

For Discussion – June 14, 2023
Introduction – June 14, 2023
Public Hearing – July 12, 2023, August 9, 2023 & September 13, 2023
Adopted – September 13, 2023
Enacted – October 4, 2023

ORDINANCE NO. 547

AN ORDINANCE AMENDING CHAPTER 216, “NOISE”, FOR THE PURPOSE OF CLARIFYING THOSE CONDITIONS THAT CONSTITUTE A NUISANCE IN THE TOWN AND THE INCREASING THE EFFICIENCY AND EFFICACY OF CODE ENFORCEMENT EFFORTS WITH RESPECT TO NUISANCE NOISE.

WHEREAS, pursuant to Md. Code Ann., Local Government, § 5-202, the Commissioners of St. Michaels (“the Town”) has the general power to adopt such ordinances as it may deem necessary in order to assure the good government of the Town, to protect and preserve the Town’s rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the residents of the Town; and

WHEREAS, Md. Code Ann., Environment Article, Title 3 “Noise Control” (“Title 3”), does not limit the power of a political subdivision to adopt noise control ordinances, rules, or regulations, except that a political subdivision may not adopt any noise control ordinance, rule, or regulation that is less stringent than the environmental noise standards, sound level limits, and noise control rules and regulations adopted under Title 3; and

WHEREAS, pursuant to this authority, and as authorized by the Town Charter, the Town enacted Chapter 216, “Noise,” of the Town Code; and

WHEREAS, the Commissioners desire to preserve peace and good order in the Town and to protect the health, comfort, and convenience of the residents of the Town by amending the Town’s Noise Ordinance to further control noise levels in the Town that can negatively impact residents’ quiet enjoyment of their properties, in particular regarding amplified sound in establishments serving food and drink.

Section 1. NOW, THEREFORE, BE IT ORDAINED by the Commissioners of St. Michaels, that Chapter 216, “Noise,” § 216-4, “Prohibited acts” of the Town Code be and is hereby amended to read as follows:

§ 216-4. Prohibited acts.

A. A person shall not:

- (1) Be a source of noise pollution.
- (2) Cause or permit a source of noise pollution to exist on property owned, leased, rented, or otherwise controlled by ~~him or his~~ THE PERSON OR THE PERSON’S agent.

Strikethrough	:	Indicates matter deleted from existing law
<u>UNDERLINED SMALL CAPS</u>	:	Indicate matter added to existing law
Asterisks * * *	:	Indicate matter remaining in existing law but omitted herein

B. (1) In the Central Commercial Zone, Gateway Commercial Zone, Historic Redevelopment Zone, or the Maritime Commercial Zone, a person shall not:

- (a.) Cause or permit an audio speaker to be located outside of a fully enclosed structure or located in any structure that is not fully enclosed or located so that it is exposed directly to the outdoors unless an annual permit has been issued by the Town as noted in § 216-5C of this chapter.
- (b) Cause or permit an audio speaker that is located within a structure to be directed toward an open window, door, or other opening in the structure.

(2) IN THE CENTRAL COMMERCIAL, MARITIME COMMERCIAL AND HISTORIC REDEVELOPMENT ZONES, OUTDOOR MUSIC ACCESSORY TO A BUSINESS, THE PRIMARY PURPOSE OF WHICH IS THE SALE OF FOOD AND BEVERAGES TO THE GENERAL PUBLIC, REQUIRES A PERMIT FROM THE TOWN, WHICH SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

- A. ~~THE PERMIT MUST BE RENEWED ANNUALLY~~
- B. A PERMIT MAY BE ISSUED ONLY FOR MUSIC INTENDED FOR THE PLEASURE OF THE CUSTOMERS OF THE PRIMARY STRUCTURE IN THE OUTDOOR DINING AREA OF THE PERMIT HOLDER'S BUSINESS ESTABLISHMENT.
- C. MUSIC MUST STOP BY 9:00 P.M. ON SUNDAY THROUGH THURSDAY AND 10:00 P.M. ON FRIDAY AND SATURDAY.
- D. MUSIC SHALL NOT EXCEED THE DBA LEVELS AS SET FORTH IN § 216-5.A.
- E. THREE VIOLATIONS OF THIS NOISE ORDINANCE WITHIN ANY CALENDAR YEAR SHALL RESULT IN THE REVOCATION OF THE PERMIT, WHICH MAY NOT BE REISSUED FOR A PERIOD OF SIX MONTHS.
- F. FOUR WRITTEN NOTICES OF VIOLATIONS AND/OR CITATIONS MAY RESULT IN THE DENIAL OF FUTURE PERMITS.
- G. ALL WRITTEN WARNINGS AND CITATIONS SHALL BE ISSUED TO THE PERMIT HOLDER WITH NOTIFICATION OF SUCH VIOLATION TO THE PROPERTY OWNER. FINES ASSOCIATED WITH THE FOREGOING VIOLATIONS MUST BE PAID IN FULL PRIOR TO THE REISSUANCE OF A NEW PERMIT.
- H. WHEN BASELINE NOISE MEASUREMENTS ARE NOT POSSIBLE DUE TO ENVIRONMENTAL OR BACKGROUND NOISE OR WHEN THE USE OF EQUIPMENT TO PROVIDE A BASELINE MEASUREMENT IS NOT FEASIBLE, AN OFFICER MAY ISSUE A CITATION BASED ON THE OFFICER'S OBSERVATIONS OF NOISE CONDITIONS OF A DEGREE AND DURATION THAT WOULD SUBSTANTIALLY AND UNREASONABLY DISTURB THE PEACE OF PERSONS OF ORDINARY SENSIBILITIES ON OTHER PROPERTIES. "BASELINE NOISE MEASUREMENT" MEANS THE MEASUREMENT OF DBA SOUND LEVELS TAKEN PRIOR TO THE ALLEGED SOURCE OF NOISE POLLUTION AT A RECEIVING PROPERTY

C. A commercial establishment offering indoor live amplified music or other live amplified entertainment shall not leave its exterior doors OR WINDOWS open during performances.

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D. ~~The following acts, among others, are declared to be noise pollution prohibited by this chapter:~~

1. ~~Between the hours of 10:00 p.m. and 7:00 a.m., the playing of, using of, operating of, or permitting to be played, used, or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound (hereafter in this subsection "the source") in such a manner as to be at a level that exceeds the limits set forth in Table 1 below, when measured as set forth in § 216-5.B.~~

2. ~~Between the hours of 10:00 p.m. and 7:00 a.m., NOISE, INCLUDING vocal disturbances (e.g., shouting, whistling or singing) EMANATING FROM A in the public streets STREET, public area, from OR private property in such a manner as to be plainly audible at a distance of 50 feet from the public street, public area, building, structure, or vehicle from which the noise emanates TO AN ENFORCING OFFICER AND CAUSING A PUBLIC DISTURBANCE OF A DEGREE AND DURATION THAT WOULD SUBSTANTIALLY AND UNREASONABLY DISTURB THE PEACE OF PERSONS OF ORDINARY SENSIBILITIES ON OTHER PROPERTIES IS DECLARED TO BE NOISE POLLUTION PROHIBITED BY THIS CHAPTER.~~

3. ~~Between the hours of 10:00 p.m. and 7:00 a.m., human conversation from a public gathering area at a volume audible inside a closed residence and causing a disturbance located 75 feet or more from the public gathering area. the actual words of the conversation need not be intelligible; audibility of the sound of conversation, under the conditions described, is sufficient to constitute noise pollution.~~

Section 2. BE IT FURTHER ORDAINED AND ENACTED, that Chapter 216, "Noise" of the Code of St. Michaels, Section 216-5, "Maximum allowable noise levels", be and hereby is amended to read as follows:

§216-5 Maximum allowable noise levels.

A. With the exception of those specific acts and circumstances described in § 216-6 of this chapter, any sound produced, reproduced, or amplified to a level that exceeds the limits of Table 1 below is hereby declared to be noise pollution.

* * *

C. ~~In the Central Commercial, Maritime Commercial and Historic Redevelopment Zones, outdoor music accessory to a business, whose primary use is the offering of food and beverages to the general public, may apply for a permit, subject to the following conditions:~~

(1) ~~The permit shall be requested annually.~~

(2) ~~The purpose of the music is for the pleasure of the customers of the primary structure in their outdoor dining area.~~

(3) ~~Music shall stop by 9:00 p.m. on Sunday through Thursday and 10:00 p.m. on Friday and Saturday.~~

(4) ~~Maximum dBA levels as set forth in § 216-5 shall be in effect.~~

(5) ~~The issuance of three citations within any calendar year shall result in the nullification of the permit with no reissuance thereof for a period of six months. Additionally,~~

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multiple written notices of violations and the issuance of multiple citations may result in the denial of future permits.

(6) — All written warnings and citations shall be issued to the permit holder with notification of such violation to the property owner. Fines associated with the foregoing violations must be paid in full prior to the reissuance of a new permit.

Section 3. BE IT FURTHER ORDAINED AND ENACTED, that Chapter 216, “Noise” of the Code of St. Michaels, Section 216-6, “Exemptions”, be and hereby is amended to read as follows:

§ 216-6. Exemptions.

Each of the following activities is hereby exempt from the prohibitions of this chapter to the extent noted below:

* * *

L. The grant of a public event permit authorizing the use of audio speakers out-of-doors shall be conditioned on the applicant meeting all of the following conditions:

(1) All events involving the use of audio speakers which are conducted on Sundays shall begin no earlier than 1:00 p.m. and shall end no later than 6:00 p.m. Such events held on Monday through Friday shall end no later than 6:00 p.m., and venues held on Saturday shall end no later 7:00 p.m., with the exception of Midnight Madness, which is normally held on the first weekend in December. Amplified music and announcements for Midnight Madness after 10:00 p.m. shall be restricted to one venue in the Central Commercial Zone and must end by midnight. The number of events for which a public event permit may be issued shall be limited to three per day.

(2) The speakers must be placed at least 75 feet from any boundary of a residential property. To the extent practicable, the speakers should be directed away from the nearest residential property boundary.

(3) Compliance with the above-noted conditions shall be enforced by any sworn police officer of the Town. Upon the receipt of a complaint, the officer shall determine the dBA level at the property line of the complainant. Should a violation be noted, the permit holder shall be notified immediately, and a written warning issued stating that if a reoccurrence of the noise violation occurs at any time during the event, the exemption for that specific venue will be voided. Furthermore, the permit holder shall be subject to the provisions of § 250-15 (Violations and penalties) of the Town Code. Consideration of future requests may be affected by the issuance of a citation.

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M. NOISE GENERATED IN THE CENTRAL COMMERCIAL, MARITIME COMMERCIAL, AND HISTORIC REDEVELOPMENT ZONES BY A BUSINESS IN POSSESSION OF A PERMIT PURSUANT TO SECTION 216-4.B.(2) OF THIS CHAPTER, SUBJECT TO ANY RESTRICTIONS OR LIMITATIONS SET FORTH IN THIS CHAPTER.

Section 34: AND BE IT FURTHER ORDAINED, that If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 45: AND BE IT FURTHER ORDAINED, that all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 56: AND BE IT FURTHER ORDAINED, that the title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

Section 67: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect twenty (20) days after adoption, having been introduced on the 14th day of June, 2023, and passed by a majority vote of The Commissioners of St. Michaels following a public hearing of The Commissioners of St. Michaels on the 13th day of September 2023, which latter date shall be at least six and no more than 70 days after the date of its introduction.

Breimhurst Yea
Harrod Yea
DuPont Yea
Whittington Yea
Mercier Yea

ATTEST:

Vickie Sharp
Vickie Sharp, Town Clerk

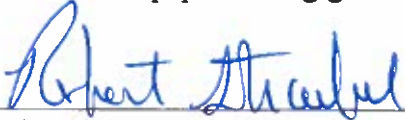
THE COMMISSIONERS OF ST. MICHAELS

David Breimhurst (SEAL)
David Breimhurst, President

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I HEREBY CERTIFY that an exact copy of the above Ordinance was posted from the 14th day of September, 2023, at 8:30 a.m. to the 3rd day of October, 2023, at 4:30 p.m., on the bulletin board at the St. Michaels Town Office, and that a summary of the above Ordinance, the date of its passage, its effective date, and a statement that the entire text of the Ordinance will appear on the bulletin board of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for two (2) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: September 14th, 2023


Robert Straebel, Town Administrator

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