

POLICIES AND PROCEDURES

NOISE BY-LAW ENFORCEMENT

REVISED July 25, 2003

GENERAL CONSIDERATIONS AND GUIDELINES

The enforcement goal regarding this by-law is compliance. The by-law prohibiting unreasonable noise is a tool which officers are expected to use when responding to noise disturbance type calls. The law is more specific than the Massachusetts General Law C.272 s.53 that deals in part with disturbers of the peace and disorderly persons.

Most noise disturbance calls in Town are resolved by a single visit and notification by the responding officer(s) informing the violator that a disturbance complaint has been received by the police (verbal warning). In the past, officers used discretion in taking stronger action such as ending the party/gathering and seeking the appropriate complaints in court. This discretion is expected to continue.

There are instances when, in the responding officer's judgement, a verbal warning is not appropriate. The noise level may be greatly beyond what is considered reasonable and/or the number of people present indicate that the officer can reasonably presume that the noise cannot be adequately controlled or even significantly reduced. The attitude and demeanor of the guests or the hosts may indicate that compliance is not to be expected. There are many other indicators, too numerous to list that officers may rely on which indicate that the violators are less than cooperative and will continue the prohibitive behavior after a verbal warning is issued. In these cases, it is expected that officers will take further action to ensure compliance.

Officers may issue to violators a verbal warning, a written warning or a non-criminal citation. They may summons the violator(s) to court or they may arrest them if appropriate. Written warnings should be used pursuant to this by-law whenever officers feel that such warning will have a positive effect on the situation. A written non-criminal citation should be issued whenever officers feel that a warning will have little or no effect and that an arrest would not be the best solution. Violations are cumulative over a twelve-month period. Officers should check with the dispatcher and/or station officer to determine if there have been past noise by-law violations which may assist them in addressing the current violation.

Violators may be arrested under the authority of this law. However, officers should consider all other alternatives in resolving the noise disturbance before making any arrests. Arrests can be made upon the first encounter with a violator if appropriate, however, as stated previously, the goal of the department is compliance and other remedies should also be considered.

Nothing in this procedure should be construed so as to limit officers' discretion or authority to take appropriate action pursuant to any applicable local or state law.

I. PROCEDURE

A. When dispatchers receive a complaint of excessive noise they should make an effort to determine the identity of the caller. If the report is anonymous, the dispatcher will so inform the responding officers. Anonymous reports of a noise disturbance should not be disregarded. Officers should respond and determine what the problem is, and if any action can be taken. Officers are reminded that in order to bring criminal action against persons for violation of the noise by-law or disturbing the peace; a victim/complainant may be required to testify in the court proceedings.

B. Officers should respond as soon as possible to the location of the complaint and determine if the situation falls under the parameters of the noise by-law.

C. When a violation is occurring, the officer(s) should try to determine who is responsible for the noise. Upon such determination, the officer(s) may issue a verbal or written warning or take other appropriate action as may be warranted keeping in mind the general guidelines listed above.

D. If the person(s) responsible for the violation cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation. The officer(s) should then take the appropriate action described previously.

E. Written notices should be issued on the form provided by the department and be given to the person(s) in violation.

F. If a non-criminal citation (by-law violation ticket) is issued, the issuing officer will:

1. Place the appropriate copy in the court officer's bin
2. Place the appropriate copy in the records' office bin
3. Record the violation in the department computer and include in such all pertinent information and a narrative description of the incident.

G. Officers should warn violators that if the noise violations do not cease, second and subsequent violations may be sought with a corresponding increase in fines, and court action may be pursued.

H. Whenever an officer determines that a court complaint is appropriate, the officer shall complete the request for complaint form and all other reports as required by the department.

I. Whenever the officer determines that an arrest is appropriate under the by-law, an arrest report will be filed as required and should indicate why that alternative was chosen

J. An officer may determine that it is necessary to enforce other state or local laws while at the scene of a noise disturbance. Nothing in this policy should be construed as limiting the authority of officers to enforce any applicable laws.

K. When a violation occurs on the premises of rental property which has a non-resident owner, the owner of said property must be notified in writing of the violation. The notification will be made by the records department staff under the direction of the Officer in Charge of Administration.

1. When a non-resident owner or manager who is on the scene at a rental property he/she owns or manages, complains about excessive noise, a CAD will be initiated indicating the name and address of the complainant and the nature of the complaint.

2. The call then will be transferred to the station Officer who determines if the manager/owner should meet with the Shift Commander. The Station Officer will discuss with the on-site owner/manager the present status of the problem, how long the problem as existed, the number of persons involved, and what he/she has done to rectify the problem. The history of the tenants should also be discussed. The Station Officer will then coordinate an onsite meeting between the owner/manager and the Shift Commander if it is needed.

3. The shift commander will view the problem and determine whether a police response will be useful and/or necessary. The following may be used as criteria when determining whether police will respond:

- a. The number of people present at the disturbance;
- b. Obvious signs of vandalism taking place;
- c. The likelihood of underage people consuming alcohol;
- d. Can officers view other violations of the law while on public or common property;
- e. Will police response at the present time cause a greater problem than the one already existing.

L. In instances when the officers are denied entry into a dwelling, and the noise disturbance is on going, officers are authorized under M.G.L. C.41 s.98 (Police Powers) to enter a dwelling to quell a disturbance. However, in Commonwealth vrs. Kiser, the Supreme Judicial Court ruled that noise, in and of itself, without an accompanying

exigency or other crime, is not enough of a reason for warrantless entry into the dwelling. Recent court cases have ruled that when there are articulable exigent circumstances, entry into a dwelling without a warrant is permissible in some circumstances. . A medical emergency or the destruction of evidence of a crime may constitute such an exigency. Without an on-going disturbance with exigent circumstances, officers may not enter the dwelling.

Whenever possible, and especially in apartment complexes, management should be utilized to gain access in order to minimize property damage. The shift commander should be contacted prior to such entry.

N. A copy of the by-law is incorporated within this procedure.

II. ELEMENTS OF A VIOLATION

A. Person or persons creating, assisting in creating, continuing or allowing to continue:

1. Excessive, unnecessary, or unusually loud noise;
2. Which annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose or the health or safety of others,
3. In the Town of Amherst

III. OTHER CONSIDERATIONS

A. Officers who find the person or persons violating this by-law may take one of the following actions:

1. Issue a verbal warning
2. Issue a written warning on the appropriate departmental form
3. Issue a non-criminal violation notice/ticket
4. Summons to court the violator(s) for disturbing the peace or for being a disorderly person
5. Arrest the violator(s) for disturbing the peace, for being a disorderly person, or for violating the Town Noise By-Law, if probable cause exists, and the violation occurs in his/her presence.

B. Each act, which if witnessed, continues or is repeated after a non-criminal ticket has been issued may be considered a separate offense, and can be prosecuted as a separate offense.

- C. If the person(s) responsible for the violation cannot be determined, the person(s) in lawful custody and/or control of the premises may be deemed responsible for the violation.
- D. The first violation of this by-law is punishable by a fine of not less than one hundred dollars (\$100.00); the second violation within one year is punishable by a fine of not less than two hundred dollars (\$200.00); the third and subsequent violation within one year is punishable by a fine of not less than three hundred dollars (\$300.00). All violations may occur at the same event.