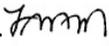


MASON, GRIFFIN & PIERSON

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MEMORANDUM

To: Mayor and Council of Princeton
From: Lisa M. Maddox, Esq. 
Date: August 21, 2014
Re: **Noise Ordinance**

Attached please find the Noise Ordinance with two (2) amendments proposed since the Ordinance was introduced on July 21, 2014. This Ordinance is scheduled for second reading and public hearing at the Mayor and Council's meeting on Monday, August 25, 2014.

The first amendment is the addition of new language to subsection 21-2(b). As introduced, subsection 2-12(b) provided the following:

(b) *Radios, televisions, musical instruments and other machines, players or devices of any type or technology, using any type of media, used for the creation of any music or sound.* The use or operation of any of the foregoing devices, with or without amplification, in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or premises in or at which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, machine, device or player between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which or land on which it is located shall be prima facie evidence of a violation of this section.

At its July 21st meeting, the Council raised questions about the language contained in the last sentence of the above, and specifically, its applicability to residences in Princeton (particularly within the former Borough) which are less than 50 feet apart. There was concern that this language could lead to difficulty enforcing noise complaints when a complainant's home is less than 50 feet from the cause of the offending noise. In addition, the Council wanted to understand more fully the rationale underlying the 50-foot standard, and whether it would be possible to reduce the distance to 20 or 25 feet.

Following the meeting, I consulted with Health Officer Jeffrey Grosser to obtain additional information regarding the proposed standards in this subsection. According to Mr. Grosser, the 50 foot rule is commonly utilized because at 50 feet, a normal conversation between two people cannot be heard; the same is not true at 20 or 25 feet. As a result of the issues raised and recognition that many residences in Princeton are less than 50 feet apart, the Council may wish to consider expanding use of the "plainly audible" standard in this subsection.

The term "plainly audible" refers to any sound that can be detected by a person using his or her unaided hearing faculties. Mr. Grosser explained that if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the

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enforcement officer need not determine the title of a song, specific words, or the artist performing the song; the detection of the rhythmic base component of the music is sufficient to constitute a "plainly audible" sound.

Mr. Grosser explained that the "plainly audible" standard is an objective standard used for detecting noise. He suggested use of language that would prohibit sound production devices (like radios, televisions, etc.) in such a manner that they cross real property lines and are "plainly audible" within a neighboring residence during nighttime hours. This approach would assist in enforcing noise complaints regardless of the distance from the noise source, and particularly when the residences are closer than 50 feet apart.

Based on the above, additional language has been proposed for inclusion in subsection 21-2(b). The proposed language is as follows (new language is underlined and language proposed for deletion is [bracketed]):

(b) *Radios, televisions, musical instruments and other machines, players or devices of any type or technology, using any type of media, used for the creation of any music or sound.* The use or operation of any of the foregoing devices, with or without amplification, in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or premises in or at which such machine or device is operated and who are voluntary listeners thereto. The following shall be prima facie evidence of a violation of this section:

1. _____ The operation of any such set, instrument, machine, device or player between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which or land on which it is located[shall be prima facie evidence of a violation of this section.]; or

2. _____ The operation of any such set, instrument, machine, device or player between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible within any residence neighboring the building, structure or vehicle in which or land on which it is located.

As used in this section 21-2, "plainly audible" shall refer to any sound that can be detected by a person using his or her unaided hearing faculties.

The second amendment is to subsection 21-1(q), which prohibits the use of power lawnmowers and chainsaws between 10 p.m. and 8 a.m., Monday through Saturdays and 10 p.m. to 10 a.m. on Sundays. In response to public comment, the Council raised concern about the need to use a chain saw to clear walkways and streets of debris outside of these permissible hours, and questioned whether this prohibition would preclude the use of a chain saw in an emergency. For instance, members of the public, such as Princeton University personnel, are

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called upon to clear walkways and streets of fallen branches and trees in response to storms, and many times, this takes place outside of the hours permitted in the Ordinance. The intent of this provision was not to preclude the use of a chain saw in response to an emergency. Therefore, in consultation with Mr. Grosser, revised language has been added, as follows (new language is underlined):

(q) *Lawnmowers or chain saws.* The operation or use of any power lawnmower or chain saw between the hours of 10:00 P.M. and 8:00 A.M., Mondays through Saturdays, and 10:00 P.M. and 10:00 A.M., on Sundays; except that the use of any chain saw shall not be prohibited during these times when used in response to an emergency, such as to clear a walkway or street from fallen branches or trees following a storm or other natural disaster.

In my opinion, neither of the foregoing amendments would substantially alter the substance of the Ordinance as introduced.

Finally, there was a question raised at the July 21st meeting regarding the use of leaf blowers with (and without) mufflers. More specifically, a question was asked as to whether the main problem with leaf blowers is the absence of mufflers, and whether adequately-muffled leaf blowers cause noise problems. It appears that even adequately muffled leaf blowers cause noise issues. Mr. Grosser indicated that all new leaf blowers have mufflers installed to control engine noise and pollution to some extent, and the majority of the noise is coming from the blower itself and fan pushing the air out of the blower at a fast rate. Also according to Mr. Grosser, even electric/cordless blowers create high levels of noise due to the blower. He further explained that, if a leaf blower was being operated without a muffler on the engine, everyone within a two- to three-block radius would know because of the tremendous noise it would produce. These issues do not frequently arise because it is so physically difficult to operate a leaf blower without a muffler.

Please do not hesitate to contact me should you have any questions or concerns in reference to the above.

Attach.

cc: Robert W. Bruschi, Administrator (w/attach.)
Kathy Monzo, Assistant Administrator (w/attach.)
Linda S. McDermott, Clerk (w/attach.)
Jeffrey C. Grosser, Health Officer (w/attach.)
Trishka W. Cecil, Esq., Attorney (w/attach.)
Edwin W. Schmierer, Esq. (w/attach.)

**AN ORDINANCE BY PRINCETON
CONCERNING LOUD,
CONTINUOUS OR EXCESSIVE
NOISE AND AMENDING THE
“CODE OF THE BOROUGH OF
PRINCETON, NEW JERSEY, 1974”
AND THE “CODE OF THE
TOWNSHIP OF PRINCETON, NEW
JERSEY, 1968.”**

WHEREAS, the Borough of Princeton and Township of Princeton pursuant to the provisions of the New Jersey Municipal Consolidation Act, *N.J.S.A. 40:43-66.35* consolidated as Princeton on January 1, 2013; and

WHEREAS, pursuant to *N.J.S.A. 40:43-66.64*, the Princeton Council on January 1, 2013 adopted a Resolution continuing in effect Ordinances of the former Borough of Princeton and the former Township of Princeton as a new Code for Princeton is prepared; and

WHEREAS, the Princeton Council’s Code Subcommittee has reviewed, consolidated and updated Chapter 21 of the “Code of the Borough of Princeton, New Jersey, 1974” and Sections 13-10.1 through 13-10.4 of Chapter 13 of the “Code of the Township of Princeton, New Jersey, 1968,” pertaining to the regulation and control of loud, continuous or excessive noise; and

WHEREAS, the Princeton Council wishes to adopt said Code revisions which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Chapter 21 of the “Code of the Borough of Princeton, New Jersey, 1974,” entitled “Noise” and Sections 13-10.1 through 13-10.4 of Chapter 13 of the “Code of the Township of Princeton, New Jersey, 1968,” regarding noise are hereby repealed.

Section 2. A NEW Chapter 21 of the “Code of the Borough of Princeton, New

Jersey, 1974,” as set forth on Exhibit A attached hereto and made a part hereof, is hereby adopted to set forth the regulation and control of loud, continuous or excessive noise in the municipality, and to replace the aforementioned provisions of the "Code of the Borough of Princeton, New Jersey, 1974" and the "Code of the Township of Princeton, New Jersey, 1968.”

Section 3. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 5. This Ordinance shall take effect upon its final adoption and publication as provided for by law. The provisions of the attached Chapter 21 shall be applicable within Princeton upon taking effect and shall become a part of the new Princeton Code once completed and adopted.

Linda S. McDermott, Clerk

Liz Lempert, Mayor

Ordinance Introduced:

Ordinance Adopted:

This ordinance is part of the ongoing process of merging and harmonizing the code provisions of former Princeton Borough and former Princeton Township into a new code for the consolidated municipality of Princeton. Under Princeton’s police power, it establishes standards guarding against noise nuisances within the municipality.

EXHIBIT A

CHAPTER 21. LOUD, CONTINUOUS OR EXCESSIVE NOISE.

Sec. 21-1. Loud, continuous or excessive noise.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, continuous or excessive noise or any noise which endangers the health, safety or welfare of the community, or which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within Princeton.

Sec. 21-2. Noises expressly prohibited or restricted - Acts enumerated.

The following acts, among others, are declared to be loud, disturbing, excessive or continuous noises, and a danger to the health, safety and welfare of the community, in violation of section 21-1, but the enumeration shall not be deemed to be exclusive:

(a) Horns, whistles, bells and signaling devices. The sounding of any horn, whistle, bell or any type of signaling device on any automobile, motorcycle, streetcar, bus or other vehicle in the municipality, except as a danger warning; the creation by means of any such horn, whistle, bell or signaling device of any unreasonably loud or harsh sound; the sounding of any such horn, whistle, bell or signaling device for an unnecessary and unreasonable period of time; the use of any horn, whistle, bell or other signaling device operated by engine, exhaust or by compressed air or gas or by vacuum; and the use of any horn, whistle, bell or signaling device when traffic is for any reason not moving normally.

(b) Radios, televisions, musical instruments and other machines, players or devices of any type or technology, using any type of media, used for the creation of any music or sound. The use or operation of any of the foregoing devices, with or without amplification, in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or premises in or at which such machine or device is operated and who are voluntary listeners thereto. The following shall be prima facie evidence of a violation of this section:

1. The operation of any such set, instrument, machine, device or player between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which or land on which it is located; or
2. The operation of any such set, instrument, machine, device or player between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible within any residence neighboring the building, structure or vehicle in which or land on which it is located.

As used in this section 21-2, "plainly audible" shall refer to any sound that can be detected by a person using his or her unaided hearing faculties.

(c) Commercial loudspeakers, amplifiers, etc. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, loudspeaker, sound amplifier, or any other machine, player or device of any type or technology for the producing or reproducing of sound which is audible upon the public streets for the purpose of commercial advertising or for any other purpose, except as authorized by Princeton municipal or other governmental authorities in connection with law enforcement or public emergencies or as permitted by this Code, such as in the case of a parade permitted by chapter 24; provided, that such devices may be employed in connection with nonprofit, charitable, educational, cultural, religious or recreational activities, in accordance with permits first obtained therefor from the administrator pursuant to section 21-3, if the administrator finds that the public health and safety will not be endangered thereby.

(cc) Music amplification at privately sponsored events. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, loudspeaker, sound amplifier or other machine, player or device of any type or technology for the producing or reproducing of sound at a privately sponsored event, including but not limited to an event taking place at the Mountain Lakes Preserve or any private school, prior to 12:00 noon or after 10:00 P.M. is hereby declared to be in violation of section 21-1, except as authorized by Princeton municipal or other governmental authorities in connection with law enforcement or public emergencies or publicly sponsored events; provided, however, that such devices may be used in connection with nonprofit, charitable, educational, cultural, religious or recreational activities in accordance with permits first obtained therefor from the administrator pursuant to section 21-3, if the administrator finds that the public health and safety will not be endangered thereby.

Music amplification at a privately sponsored event between the hours of 12:00 noon and 10:00 P.M. shall be permitted without the necessity of the above-referenced permit, provided that the measured sound pressure or decibel levels comply with applicable State law and regulation.

The individual, corporation, group or entity owning or controlling the location at which the event will be held shall be responsible for calling the provisions of this subsection and subsection (c) set forth above to the attention of all individuals, corporations and other entities wishing to use the improvements at the location of the event. There shall not be continuous music amplification for a period of time in excess of five hours for any one event.

(d) People noises. Yelling, shouting, whistling, singing or conducting unnecessarily loud or annoying vocal utterances at any time or place, so as unreasonably to annoy or disturb the quiet, comfort or repose of any person in any hospital, residential medical facility, school, place of worship, place of business or dwelling, hotel or other type of residence, or of any person in the vicinity.

(e) Animals, including but not limited to birds and dogs. The keeping of any animal, including but not limited to any bird or dog, which, by causing frequent or long continued noise, shall disturb the comfort or repose of any persons in the vicinity. For purposes of this subsection, a dog barking continually for ten (10) minutes or intermittently for thirty (30) minutes, unless provoked, and plainly audible at a distance of fifty (50) feet from the building, structure or

vehicle in which or land on which it is located, shall be prima facie evidence of a violation of this section.

(f) Non-vehicular whistles, horns and other signaling devices. The sounding of any whistle, horn and other signaling device, except to give notice of the time to begin or stop work or as a warning of fire or danger, by or upon request of a duly authorized Princeton official, or as may be required by general law or ordinance, or directed by a duly authorized state or federal official.

(g) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary jet or internal combustion engine or motor vehicle, except through a properly functioning muffler or other device which will effectively prevent loud or explosive noises therefrom.

(h) Overloaded, improperly operated vehicles. The use of any automobile, motorcycle, truck or vehicle so out of repair, or so loaded or operated in such a manner as to create loud and unnecessary grating, grinding, rattling or other loud or disturbing noise.

(i) Construction work. The excavation, grading, paving, erection, demolition, alteration or repair of any premises, street, building or structure at any time on Sundays, or other than between the hours of 8:00 A.M. and 6:00 P.M. on Saturdays, or between the hours of 7:00 A.M. and 6:00 P.M. on all other days, except in case of urgent necessity in the interest of public health and safety; and, if the nature of the emergency requires the prior procurement of a permit, first obtained from the municipal engineer as to public street work, or from the building official as to other work, pursuant to section 21-3, then all work shall be performed in accordance with the terms of the permit. Such permit may be granted for a period not to exceed three days while the emergency continues. Notwithstanding the foregoing, if the engineer or the building official, as the case may be, shall determine that the public health and safety will not be impaired by such work within the prohibited hours, and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the prohibited hours, upon application being made at the time the permit for the work is issued or during the progress of the work. The provisions of this subsection shall not apply to interior or exterior repairs or to interior alterations, the work for which is actually performed personally by a homeowner or other occupant or tenant between the hours of 8:00 A.M. and 10:00 P.M., provided, that the work shall be done without undue noise or disturbance of the peace and quiet of the nearby residences or of the neighborhood.

(j) Loading or unloading vehicles; opening boxes. The creation of loud and excessive noise in connection with the loading or unloading of any vehicle or the opening or destruction of bales, boxes, crates or containers.

(k) Refuse collection. The collection, transportation or disposal of garbage, trash, cans, bottles and other refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, at any time on Sundays or other than between the hours of 7:00 A.M. and 7:00 P.M. on all other days, except in case of urgent necessity in the interest of public health and safety and, if the nature of the emergency will admit of the prior procurement

of a permit, then only in accordance with a permit first obtained from the engineer pursuant to section 21-3. Such permit may be granted for a period not to exceed three days or less while the emergency continues, and it may be renewed for periods of three days or less while the emergency continues.

(l) Schools, courts, places of worship, hospitals and residential medical facilities. The creation of any excessive noise on any street or property adjacent to any school, institution of learning, place of worship or court, while the same is in use, or adjacent to any hospital or residential medical facility which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital or medical facility, provided that, with respect to such streets, conspicuous signs are displayed indicating the proximity of the school, court, place of worship, hospital or residential medical facility.

(m) Drums, other instruments. The use of any drum or other instrument or device for the purpose of attracting attention to any performance, show, sale or other event.

(n) Solicitors, peddlers. The shouting or crying of solicitors, peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood.

(o) Railroads, buses, trucks. The causing, permitting, or continuing of any excessive, unnecessary or avoidable noise in the operation of railroad cars, locomotives, buses and trucks.

(p) Blowers, fans or engines. The operation of any noise-creating blower (including but not limited to leaf blowers) or power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower, fan or combustion engine is adequately muffled and such engine is equipped with a muffler device sufficient to deaden such noises. In addition, the operation or use of any of such equipment between the hours of 10:00 P.M. and 8:00 A.M., Mondays through Saturdays, and 10:00 P.M. and 10:00 A.M., on Sundays, shall not be permitted; except that the use of any snow blower shall not be prohibited during these times when used to clear sidewalks, walkways or driveways following a snow storm, nor shall the use of any portable generator be prohibited during these times when used during a power outage caused by a storm or other natural disaster.

(q) Lawnmowers or chain saws. The operation or use of any power lawnmower or chain saw between the hours of 10:00 P.M. and 8:00 A.M., Mondays through Saturdays, and 10:00 P.M. and 10:00 A.M., on Sundays; except that the use of any chain saw shall not be prohibited during these times when used in response to an emergency, such as to clear a walkway or street from fallen branches or trees following a storm or other natural disaster.

(r) Idling, starting, etc., of vehicles at night. Any of the following activities, when occurring in close proximity to residences between 11:00 P.M. and 7:00 A.M.: The warming up or idling of buses, trucks or tractors; and the unnecessary and repeated idling, acceleration and deceleration, or starting and stopping of automobiles and motorcycles.

(s) Outdoor concerts. Outdoor concerts, except in accordance with permits first obtained therefor from the administrator, pursuant to section 21-3.

Sec. 21-3. Permits - Issuance; form and contents; fee; time; reporting.

The officers charged with the responsibility of issuing permits for the activities requiring permits in accordance with section 21-2 shall issue permits for such activities if the officer finds that the activities will not unduly or unnecessarily annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others, that the activities will not violate other provisions of this Code, or any ordinance or law or create a public nuisance, and that the public health and safety will not be endangered thereby.

Permits shall specify the dates and hours of the permitted activities, which shall not be allowed between the hours of 10:00 P.M. and 7:00 A.M., unless the issuing officer determines that it is in the best interest of the community that the activities take place, wholly or partially, during such hours.

The issuing officers are authorized to adopt and use such forms of applications and permits as may be reasonably required in the performance of their duties. Each application for a permit shall be accompanied by a fee of ten dollars, which shall be payable to Princeton, and shall be submitted to the officer charged with the responsibility of issuing the permits at least ten days prior to the planned activity. Where good cause is shown therefor, the issuing officer shall have the authority to consider any application under this section which is filed less than ten days before the date such activities are proposed to be conducted.

Sec. 21-4. Appeal from denial.

An applicant for a permit under section 21-3 shall have the right to appeal to the mayor and council from the denial of the permit by the issuing officer. The appeal shall be taken by filing a written notice of appeal, addressed to the mayor and council at the office of the municipal clerk. The notice shall be filed within three days after the issuing officer shall have notified the applicant of the denial of the permit. The mayor and council shall act upon the appeal as soon as practicable after receiving the notice thereof and shall give the applicant an opportunity to be heard before taking action. The mayor and council may affirm or reverse the issuing officer's denial of the permit or may grant the permit with modifications or conditions.

Sec. 21-5. Certain noises exempt from chapter.

Nothing in this chapter shall be construed to apply to bells or chimes at places of worship; to the playing of bands or orchestras in a hall or building in a manner that will not annoy the peace, comfort and quiet of the neighboring inhabitants; to municipal, county, state or federal government agencies in connection with any emergency; to normal working activities of or activities sponsored by the governing body; to warning devices on authorized emergency vehicles; or to horns or other warning devices on other vehicles used only for traffic safety purposes.

Sec. 21-6. Enforcement of chapter.

In addition to public law enforcement officers and others who by law are entitled to enforce or bring complaints under this chapter, the officers who are designated under this chapter for the issuance of permits shall have the power to enforce and bring complaints under this chapter.

Sec. 21-7. Violations; penalties.

For each violation of this chapter, the violator shall be subject to such fines and other penalties as provided in section 1-6 of this Code, entitled "General penalty; continuing violations; repeat violations; other penalties." Repeat offenders shall be subject to additional fines and other penalties as provided in section 1-6 of this Code.