

Village of Depew, NEW YORK

"The Village of Unexcelled Opportunity"



MEETINGS TO DATE: 5
NO. OF REGULARS: 4

AGENDA

VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF DEPEW
MAY 29, 2012 7:00PM

ROLL CALL: Trustee Hammer
Trustee Nolder
Trustee Pecora
Trustee Nikonowicz
Mayor Hoffman

PLEDGE OF ALLEGIANCE

INVOCATION

NOTIFICATION OF FIRE EXITS

APPROVE VILLAGE BOARD MINUTES MAY 14, 2012

ACCEPT ZONING BOARD MINUTES MAY 21, 2012

PUBLIC COMMENT – AGENDA ITEMS ONLY

1. Public Hearing Local Law 5 of 2012 – Pawn Shop
2. Adopt/Table/Deny Local Law 3 of 2012– Noise Ordinance
3. Appoint Registrar of Vital Statistics
4. Authorize Mayor to Sign Clerical Agreement
5. Authorize Administrator to Advertise for Bids – Paver
6. Authorize Administrator to Advertise for Bids – Ice Rink Boards
7. Tree Trimming/Removal:
8. Employment Applications: Recreation – Shelby Derkovitz, Kelsey Martin, Emily Zobrest, Robert Nowicki, Kelsey Grosch, Kayla Nicometi, Nicholas Weigand, DPW – Justin Ryszkiewicz
9. Department Head Reports: Police Dept April 2012
10. Report of the Village Attorney
11. Report of Village Engineer
12. Committee Reports
13. Unfinished and Other Business
14. Public Concerns and Comments
15. Claims and Accounts
16. Adjournment

RESOLUTION

MAY 29, 2012

ADOPT LOCAL LAW #3 OF 2012 –NOISE ORDINANCE CHAPTER 148

Trustee _____, offered the following resolution and moved for its adoption:

WHEREAS, the Board of Trustees of the Village of Depew, New York held a public hearing on May 14, 2012 at 7:00 pm in the Council Chambers of the Municipal Building, 85 Manitou St, Depew, NY to consider the adoption of a local law amending Chapter 148 Noise Ordinance.

WHEREAS, all persons were given an opportunity to speak for or against this local law;

NOW THEREFORE, BE IT RESOLVED, this local law is hereby adopted/abled.
Local Law is attached.

The following resolution was seconded by Trustee _____, and duly put to a roll call vote which resulted in the following:

Trustee Hammer –
Trustee Nolder –
Trustee Pecora –
Trustee Nikonowicz –
Mayor Hoffman –

VILLAGE OF DEPEW
BOARD MEETING
MAY 29, 2012

Agenda Item #2

 Approved Denied

EXHIBIT A

EAF and Negative Declaration

EXHIBIT B

Local Law

Chapter 148, NOISE (Local Law 3 of 2012)

[HISTORY: Adopted by the Village Board of the Village of Depew effective 12-27-1971 by L.L. No. 2-1971 as Ch. 68 of the 1971 Code ^{EN(1)} Amendments noted where applicable.]

GENERAL REFERENCES

Amusement arcades-- See Ch. 56
Animals--See Ch. 58, Art. I
Neighborhood block parties-- See Ch. 65.
Dance Halls-- See Ch. 91.
Mass gatherings-- See Ch. 160.
Parks—See Ch. 174.

§ 148-1. Title.

This chapter shall be known as the “Noise Law of the Village of Depew, Erie County, New York.”

§ 148-2. Purpose.

It is hereby declared to be the policy of the Village of Depew to safeguard the right if its residents within the privacy of their homes to be free from intrusive unwanted sounds. Problems concerning the disturbance of peace and quiet by noise from various activities are best solved by thoughtful discussions and cooperative agreements between affected parties. However, to resolve remaining problems of noise which is disturbing to others, it is the policy of the Village of Depew to establish standards, variance procedures, enforcement procedures and penalties.

§ 148-3. Definitions.

As used in this chapter, the following terms shall have meanings indicated. All other terms shall have the meanings normally ascribed to them in regular usage.

A-WEIGHTED SOUND PRESSURE LEVEL – The sound pressure level in decibel as measured on a sound level meter using the A- weighting network by a trained operator. The level so read is designated dB(a) or dBA.

AMBIENT NOISE LEVEL—The sound pressure level of the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources and/or the A-weighted sound pressure level exceeded 90% of the time L_{90} based on a minimum period of 10 minutes.

DAY – Any day of the week, that is, Monday thru Sunday.

DECIBEL (DB) -- 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 pressure of a standard sound (20 micropascals); abbreviate dB.

NOISE DISTURBANCE – That level of sound which, in each context described is hereunder either:

- A. Annoys, disturbs, or perturbs a reasonable person of normal auditory sensitivities or any sound which injures or endangers the comfort, repose, health, hearing, peace, or safety of a reasonable person of normal auditory sensitivities; or
- B. Is loud, disturbing, unusual, unreasonable and unnecessary, as well as audible outside the structure or the real property boundary from which it originates.

PERSON – An individual, firm or corporation.

REAL PROPERTY BOUNDARY—A line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned or controlled by another person, including intrabuilding real property divisions.

RESIDENTIAL AREA – An area designated for any residential use in the Village of Depew, Erie County, New York, or any area improved by a dwelling.

SOUND-LEVEL METER -- An instrument for the measurement of sound levels conforming to American National Standards Institute Type I or II Standards.

STATIONARY NOISE SOURCE -- Any device, fixed or movable, which is located or used on geographically defined real property other than a public right-of-way.

VIBRATION – An oscillatory motion of particles described by displacement, velocity or acceleration with respect to a given reference point.

§ 166-4. General prohibitions.

It is hereby declared to be a nuisance and it shall be unlawful for any person, firm or occupation to make or cause or suffer or permit to be made or caused, upon any premises owned, occupied or controlled by him or her or it, or upon any public street, alley, or thoroughfare in the Village of Depew, any unnecessary noises or sounds by means or methods which are physically annoying to the comfort of any person or which are so harsh or so prolonged or unnatural or unusual in their use, time and place as to occasion physical discomfort or which are injurious to the lives, health, peace and comfort of the inhabitants of said Village or any member thereof.

§ 148-5. Specific Prohibitions.

The following acts are declared to be loud, disturbing or excessive noise in violation of this chapter, but said enumeration shall not be deemed to be exclusive:

- A. Amplified sound. The operation, playing or permitting the operation or playing of any radio, receiver, television, phonograph, tape player, compact disc or digital sound systems, sound amplifier, boom box, musical instrument, loudspeaker, or similar device, whether from a moving vehicle or a stationary location, which reproduces or amplifies sound in such a manner as to create a sound level across a real property line, or through partitions common to two or more persons within a building, or from a stationary or moving vehicle, which exceeds the limits set forth in Table I^{EN(2)} (This subsection does not apply to industrial manufacturing plants in the regular conduct of their business of their own properties.)
- B. Horns and signaling devices. The sounding of any horn, signaling device or alarm (except as a danger warning, pursuant to § 375 of the Vehicle and Traffic Law of the State of New York) which results in a harsh or loud sound or repetitive sounds for any unreasonable or unnecessary period of time, so as to create a noise disturbance.
- C. Shouting and Yelling. Shouting, yelling, singing, calling, hooting or whistling so as to create a noise disturbance.
- D. Engines. The operation, including stationary idling, of any engine, including, but not limited to an automobile, truck, motorcycle, motorbike, motorboat or minibike engine, so as not to create a noise disturbance, or the use of any automobile, motorcycle, or motor vehicle so out of repair, so loaded, or in any manner so as to create excessive or unusual grating, grinding, rattling, or other noise, or the discharge into the open air of the exhaust from any stationary steam engine, stationary internal combustion engine or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom, which exceed maximum permissible sound levels in Table I herein.^{EN (3)}
- E. Heavy Equipment. The operation of any pile driver, bulldozer, pneumatic hammer, grinder, noise or other construction equipment which creates a noise disturbance, except between 7:00 a.m. and 11:00 p.m. and except in cases of urgent necessity in the interest of public safety.
- F. Construction. Any construction, excavation, demolition, alteration, or repair which creates a noise disturbance, except between 7:00a.m. and 11:00 p.m. and in cases of urgent necessity in the interest of public safety.
- G. Domestic equipment. The operation of or permitting to be operated any power saw, drill, sander, router, lawn or garden device, leaf or snow blower, insect control device or domestic

equipment so as to create a noise disturbance, except between 7:00 a.m. and 11:00 p.m. However, the use of snow blowers, chain saws, and other domestic tools and equipment are exempted from these limits when they are being used to clear driveways, streets, or walkways during and within 24 hours after snowfalls, rainstorms, ice storms, windstorms, or similar emergencies.

- H. Machinery. The operation of any machinery, equipment, pump, fan, air-conditioning apparatus or other mechanical device in such a manner as to create a noise disturbance which exceeds maximum permissible sound levels in Table I herein.^{EN(4)}
- I. Loading and unloading. The loading or unloading of any materials, equipment, and garbage cans or the handling of bales, boxes, crates, containers, or similar objects so as to create a noise disturbance which exceeds maximum permissible sound levels in Table I herein.^{EN(5)}
- J. Domestic animals. The howling, barking, whining, squawking, neighing, or other sounds of domestic animals which occurs continuously or intermittently, or so frequently as to create a noise disturbance (for purposes of this subsection, “continuous” shall be a periods of 10 minutes, and “intermittent” shall be a period of 30 minutes.)
- K. The making of any noise for advertising purposes in any street or public place, or by means of aircraft, or the advertisement or calling attention to any advertisement, article, business, calling or profession upon any street, sidewalk, or entrance, to a place of business by means of any horn, megaphone, siren, bell, radio, or any other sound producing or sound amplifying mechanism, instrument, or device.
- L. Places of public entertainment. Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment which produces maximum levels of 90 dB(A)’s or greater at any point that is normally occupied by human being, as read with with the slow response on a sound-level meter, without a conspicuous and legible sign with lettering no less than one inch high located outside such place, near the entrance, stating, **WARNING: SOUND ENVIRONMENT WITHIN MAY CAUSE TEMPORARY HEARING IMPAIRMENT WHICH MAY BECOME PERMANENT WITH CONTINUED EXPOSURE.** The sound level across a real property line shall not exceed the limits set forth in Table I.^{EN(6)}
- M. Alarms. The sounding or permitting of the sounding of any exterior alarm on any building or motor vehicle, unless such alarm shall terminate its operation within 15 minutes of its being activated.
- N. Stationary emergency signaling devices. Testing of only the electromechanical functioning of a stationary emergency signaling device shall occur at the same time each day when a test is performed, but not before 9:00 a.m. or after 8:00 p.m. Any such testing shall not exceed one minute.

§ 148-6. Noise Levels by land use.

- A. It shall be unlawful for any person to operate or permit to be operated any noise source in such a manner as to create a sound pressure level in dB(A)'s which exceeds the limits set forth in Table I when measured at the real property boundary.

TABLE I: Maximum Permissible Sound Levels by Receiving Land Use Category

Sound Source Land Use Category	Time Period	Receiving Land Use Category (dBA)		
		Residential	Business	Manufacturing
Residential (First,	7:00a.m.to 11:00 p.m.	105	110	115
Second and M-F)	11:00 p.m. to 7:00 a.m.	100	105	110
Business and manufacturing	7:00a.m. to 11:00 p.m.	110	115	115
(M1, M2 Zoning)	11:00 p.m. to 7:00 a.m.	105	110	115

- B. The restrictions set forth in this chapter shall not apply to alarms as defined in § 166-5M of this chapter.

§ 148-7. Motor vehicles on public rights-of-way.

No person shall operate a motor vehicle on a public right-of-way at any time in such manner that the sound pressure level emitted by said vehicle exceeds the levels set forth in the New York State Vehicle and Traffic Law.

§ 148-8. Presumptive evidence.

- A. The use of any sound-producing, sound reproducing or sound amplifying device, machinery, domestic equipment, heavy equipment, or engine so as to cause the sound produced thereby to be audible outside the building or beyond the boundary of the property (real and personal) where it originates, between the hours of 11:00p.m. and 7:00a.m. the following day, shall be presumptive, prima facie evidence of a violation of this chapter.
- B. Barking, squawking, whining, neighing or any other domestic animal sound which is audible at a point beyond the real property boundary from which sounds emanates and which continues continuously for 10 minutes, or intermittently for over 30 minutes between the 11:00p.m. and 7:00a.m. shall be presumptive, prima facie evidence of a violation of this chapter.

§ 148-9. Exceptions; legislative intent.

- A. The following sounds are exempt from the operation of this chapter:
 - (1) Emergency vehicles, such as fire, police or ambulance, while on emergency calls using radios, sirens, horns, bells or whistles;
 - (2) Parades, fireworks displays and/or other special events for which permission has been granted by the Village, within such hours and conditions as may be imposed by the permit;
 - (3) Emergency construction work which is necessary for the protection of life and property;
 - (4) Trains, buses, aircraft or other items of transportation governed by either the state or federal noise regulations;
 - (5) Emergency alarms, such as fire alarms or burglar alarms, prior to a reasonable opportunity for the owner or tenant in possession of the premises served by such alarm to turn off the alarm;
 - (6) Church bells which are to be rung to signal church services;
 - (7) Music in connection with any military, civic or authorized parade, funeral procession or religious ceremony, or any musical performance conducted under a consent of municipal authority.
 - (8) Municipal refuse collection;

- (9) Activities that are governed, authorized, or permitted under state or federal regulations;
- (10) Routine maintenance activities on all Village owned facilities, such as parks, community centers, playgrounds and golf courses. [Added 12-4-2006 by L.L. No. 3-2006]

B. It is the intention of the Village Board that this chapter, while in addition to and supplementing the federal and state regulations, be construed to secure for the people freedom from unlawful noise as described herein, without violating any of the rights secured by the Constitution of the State of New York.

§ 148-10. Police officers and firemen on duty excepted.

The provisions of this chapter shall not apply to police officers and firemen while in the discharge of duty.

§ 148-11. Variance procedure; determination by the Village Board.

- A. Any person seeking a variance pursuant to this chapter shall file an application for a permit with the Village Board. The application shall consist of a letter signed by the applicant and containing a legal form of verification. Such letter shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. In addition, the following information shall be provided:
 - (1) The plan, specifications and other information pertinent to such sources;
 - (2) The characteristics of the sound emitted by the source, including but not limited to the sound levels, the presence of impulsive sounds and the hours during which such sound is generated.
 - (3) The noise abatement and control methods used to restrict the emission of sound;
- B. The Village Board, upon receipt of such application and upon payment of any fee which shall be required by the resolution of the Village Board, shall set the matter down for a public hearing to be held within 30 days from the date the application is submitted. The Village Board shall cause publication of such public hearing to be given in the official newspapers of the Village in the same manner as an application to the Zoning Board of Appeals is published. The applicant in like manner shall give notice of the application by certified

C. Unless otherwise provided, each day a violation occurs shall be deemed a separate violation for purposes of this chapter.

§ 148-14. Effective date.

This chapter shall take effect as of _____

§ 148-15. Repealer.

A. The existing Noise Ordinance of the Village of Depew, New York effective 12-27-1971 by L.L. No 2-1971 as Ch 68 of the 1971 Code, as amended, is hereby repealed and replaced by this chapter, effective _____

RESOLUTION

MAY 29, 2012

APPOINT REGISTRAR OF VITAL STATISTICS

Trustee _____, offered the following resolution and moved for its adoption:

BE IT RESOLVED, that Pursuant to Section 4121 (3) of the Public Health Law, Elizabeth C. Melock, 48 Burlington Ave., Depew, NY 14043 is hereby appointed to the position of Registrar of Vital Statistics for a term of four years beginning the first Monday in April 2011 and ending the first Monday in April 2015, at no additional salary.

The foregoing resolution was seconded by Trustee _____, and duly put to a roll call vote which resulted in the following:

Trustee Hammer –
Trustee Nolder –
Trustee Pecora –
Trustee Nikonowicz –
Mayor Hoffman –

VILLAGE OF DEPEW
BOARD MEETING
MAY 29, 2012

Agenda Item # 3

___Approved ___Denied

RESOLUTION

MAY 29, 2012

**AUTHORIZE MAYOR TO SIGN SUCCESSOR AGREEMENT – CSEA UNIT
6717-01**

Trustee _____, offered the following resolution and moved for its adoption:

BE IT RESOLVED, Mayor Steven Hoffman is authorized to sign a successor agreement with Village of Depew CSEA White Collar Unit 6717-01 representing the members of the Clerical Staff, Dispatchers, and Recreation Laborers for the period June 1, 2011 till May 31, 2015.

The foregoing resolution was seconded by Trustee _____, and duly put to a roll call vote which resulted in the following:

Trustee Hammer –
Trustee Nolder –
Trustee Pecora –
Trustee Nikonowicz –
Mayor Hoffman –

VILLAGE OF DEPEW
BOARD MEETING
MAY 29, 2012

Agenda Item #4

___ Approved ___ Denied

RESOLUTION

MAY 29, 2012

AUTHORIZE ADMINISTRATOR TO ADVERTISE FOR BIDS – PAVER

Trustee _____, offered the following resolution and moved for its adoption:

BE IT RESOLVED, the Village Administrator is hereby authorized to advertise for bids for a paver for the Department of Public Works. Bid date will be set once the bid package is completed.

The foregoing resolution was seconded by Trustee _____, and duly put to a roll call vote which resulted in the following:

Trustee Hammer -
Trustee Nolder –
Trustee Pecora –
Trustee Nikonowicz –
Mayor Hoffman –

VILLAGE OF DEPEW
BOARD MEETING
MAY 29, 2012

Agenda Item #5

___Approved ___Denied

RESOLUTION

MAY 29, 2012

**AUTHORIZE ADMINISTRATOR TO ADVERTISE FOR BIDS – ICE RINK
BOARDS**

Trustee _____, offered the following resolution and moved for its adoption:

BE IT RESOLVED, the Village Administrator is hereby authorized to advertise for bids for a new boards for the ice rink. Bid date will be set once the bid package is completed.

The foregoing resolution was seconded by Trustee _____, and duly put to a roll call vote which resulted in the following:

Trustee Hammer -
Trustee Nolder –
Trustee Pecora –
Trustee Nikonowicz –
Mayor Hoffman –

VILLAGE OF DEPEW
BOARD MEETING
MAY 29, 2012

Agenda Item # 6

Approved Denied