise Level means the source noise level after an adjustment for the adverse character of noise (including tonal, impulsive, bass or rumble noise).

L_{max} means Maximum Sound Level as defined herein.

Maximum Sound Level means the maximum sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" meter response over a measurement period; expressed as L_{max} in dBA.

Nighttime hours means the hours between 10:00 p.m. and 7:00 a.m. Sunday evening through Saturday morning, except that night means the hours between 10:00 p.m. Saturday and 9:00 a.m. Sunday.

Noise level means the sound pressure level as measured with a sound level meter using the A-weighting network. The level so read is designated "db(A)" or "dBA."

Property line means that real or imaginary 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; and
- (2) Separates real property from the public right-of-way.

Source Noise Level means the equivalent sound level (or Leq) of the noise radiated from a source or group of sources and determined by subtracting (on an energy basis) the background sound level – with the source(s) off – from the total sound level – measured with the source(s) on.

Sound level or Leq means the energy-equivalent sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" response over a measurement period; expressed as Leq in dBA.

Sound level meter means an instrument for the measurement of sound levels conforming to ANSI type I or type II standards.

Sound pressure level means the level of a sound measured in dB units with a sound level meter which has a uniform (flat) response over the band of frequencies measured.

The Ballpark means the municipal facility located on E. Emerson Cummings Boulevard, commonly known as the Ballpark, consisting of approximately 49 acres of land improved with a stadium, playing fields and parking areas, the exact boundaries of which may be established and modified by the Town Council from time to time.

(Ord. of 3-16-1983, § 8-309; Ord. of 3-15-1994)

Sec. 26-57. Findings.

It is found and declared that:

(1) The making and creation of loud, unnecessary or unusual noises within the town limits is a condition which has existed for some time, and the extent and volume of such noises is increasing.

(2) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use effect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the town residents; and

(3) The necessity in the public interest for the provisions and prohibitions contained and adopted in this article is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained and adopted in this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the town and its inhabitants.

(Ord. of 3-16-1983, § 8-301)

Sec. 26-58. Effect of zoning.

Any section of chapter 78 ~~pertaining to~~ of the Code (zoning) which is more stringent than the standards set forth in this article shall ~~remain in force~~ prevail over the standards of this article.

(Ord. of 3-16-1983, § 8-311)

Sec. 26-59. Exemptions for ~~licensed performing arts facility.~~ The Ballpark.

This article shall not apply to ~~any performing arts facility activities at The Ballpark~~ holding a ~~license~~ Special Event Permit pursuant to article ~~VI~~ IV of chapter ~~48~~ 42 Divisions 5 for licensing performing arts facilities during such time as such ~~license permit~~ remains in effect and has not been suspended or revoked, and the permittee is in compliance with all conditions placed on the Special Events Permit.

(Ord. of 2-10-1992, § 8-313)

Cross references: Special Events, § 42-231 et seq. ~~Performing arts facilities, § 18-286 et seq.~~

Sec. 26-60. Enforcement.

(a) The police department is directed to enforce this article.

(b) No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this article while such person is engaged in the performance of his duty.

(c) Violations of this article shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this article, with the exception of the violations specified in section 26-65(3), 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 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.

(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. Subsequent violations of the same offense shall result in the immediate filing of a civil complaint.

(Ord. of 3-16-1983, § 8-308; Ord. of 3-15-1994; Ord. of 8-4-1998)

Sec. 26-61. Penalties.

Any person in violation of any of the sections of this article shall be deemed guilty of a civil infraction and, upon conviction, shall be fined as provided in section 1-14. Each day such violation continues after the time for correction of the violation has been given in an order shall constitute a continuing violation, and the amount of fine shall be doubled for each day the violation continues. The fine shall not exceed \$400.00 per day. (Ord. of 3-16-1983, § 8-310; Ord. of 3-15-1994)

Sec. 26-62. Loud and unnecessary noise.

It shall be unlawful for any person to make, continue, or cause to be made or continued any loud or unnecessary noise within the town limits. For the purposes of this article, the term "loud and unnecessary noise" shall mean any sound which either:

- a) exceeds the limits of the table in section 26-63, or;
- b) is a permitted sound as defined in Section 26-64 but does not comply with restrictions for that permitted sound, or;
- c) fits the descriptions given in section 26-65 or;
- d) in the event that the average ambient noise level is greater than the levels specified in Section 26-63, the sound level emanating from the alleged violator's property line shall be measured as specified in sections 26-66 and 26-67. If the sound level emanating from the alleged violator's property is greater than 10 dB(A) above the average ambient noise level it shall be deemed to be loud and unnecessary noise and in violation of this Ordinance.

(Ord. of 3-16-1983, § 8-302; Ord. of 3-15-1994)

Sec. 26-63. Noise level standards.

Sound from any source controlled by this article shall not exceed the following limits at the lot line of the emitter:

SOUND PRESSURE LEVEL LIMITS
MEASURED IN dB(A)

TABLE INSET:

| | Day | Night |
|---|-----|-------|
| Industrial district (ID) and planned mixed use development (PMUD) | 70 | 60 |
| General business district 1 (GB-1) and general business district 2 (GB-2) | 70 | 60 |
| Downtown district (DD-1) | 80* | 70* |
| Downtown district (DD-2) | 70* | 60* |
| Residential districts including R-1, R-2, R-3, R-4, R-5, RD, BRD | 55 | 45 |

*Nighttime hours in the DD-1 and DD-2 zones shall commence at 12:00 midnight and shall end as specified in section 26-56.

(1) 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.

~~(2) The levels specified may be exceeded by ten dB(A) for a single period, not to exceed 15 minutes in any one day.~~

(Ord. of 3-16-1983, § 8-303; Ord. of 10-5-1983; Ord. of 3-15-1994; Ord. of 9-19-1995)

Sec. 26-64. Exclusions.

The noise levels in section 26-63 shall not apply to noise emitted by or related to:

- (1) Natural phenomena.
- (2) Any bell or chime from any building clock, school or church.
- (3) 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 not terminating within 30 minutes after being activated shall be unlawful.
- (4) Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
- (5) Farming equipment or farming activity.
- (6) 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.
- (7) Timber harvesting (felling trees and removing logs from the woods).
- (8) Noise generated by any construction or demolition equipment which is operated during daytime hours, provided that the operation of construction equipment during nighttime hours shall not exceed the maximum noise levels as specified in section 26-63. For purposes of this subsection, daytime hours and nighttime hours shall be as defined in section 26-56, ~~except that during the period from Memorial Day through Labor Day each year, daytime hours shall mean the hours between 9:00 a.m. and 4:00 p.m. daily, and nighttime hours shall mean the hours between 4:00 p.m. and 9:00 a.m. daily.~~ 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.
- (9) Noise created by refuse and solid waste collection.
- (10) Municipal or public works projects.
- (11) Noise generated by primary uses in the Amusement Overlay District as defined in Section 78-1083 (1) of the Zoning Ordinance; during daytime hours as outlined for the DD-1 zone in section 26-63 of this Chapter.
- (12) Noise generated within a mixed use structure effecting only the uses or unit owners within the structure.
- (13) From June 1st to October 1st of each year, Day Time Noise generated from Salvation Army Pavilion (Tax Map 311 Block 6 Lot 1) shall be allowed to comply with the noise level standards for the GB-1 Zoning District as show in Section 23-63 measured at the receiving station. Night time noise levels shall comply with the noise level standards for the R-2 Zoning District throughout the year.

(Ord. of 3-16-1983, § 8-304; Ord. of 9-10-1985; Ord. of 3-15-1994)

Sec. 26-65. Specific prohibitions.

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

- (1) Owning, possessing or harboring any animal or bird which, frequently or for continued duration, makes sounds which create a noise disturbance across a residential real property boundary. For the purpose of this article, 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 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.

(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 cast upon the public street and which exceeds the level limits specified in section 26-63.

(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. The use of audio equipment clearly audible beyond the confines of a motor vehicle.

(4) The creation of a noise disturbance by or with any sound including the unamplified human voice by three or more people that congregate during nighttime hours. This prohibition shall not be applicable for alerting for personal danger or peril of life emergency.

(Ord. of 3-16-1983, § 8-305; Ord. of 7-6-1993; Ord. of 3-15-1994; Ord. of 8-4-1998)

Sec. 26-66. Measurement procedures.

For the purpose of determining sound levels set forth in this article, the following procedures shall be utilized.

(1) The sound measurements shall be made while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum, and fluctuating rates.

(2) No outdoor measurements shall be taken:

- a. During periods when wind speeds (including gusts) exceed 15 mph;
- b. Without an acoustically acceptable windscreen properly attached to the microphone;
- c. Under any condition that allows the measuring instrument to become wet (e.g., rain, snow, or condensation); or
- d. When the ambient temperature is out of the range of the tolerance of the measuring instrument.

(3) The Investigating Officer shall, to the extent practicable, identify all sources contributing to the noise at the point of measurement.

(4) Prior to taking noise measurements the Investigating Officer shall explore the vicinity of the source in question to identify other sound sources that could affect measurements, to establish the approximate location and character of the principal sound source, and to select suitable locations from which to measure the sound radiated from the source in question.

(5) When measuring sound, the sound level meter shall be set for A-weighting, "Fast" meter response, linear averaging, and the proper range (i.e., where the sound level registers in the upper measurement range without exceeding its limits). The sample duration shall be at least one minute or one cycle of equipment operation, whichever is longer. To ensure measurement repeatability, a second measure shall be taken that must agree with the first within 2 dBA for both measures to be acceptable. The final measurement is the average of two samples.

(6) The measuring instrument shall be placed at a minimum height of 3 ft above the ground and from any reflective surface. The microphone shall be held at arm's length and pointed at the source at the angle recommended by the measuring instrument's manufacturer.

(7) If temporary sound sources unrelated to the measurements are plainly audible, such as aircraft flyovers, barking dogs, or moving motorcycles, the measurements should be postponed until these extraneous sounds have negligible effect on the sound levels of interest.

(8) The observation session should last for a period of time sufficient to ensure that the sound levels measured are typical of the source in question.

(9) Instruments used to determine sound levels shall be ANSI Type 1 or 2 meters and shall be maintained with yearly calibration certificates traceable to NIST.

(10) The measurement period shall be for no less than one minute, (a 1-minute Leq) or for a greater time interval encompassing the variations in sound for the source being measured, as determined by the Investigating Officer.

(11) The measurement shall be taken at the source lot line, except as specified in Section 26.64.(13).

(12) To determine the Source Noise Level, the background level (Leq) shall be measured and subtracted from the measured total sound level (Leq). If the total sound level does not exceed the background sound level by 2 dB or more, the source level cannot be derived and a violation of the ordinance cannot be substantiated.

(13) A minimum of two Source Noise Level measurements shall be obtained. If the two measurements (Leq) differ by more than 2 dBA (3 dBA permitted for music), the investigating personnel shall measure again as needed until two measurements agree within 2 dBA (3 dBA for music), or discontinue measurements and a violation of the ordinance cannot be substantiated. The two measurements shall be averaged arithmetically and the result called the Averaged Source Noise Level.

(14) The report for each measurement session shall include but not be limited to:

- a. The date and times at which measurements are taken.
- b. The results of the calibration check.
- c. The weather conditions.
- d. The identification of all monitoring equipment.
- e. A description of the source(s) and its operating cycle.

f. The total sound level (level with the sources in question operating, Leq and Lmax values).

g. The background sound level (level without the sources in question operating, Leq and Lmax values).

h. The averaged Source Noise Level (Leq).

i. The Effective Source Noise Level (Leq(e)).

(Ord. of 3-16-1983, § 8-306; Ord. of 3-15-1994)

Sec. 26-67. Inspections.

(a) For the purpose of determining compliance with this article, the police department 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.

(b) No person shall hinder, obstruct, delay, resist, prevent in any way, interfere or attempt to interfere with any authorized person while in the performance of his duties under this article.

(Ord. of 3-16-1983, § 8-307; Ord. of 3-15-1994)

Per Order of the Municipal Officers this 4th day of May, 2010.

A True Copy

Attest:

s/Kim M. McLaughlin

Kim M. McLaughlin, Town Clerk