

June 10, 2020
Town of Erin Board Meeting

Supervisor Schmidt called the regular meeting of the Erin Town Board to order on this date at 6:36 PM. She then asked the Clerk to call the roll.

MEMBERS PRESENT: William VanRiper, Jr., Randy Evans, Daniel Delorme, Michael Shutts, Dawn Schmidt.

PUBLIC PRESENT: Kimberlee Middaugh, Town Attorney, John McCracken, Erin Code Enforcement Officer. The meeting was limited to 10 residents due to the Coronavirus (Covid-19).

Supervisor Schmidt welcomed everyone and the Pledge of Allegiance was recited.

A motion was made by D. Delorme and seconded by W. VanRiper, Jr. to pay the audited bills as they appear on the General Fund Abstract 6, #108-124, totaling \$2,828.27; and the Highway Fund Abstract 6, #82-96, totaling \$8,953.17; and the Street Lighting Fund Abstract 6, #118 & 119, totaling \$168.77; and the Trust & Agency Fund Abstract 6, #6, totaling \$5,894.39.

Motion Carried: Ayes: W. VanRiper, Jr., R. Evans, D. Delorme, M. Shutts, D. Schmidt. Nays: None.

A motion was made by D. Delorme and seconded by M. Shutts to dispense with the reading of the minutes from the regular Board Meeting on May 13, 2020 and approve the minutes.

Motion Carried: Ayes: W. VanRiper, Jr., R. Evans, D. Delorme, M. Shutts, D. Schmidt. Nays: None.

COMMUNICATIONS

- The Clerk announced new posted hours for Fridays as being 8:00 am – noon until further notice.

Kim Middaugh, Town Attorney present to discuss/amend Good Neighbor Ordinance as originally presented by the Planning Board. Attorney states it is a tough law due to the discretion. Noise takes interpretation. She is hesitant with the ordinance proposed by the Planning Board due to its lack of language. She did research and looked at other Town laws. Feels there needs to be better language to support the ordinance. Discussed adding/deleting language in sections, adjusting hours, explained definitions and suggested calling it a Law instead of an Ordinance.

RESOLUTION 26-2020

RESOLUTION TO SET PUBLIC HEARING FOR LOCAL LAW NO. 1 OF 2020 A LOCAL LAW TO ALLOW EACH RESIDENT TO ENJOY THE USE OF HIS/HER RESPECTIVE PROPERTY FOR LEISURE AND OTHER ACTIVITIES WITHOUT DISTURBING THE USE OF A NEIGHBOR'S PROPERTY.

Resolution By: R. Evans

Seconded By: W. VanRiper, Jr.

WHEREAS, the Town of Erin Town Board wishes to adopt a local law to allow each resident to enjoy the use of his/her respective property for leisure and other activities without disturbing the use of a neighbor's property; and

WHEREAS, this law does not intend to interfere with residents allowable use and enjoyment of their homes and property, but to promote a safe and peaceful environment for all town residents; and

NOW, THEREFORE,

BE IT RESOLVED, that the Town of Erin Town Board hereby schedules a public hearing for Local Law No. 1 of 2020 as set forth herein on June 24, 2020 at 6:00 p.m. at the Town of Erin Town Hall.

PROPOSED LOCAL LAW NO. 1 OF 2020

GOOD NEIGHBOR LAW

Section 1. Intent. The purpose of this Local Law is to protect the public health, welfare, safety, peace, and tranquility by regulating unreasonably loud and disturbing noises and sounds that are determined by the Town Board to be of a character, intensity, or duration as to be detrimental to the peace of the residents of the Town of Erin. The Town Board intends to improve and promote the quality of life in the community, and in the exercise of its lawful enforcement in this regard, the Town Board does hereby enact the following Local Law. It is the intent of the Town Board that this Local Law will be liberally constructed so as to effectuate the purpose described herein. The Town Board also acknowledges that Article 25-AA of the New York State Agriculture and Markets Law would create exemptions to a farm from the provisions of this Local Law.

Section 2. Definitions. As used in this Local Law, the following terms and phrases shall have the meanings indicated below.

Decibel (dB). A unit for measuring the volume of a sound as determined by a sound testing instrument. For purposes of this Local Law, a decibel level exceeding 90 dB shall be a nuisance noise.

Emergency. A public disaster or calamity or an exposure of any person or property to imminent danger.

Emergency Signal Device. Any ongoing siren, whistle, air horn, or similar device, the use of which on emergency vehicles is permitted by Subdivision 26 of § 375 of the New York State Vehicle and Traffic Law.

Excessive Noise. Incessant or repeated sounds that have the effect of endangering or injuring the safety or health of humans or animals or annoys or disturbs a reasonable person of normal sensitivity or endangers or injures personal or real property or any sound in excess of 90 dB that is annoying, a nuisance, or causes alarm to a reasonable person of normal sensitivity.

Motor Vehicle. Device in, upon, or by which any person or property is or may be transported or drawn, which is propelled by any power other than muscular power, except vehicles which run only upon rails or tracks. This definition shall include, but is not limited to, trucks, buses, automobiles, vans, motorcycles, motor-driven cycles, motor scooters, dune buggies, snowmobiles, all-terrain vehicles, go-carts, mini bikes, trail/dirt bikes, and all other types of motorized recreational vehicles.

Public Right-of-Way. Any street, avenue, boulevard, road, highway, sidewalk, alley, or easement that is owned, leased, or controlled by a governmental entity.

Public Space. Any real property or structures thereon that are owned, leased, or controlled by any entity.

Real Property Line. Imaginary line, including its vertical extension, that separates a parcel of real property from another.

Section 3. Prohibited Acts. No person shall make, continue, or cause to be made or continued, any excessive noise.

Section 4. Sound Reproduction Devices.

A. No person shall operate or use, or cause to be operated or used, any sound reproduction device for commercial or business purposes.

B. No person shall use or operate, or permit to be used or operated, any radio, television, phonograph, compact disk player, musical instrument, or other machine or device for producing, reproducing, or amplifying of sound with louder volume than is necessary for convenient hearing for the persons who are voluntarily listeners thereto.

C. It shall be prima facie evidence of a violation of this Section if sound emanating from a machine or device is:

(1) audible beyond the property lines of the premises upon which it is being used between the hours listed below:

Sunday	11 p.m. through 7 a.m.	Monday
Monday	11 p.m. through 7 a.m.	Tuesday
Tuesday	11 p.m. through 7 a.m.	Wednesday
Wednesday	11 p.m. through 7 a.m.	Thursday
Thursday	11 p.m. through 7 a.m.	Friday
Friday	1 a.m. through 7 a.m.	Saturday
Saturday	1 a.m. through 7 a.m.	Sunday

(2) audible at a distance of 50 feet beyond the property line of the premises upon which it is being used between the hours of 7:00 a.m. and 11:00 p.m. of the same day.

(3) audible at a distance of 50 feet from a machine or device if operated from a motor vehicle on a public street.

(4) audible at a distance of 50 feet from a machine or device when operated in a public park or other public place.

D. Provisions of this Section shall not apply to the following:

(1) Funeral processions or use of such devices by a church.

(2) The production of music in connection with any parade authorized under any provision of law.

(3) Any musical performance upon a public place that is allowable by law.

(4) The use of amplifiers or other sound-producing instruments or equipment in connection with any religious or political activities or permitted athletic competition or recreational event as permitted by law.

Section 5. Motor Vehicles.

A. No person shall operate, or cause to be operated, any motor vehicle in a manner that the sound emitted is excessive noise as defined in this Local Law.

B. The excessive noise is audible at a distance of 25 feet or more from the vehicle when operated on a public street or in a park or other public place.

C. This Section shall not apply to those motor vehicles being operated upon a public street or roadway to which Section 386 of the New York State Vehicle and Traffic Law applies (motor vehicle sound level limits).

D. This Section shall apply to all motor vehicles as defined in this Local Law, whether or not duly licensed and/or registered.

Section 6. Construction. No person shall engage in, or permit any person to be engaged in, construction activities which create excessive noise at the property limits of the construction site between the hours of 11:00 p.m. of one day and 5:00 a.m. the following day on any day of the week. This Section shall not apply to

A. Emergency work or action by public service utilities.

B. In the case of emergency so declared by the Code Enforcement Officer, Fire Department, or Police Department, construction activities directly connected to the abatement of such emergency may be undertaken.

C. When the sound is not audible across a real property boundary.

Section 7. Exceptions.

A. The provisions of this Local Law shall not apply to the following:

(1) Agricultural activities as recognized by New York State Agricultural and Markets Law Article 25-AA.

(2) Discharging of firearms for the purposes of hunting or any legal firearm activity. This activity shall be during the hours and distances permitted and posted by the New York State Department of Environmental Conservation.

Section 8. Administration and Enforcement.

A. The Town of Erin shall administer this law and enforcement shall be in some instances by the Town of Erin Code Enforcement Officer, but also by any authorized police enforcement agency.

B. Any violation of this Local Law shall be cause for an enforcement document to be issued to the violator and/or property owner.

C. Any person in violation of this Local Law shall be guilty of a violation, and upon conviction, shall be punished by a fine not less than One Hundred Fifty Dollars (\$150.00) but not more than Three Hundred Fifty Dollars (\$350.00) or by imprisonment for up to fifteen (15) days, or both. Each day shall constitute a separate offence punishable by a like fine or penalty as herein set forth.

Section 8. Authority.

This local law is enacted by the Town Board pursuant to its authority to adopt local laws under Article IX of the New York State Constitution and Municipal Home Rules Law § 10.

Section 10. Inconsistent Laws.

All laws inconsistent with any provision or provisions of this law are hereby repealed.

Section 11. Severability.

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law, or the application thereof to any person, firm, or corporation or circumstance, is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law, or in its application to the person, individual,

firm, or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 12. Effective Date.

This local law shall take effect immediately upon filing with the New York State Secretary of State.

BY ORDER OF THE TOWN BOARD OF THE TOWN OF ERIN

Motion Carried: Ayes: W. VanRiper, Jr., R. Evans, D. Delorme, M. Shutts, D. Schmidt. Nays: None.

A motion was made by R. Evans and seconded by D. Delorme to adjourn the meeting at 7:25 PM.

Motion Carried: Ayes: W. VanRiper, Jr., R. Evans, D. Delorme, M. Shutts, D. Schmidt. Nays: None.