

TOWN OF EAST LYME  
BOARD OF SELECTMEN

MARCH 6, 2013

PUBLIC HEARING

Filed  
Recorded March 11, 20 13  
(AM)  
8:47 PM Lesley A. Blais  
East Lyme Town Clerk

**Members Present:**

**Paul Formica, First Selectman**

**Kevin Seery**

**Rose Ann Hardy**

**Holly Cheeseman**

**Mark Nickerson**

**Rob Wilson**

**Also Present:**

**Bill Scheer, Town Engineer**

**Anna Johnson, Finance Director**

**Ed O'Connell, Town Attorney**

**Matthew Kinell, Town Attorney**

**Dave Putnam, Parks & Recreation/Youth Services Director**

Mr. Formica called the Public Hearing to order at 7:03 p.m.

He stated a copy of the Proposed "Town of East Lyme Noise Control Ordinance" had been on file in the Town Clerk's office, posted on the Town of East Lyme website, and duly advertised in The Day newspaper.

Mr. Formica led the assembly in the Pledge of Allegiance.

Mr. Formica stated the purpose of the ordinance is the reduction, control, or prevention of noise.

Attorney O'Connell stated they had asked him to edit the ordinance so as to preserve the intent, but to save on publishing costs. They eliminated some duplicate information, and took out some draft forms that were included in the original that did not have to be. The publishing cost ended up being approximately \$5500.00.

Paul Spakowski or 37 Mill Road, East Lyme asked what brought this on at the expense of the taxpayers. He also wanted to know if he would still be covered when he works at the break of dawn to the evening with lawnmowers, and are there going to be different hours on Saturdays?

Mr. Formica stated he could operate from 7:00 a.m. to 10:00 p.m. This was brought to us to fix a problem residents were having with their neighbors. It is important to bring it forward for discussion of the community.

Giancarlo Diangeli – Penncove Road stated he lives next to someone who rides ATVs all day. He supports the noise ordinance. He would like to see an exemption for generators, with all of the storms lately and the town losing power so much it is a safety issue. He would like to see that allowed.

Greg Decker, Memorial Park Drive stated he has neighbors that party late at night; he has called the police several times. He is in full support of the ordinance.

Franz Edson of 52 Quarry Dock Road stated he moved here 17 years ago. There are great school and quality of life. He does not think it is reasonable for several ATVs to go up and down a hill by his home. He urged the passage of the ordinance.

Ron Rando, 194 Boston Post Road is against the noise ordinance. He stated the Town doesn't need any more laws, the \$5500.00 was a wasted of taxpayer money. They should be sending the cops up there. Enough is enough.

Mr. Formica stated it was actually \$5568.00 for the advertisement and it was paid out of the Contingency Fund.

John Drabik, 18 Drabik Road stated we could be opening a can of worms with this Ordinance. He hears Harleys in the morning and later in the afternoon; he could call the police about them with the Ordinance. This started on Walnut Hill between two neighbors. He doesn't understand why Breach of Peace hasn't been enforced by the police. They jumped the gun on advertising this.

Mark Butterfield of 6 Upper Walnut Hill Road is aware of the issue between the neighbors. He does feel for this neighbor, but this Ordinance is not free. Long term they risk the potential of litigation because of it. He encourages the Board to mimic the requirements of the State Statutes. If the Ordinance is overly restrictive it will be taken on in court by organizations that support ATVs and Motorcycles. He doesn't want his taxes spent on frivolous lawsuits. He believes the Ordinance is in conflict with State Law, and a regular motor vehicle could be in violation of this Ordinance. He stated motor vehicles operated at night wouldn't conform to the decibel table. **He entered Exhibit A, which was a summary of his comments and an article from a New Hampshire lawsuit and a pamphlet from the American Motorcycle Association.**

Bob Scheel, Walnut Hill Road stated he understands the concerns. 4 years ago when this started he made a lot of calls. There was no remedy. There are almost 60 towns with Ordinances like this. They are almost verbatim to this one. You don't call the police every time you hear a noise, that would be unreasonable. When the noise reaches into your house and shakes you, that is unreasonable. The police couldn't do anything for him. He urged them to pass this Ordinance. The Town officials all sympathized with him, and if they could have helped they would have.

Sally Wade, 392 Boston Post Road stated she is opposed to this Ordinance, she feels for Mr. Scheel but this Town has enough regulations and laws on the books to cover his problems. There is a lack of enforcement. She has struggled with a neighbor that was trying to keep her up by hanging wind chimes 30 feet from her bedroom. She has called the police and they would do nothing. She continued to call until a female officer came out and made the neighbor take the wind chimes down.

Karen Rak, 27 Black Point Road, stated she is opposed to the Ordinance. They need to enforce the laws on the books. It is a civil matter. There are enough laws, most neighbors are friendly and they don't need an Ordinance for a small number of people.

Mark Toth, Lovers Lane stated he has a motorcycle track in his yard. He races as a hobby. His neighbors come over and watch. There is no place in this area that is legal to ride. He pays taxes also. There has to be some way around this. ATVs are not legal on the road, and there are zero places to ride them. They can't stop it all together.

Mike Schultz of Lovers Lane stated the problem goes beyond noise. There is no place for anyone to ride. He does feel sorry for the gentleman who can't enjoy his home. **He presented Exhibit B – photos of Post Road Commons open space area**, a path was created by electric bicycles, then ATVs, and then went to motorcycles. There was destruction to the property. He doesn't think we need a noise ordinance.

Daniel Wade of 392 Boston Post Road stated he is opposed to the Ordinance. There are laws on the books for harassment. He doesn't understand why the police can't hand out citations. The laws aren't being enforced.

Jim Levandoski of 15 Dean Road stated he is a police officer in town. He is not opposed to the Ordinance, but he is not for it either. There are issues that need to be addressed. Will they include boats, are generator's exempt? Time frames would be very useful also. Is 10:00 p.m. on weekends reasonable? He has gone to calls where people are just having a discussion in their back yard and the neighbors complained. They didn't hear it when they arrived. There are Statutes on the books, when they go to calls they try to be reasonable, they have to be in the middle, they have been called back and if the issue doesn't stop they can ticket.

Giancarlo Deangeli of Penncove Road stated that hobbies are for fun, they shouldn't impede on property values or people's right to sleep. He would like some statistics from the police on noise violations. Is there any information on lawsuits against other towns that have noise ordinances? This is easy to oppose until someone disrupts you.

Matthew Fleisher of 38 White Birch Circle stated he feels for these people, but they are asking the taxpayers to fight their battle. He is opposed to this.

Ross Moratori of North Bride Brook Road stated he is a taxpayer and he wants to pay for this Ordinance. There are not enough laws on his side. It would improve the quality of his life, across the brook behind his house is a light industrial zone and they can make all of the noise they want. There is an air conditioning unit in the summertime making a loud whining sound. He went up there and had to talk to the maintenance man. If there was a decibel meter they could have been fined every day. Why should he be subjected to this?

Mark Butterfield stated he is not opposed to the noise ordinance. He heard what is going on and he is glad he doesn't live next door to those neighbors, but he doesn't want to see frivolous lawsuits.

John Drabik stated unfortunately decibel meters don't always produce the results you think they are going to produce. Who owns the land up there where the offenses are taking place? Has the owner

been taken to task? This is between two private parties, and he thinks the recourse is on the landowner.

Karen Rak stated with Breach of Peace you have to have witnesses, and the other neighbors are witnesses.

Ron Rando stated his grandson has been racing since he was 5 years old. He races all over the country. When they rebuild the bike and add parts they have to test the bike. This Ordinance could shut him down.

Robert Scheel stated there are other neighbor's issues in town other than his own. His is just an example. This has been going on for four years and he has explored every avenue. DEEP approved our Ordinance in 5 days; the risk of lawsuit is minimal. The Town has to set a standard. The courtesy people once had is slowly disappearing. They owe it to the residents.

Mr. Seery stated he has been a State Trooper for 26 years. He has had to enforce excessive noise. He has issued fines for public disturbance. There is a Statute for Disorderly Conduct. State Statute would take care of that. They issue citations and sometimes the Courts choose not to prosecute. **He entered Exhibit C, Connecticut General Statute on creating a public disturbance.**

Mr. Formica read and **submitted Exhibit D, an email from Ted Sudal.**

The Public Hearing was closed at 8:29 p.m.

Respectfully Submitted,

Karen Miller Galbo  
Recording Secretary Pro-Tem

# Exhibit A

## Comments to East Lyme's Proposed Noise Ordinance

From Mark Butterfield 6 Upper Walnut Hill Rd East Lyme

- I am aware of the issue from which this Ordinance originated, have there really been a multitude of documented cases that warrant a new Ordinance? Because its not free, meters and calibration, enforcement, and litigation are just a few costs.
- The requirements outlined in section A do not provide the technical guidance necessary to conduct an appropriate test. As an example it does not specify the minimum distance to from property line to emitter, if taken as written a cell phone would violate this Ordinance, and any car driving on a driveway close to a property line would violate this Ordinance.
- Motor Vehicle section should mimic CT Statute 14-80a period, the attached article is one example where town ordinances that circumvent state law is not enforceable.
- Motor Vehicle section B as written would prohibit the use of a motor vehicle at night. It imposes section A requirements 45db again without the technical details on how to measure, but even if we assume its in accordance with the state statute 14-80a measured at 50 feet, all vehicles would violate this level.
- I would rather you not spend my \$10000 a year I sent you, in town tax dollars, on frivolous law suits. If you review the American Motorcycle Association (AMA) website and literature you will find one of the services they provide is legal representation for denying people the right to ride motorcycles and alike on their own land, and lets face it, this is why the document got started and this is what it is trying to accomplish.

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## More New Hampshire towns face motorcycle noise legislation

Tuesday, 21 December 2010 | Written by Digits |  | 

More towns in the state of New Hampshire are about to ride the controversial roads of what is and isn't considered a loud motorcycle as local groups petition to expand a questionable law.

At the heart of the legal troubles in New Hampshire are a group of citizens who feel motorcycles are too loud and a law passed in the town of North Hampton in May 2010 that has many, including the local police chief who consider it unenforceable as well as unfair.

The new local law uses EPA standards to measure acceptable noise standards, setting the level at 80 decibels, contradicting the State of New Hampshire which considers that level to be at 106 decibels.

To monitor whether motorcycles adhere to the new noise level, the law requires any motorcycle with custom exhaust systems or those manufactured after 1982 to have a federal Environmental Protection Agency sticker verifying they don't exceed the 80 decibel level.

The law passed in North Hampton carries fines of between \$200 and \$500 for the first offense with each subsequent violation punishable by a fine of \$500 to \$1,000. The offending motorcycle doesn't even need to be running to receive a ticket with the law including those that are parked as well as being operated.

Now the same group that is fighting against local authorities and law enforcement in North Hampton to keep the law on the books is hoping to have similar legislation passed in the neighboring towns of Rye and New Castle. The group, NH CALM (N. H. Citizens Against Loud Motorcycles) are again going against the local law authorities advice to have the bill considered in the next election. The group gathered enough signatures in Rye to get a bill on the March town meeting ballot.

But it's not just local riders who are upset with the law passed in North Hampton, or the prospect of having similar laws in surrounding towns.

Some of the largest motorcycle dealerships in New Hampshire are located in the town of North Hampton: Seacoast Harley-Davidson, Great Bay Triumph, Ducati and Vespa, and MAX BMW and combined employ approximately 100 people.



A suit was filed this year in response to the already passed law by Seacoast Harley Davidson in Rockingham Superior Court requesting a restraining order preventing North Hampton from enforcing the motorcycle noise ordinance, to declare that state law trumps the local ordinance in terms of motorcycle noise, and to award attorney's fees.

The possibility of having the law in other towns doesn't make local law enforcement happy either. Rye Police Chief Kevin Walsh is reportedly against the proposed ordinance due to its unenforceable nature as well as the rising legal costs neighboring North Hampton is facing to defend their version of the law in court. His opposition to the proposed law isn't a secret, with the Police Chief not only telling local papers of his concerns but the organizers behind NH CALM as well.

This view should be no surprise to those standing behind the law which strictly targets motorcycle noise. The Police Chief of North Hampton has refused to enforce the law which was voted in earlier this year.

"The town ordinance is trying to circumvent state law and is not enforceable," North Hampton Police Chief Brian Page said in June, "It would be ridiculous for me to direct my men to enforce it."

Since then, the county attorney and a N.H. Local Government Center attorney also stated publicly the North Hampton ordinance is not enforceable.

Rye Police Chief Kevin Walsh agrees with that sentiment, noting most taxpayers would not support sending their police officers to court to fight motorcycle noise cases. Walsh has also recommended if the members of NH CALM want the allowed decibels lowered, "they need to go to the state legislature."

But they may have already tried that route. Failed legislation introduced in the New Hampshire State government earlier this year which would have required the state's riders to follow the EPA's 80 decibel guideline (with the appropriate sticker) was introduced and sponsored by North Hampton State Representative, Judith Day. Day's husband Larry Miller is coincidentally a member of NH CALM.

Interestingly, if the standard of the new legislation was enforced more broadly, a range of residents could find themselves the next target of laws against noise pollution. According to [comparative charts](#) of decibel ratings, lawnmowers, subway trains, train whistles and even the sound of city traffic when sitting in a car all exceed the standard set by the legislation.

Even a telephone dial tone is rated at 80 decibels, the level set for the legislation. However, since none of these are motorcycles they wouldn't be affected by the current actions.

## Comments

#2 2011-01-05 15:58

0

It'd be nice if the members of our own community would get their facts straight. If we can't figure this stuff out, what are the chances of any of us helping our elected officials figure it out. And what are the chances of us challenging the ridiculous propaganda coming from the likes of NHCALM.

80dB does not conflict with 106dB - the two standards are measured at different distances and cannot be directly compared. Nor can either of those numbers be directly compared to the comparative charts without normalizing it all to a common measurement distance.

There is no such thing as an "appropriate sticker" or "EPA sticker". It is an embossment or marked plate applied by the OEM and some of these markings are placed where they are difficult or even impossible to

see.

Sure the straight pipes are a menace. You need a night-stick, not a stamp, to check for that. The stamp laws are just mean spirited crap from folks who are sick of the noise.



#1 2011-01-04 19:00

+1

I gotta side with NHCALM on this. These guys with straight pipes are ruining it for everyone. Now people are sick of it enough to stand up and do something. I checked my exhaust and lo-and-behold, there IS an EPA label. (It's an imprint more than a label.)

Quote

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### Our current question

**Does the change in onwership change your view about Ducati**

- Yes, VW/Audi will ruin a great motorcycle
- Nope, they will keep everything in place
- Not sure. Waiting to see what will happen

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# DON'T RIDE ALONE

## When It Comes To Rights, Riding And Racing, There Are Benefits To AMA Membership

AMA member benefits are about one thing—you. AMA members are the core of the Association. You provide the influence we need in Washington, D.C., the commercial sway needed to negotiate discounts and benefits, and the critical mass that makes AMA-sanctioned events

### RIGHTS

As the country's premier motorcyclist advocacy group, the AMA targets anti-motorcycling forces in the halls of federal, state and local government. We give you the tools to stop them.

With your help, we target key issues from coast to coast. Listed below are some of the issues that are fueling our current government-relations initiatives. Concerned? The AMA is your primary tool for making a difference. See [AmericanMotorcyclist.com](http://AmericanMotorcyclist.com) > Rights or call us at (800) 262-5646 for how you can help.

#### Your Voice, Amplified

Anti-motorcycling foes are everywhere. Thanks to AMA members, so are we. The AMA has legislative experts and lobbyists based in Washington, D.C., Ohio and California, along with grassroots efforts in nearly every state.

#### Keep Off My Motorcycle!

Every year, it seems, someone in Congress introduces a bill that would ban you from customizing parts of your motorcycle. These anti-tampering bills are already prevalent in Europe. The AMA fights these laws, believing the choice should remain with you, the rider.

#### Kids Just Want To Ride

Lawmakers essentially banned the sale of kids' motorcycles through the application of a law designed to control lead content in small toys. The AMA, its members and the motorcycling industry fought long and hard to overturn the ban—and succeeded.

#### Answers About Ethanol

The jury is still out on whether fuels with high levels of ethanol damage motorcycle engines. The AMA opposes the use of gasoline that contains up to 15 percent alcohol by volume, also known as E15, until further study.

#### Public Land Access

For years, almost 43 million acres of federal land that doesn't qualify for Wilderness protection has been locked up by bureaucratic rules, despite the fact that land managers think it should be open to responsible users. Joining with like-minded forces, the AMA is working to get those lands back in the public domain.

#### Motorcycle Only Checkpoints

Several states, including Georgia and New York, have implemented motorcycle-only checkpoints and forced them through rigorous equipment and paperwork checkpoints while other motorists rolled by without scrutiny. The

#### Distracted Drivers

Distracted and inattentive driving pose a major danger to motorcyclists. The AMA is an active participant at the federal level in the war on distracted driving, including taking part in national summits on the issue.

#### Riding On Your Own Land

Believe it or not, plenty of local municipalities try to ban residents from riding motorcycles on their own land. The AMA and its members fight such ordinances outright.

#### Cash Prevention

Thanks to the urging of the AMA and its members, the federal government has launched a national study into the causes of motorcycle crashes, the first in three decades. The study is expected to be completed in 2013.

#### Working The Money

When you buy gas for your off-highway vehicle, the gas tax money goes to the federal Recreational Trails Program, which the AMA and other groups helped establish. The program helps build and maintain trails. The AMA is fighting to keep the program intact against congressional efforts to allow these funds to be spent on non-trails projects.

#### Insurance Industry Attacks

The insurance industry wants to limit motorcycle engine output, mandate anti-lock brakes on all bikes, and claims that sportbikes are more dangerous than other types of bikes. The AMA is aggressively fighting back, talking with federal decision-makers and the insurance industry to point out the flaws in the industry's research.

#### High-Occupancy Vehicle (HOV) Lane Access

If you ride in HOV lanes, thank the AMA and its members. Though motorcycles were at first banned from HOV lanes, the AMA fought for, and won, the right for motorcyclists to use them. The AMA is working to keep access open.

#### Getting You Covered

Some medical insurance policies won't pay for medical care if a rider is injured on a motorcycle. The AMA is actively working on Capitol Hill to ensure you can't be denied coverage for injuries suffered in a motorcycle crash.

(800) 262-5646 for how you can help.

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Lawnmowers essentially banned the sale of kids' motorcycles through the application of a law designed to control lead content in small toys. The AMA, its members and the motorcycling industry fought long and hard to overturn the ban—and succeeded.

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### Motorcycle-Only Checkpoints

Several states, including Georgia and New York, have flagged down motorcyclists—and only motorcyclists—and forced them through rigorous equipment and paperwork checkpoints while other motorists relied by without scrutiny. The AMA works to stop this discriminatory practice.

### Stop The Land Grab

There are 33 million acres of national public land where responsible motorized recreation is allowed in designated areas. Every year, anti-motorcycle forces work to close down as much as they can through laws, lawsuits and congressional actions. With your help, we work to stop them.

to ban residents from riding motorcycles on their own land. The AMA and its members fight such ordinances outright.

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### Fighting Bike Bans

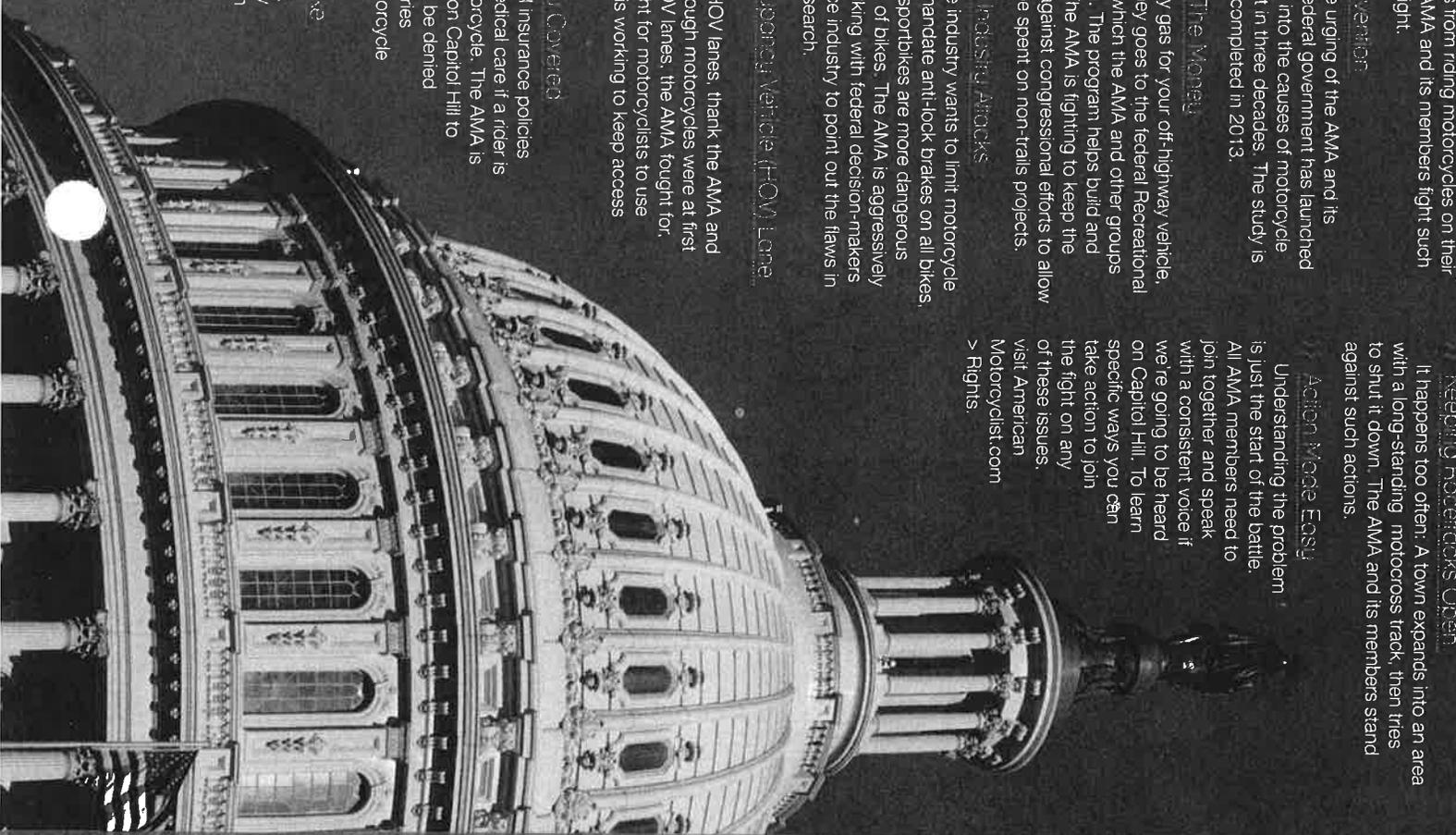
When cities try to ban bikes from streets, the AMA fights back. The AMA got Congress to pass a law

### Keeping Pocketbooks Open

It happens too often: A town expands into an area with a long-standing motocross track, then tries to shut it down. The AMA and its members stand against such actions.

### Action Mode EASY

Understanding the problem is just the start of the battle. All AMA members need to join together and speak with a consistent voice if we're going to be heard on Capitol Hill. To learn specific ways you can take action to join the fight on any of these issues, visit [AmericanMotorcyclist.com](http://AmericanMotorcyclist.com) > Rights.



# ACT UP



JANUARY 2013  
"OPEN SPACE" @ Post Rd Commons

SHOWS RUTS & PATHS CREATED  
BY ELECTRIC AND MOTORIZED ATV'S  
LARGE SPRING FED POND TO  
RIGHT OF TREES, BUT NOT SHOWN  
IN PHOTO. ZONED RU40

Exhibit B

JANUARY 2013  
OPEN SPACE @ Post Rd Commons

SHOWS WORN PATHS CREATED BY  
ELECTRIC AND MOTORIZED ATV'S  
ZONED RU40  
PATHS CONTINUE INTO WOODS  
WHERE MORE MORE TURN  
AROUNDS EXIST OR HAVE BEEN  
CREATED

Exhibit C

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  - {Criminal Law Glossary}
  - {Litigation Glossary}
  - {More Criminal Law Topics}

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Home > For Everyone > Criminal Law > Connecticut General Statutes 53a-181a - Creating a public disturbance: Infraction



## Criminal Law

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### Connecticut General Statutes 53a-181a - Creating a public disturbance: Infraction

*Connecticut General Statutes > Title 53a > Chapter 952 > § 53a-181a - Creating a public disturbance: Infraction*

Current as of: 2009

[Check for updates](#)

(a) A person is guilty of creating a public disturbance when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he (1) engages in fighting or in violent, tumultuous or threatening behavior; or (2) annoys or interferes with another person by offensive conduct; or (3) makes unreasonable noise.

(b) Creating a public disturbance is an infraction.

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Comments (0)

Post a comment or question below.

**Name**

**Email**

(a) A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior; or (2) by offensive or disorderly conduct, annoys or interferes with another person; or (3) makes unreasonable noise; or (4) without lawful authority, disturbs any lawful assembly or meeting of persons; or (5) obstructs vehicular or pedestrian traffic; or (6) congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse; or (7) commits simple trespass, as provided in section 53a-110a, and observes, in other than a casual or cursory manner, another person (A) without the knowledge or consent of such other person, (B) while such other person is inside a dwelling, as defined in section 53a-100, and not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy.

# Exhibit D

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**From:** N5733 [mailto:N5733@att.net]  
**Sent:** Wednesday, March 06, 2013 10:20 AM  
**To:** Paul Formica  
**Subject:** Noise Control Ordinance

I have just become aware of the proposed Noise Control Ordinance that will be brought up at tonight's public hearing. I unable to attend but, after a cursory review of the Ordinance, I offer some comments for discussion:

1. The definition of decibel (dB) requires expansion, correction, and modification. It is too cursory and practically meaningless and the method of sound measurement and scales used should be defined. Acoustics is a complex subject.
2. Daytime hours are much too long! I suggest 8:00 am to no more than 9:00 pm. Many people go to bed/sleep 8:00/9:00 o'clock or at least want quiet time to do home administrative business and read.
3. The Ordinance addresses only mechanically generated noise. It does not address biologically created noise such as barking dogs, cats, human noise (screaming, yelling, and partying).

If the purpose of the Ordinance is promote "... *peace, quality of life... facilitate the enjoyment of natural resources and tranquility of the town (neighborhood and home)*" then this Ordinance falls short. Either do it right or not at all. After all, every person has the right to enjoy their home and property without extraneous noise of any kind from ALL sources of disturbance.

Ted Sudal