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MEMORANDUM

TO: **Mayor Casale and Members of the City Council of the City of Beacon**

FROM: **Keane & Beane, P.c.**

RE: **Proposed Noise Ordinance**

DATE: **September 26, 2019**

Based on the City Council's comments at the August 29, 2019 workshop meeting and comments raised by the City's staff and the City's noise consultant, the following changes have been made to the local law amending Chapter 149 of the Code of the City of Beacon entitled Noise. All revisions are marked as track changes in the attached local law.

1. It is our understanding the City Council was in agreement that the current exemptions and specified prohibited acts that have time restrictions associated with them should have the same time restrictions. Therefore, the proposed Local Law has been amended to create uniform daytime hours (7 a.m. – 9 p.m.) and nighttime hours (9 p.m. – 7 a.m.). We have updated the definitions in the proposed Local Law to reflect this change.

2. At the August 29, 2019 workshop, the Council did not want to have different time restrictions for weekends or holidays for exempted and prohibited actions. The proposed Local Law has been updated to address this by removing the definitions of weekday, weekday night, weekend and weekend night. All references to these terms have been removed in the proposed Local Law.

3. It is our understanding the Council wishes to keep footnote one in Table 1 in the proposed Local Law. However, the Council agreed that it would be easier for enforcement purposes to eliminate any reference to zoning districts, and amend the provision so that the permissible sound level limits are increased by 5 dB(A) during daytime hours if the residential receptor lives on property within a distance of 200 feet of a commercial facility or industrial use, such distance shall be measured from the sound source to the property line of the residential receptor . Police officers do not always know what zoning district a property is located in. This language is easier and more efficient to enforce because it does not rely on the zoning district designations.

4. The plainly audible standard has been updated to specify that noise disturbance is considered plainly audible if it can be heard inside the dwelling of an affected person with all windows and doors closed.

5. We eliminated Section 149-7.D which prohibited loading and unloading of boxes, crates, etc. between the hours of 10:00 p.m. and 7:00 a.m. The loading and unloading of boxes is addressed by the decibel restrictions set forth in the proposed Local Law. The City's noise consultant, Eric Zwerling, advises such a provision is no longer necessary and is outdated.

6. It remains unclear how the City Council would like to address the issue of outdoor music. We have updated the proposed Local Law to require outdoor noise permits for commercial establishments (§149-10) and to require outdoor noise permits for (a) private or public celebrations and (b) certain construction projects (§ 149-11). In connection with commercial establishments, the proposed Local Law, as drafted, requires commercial establishments to obtain a permit to operate, play or permit the operation or playing of any sound production device outdoors. The permit is good for a year and allows the permit holder to play/operate any sound production device outdoors once a week (Sunday-Monday). This is one option the City may pursue.

   The City's noise consultant has prepared the attached chart to clarify the options available to regulate outdoor music on commercial properties. The chart also includes a pros/cons analysis of each option. The City Council should review the attached chart and provide additional feedback and direction concerning the regulation of outdoor music.

ecc: Anthony Ruggiero, City Administrator
Lieutenant Tom Figlia
John Clarke, City Planner
Eric Zwerling, Noise Consultant

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OPTION #1 – Prohibit outdoor amplified music
PROS – This is very simple to enforce. If there is an outdoor speaker in use, it is a prima facie violation. No measurements are necessary. It is extremely protective of affected parties.
CONS – This is very restrictive on the facilities so regulated, and affords no opportunity for any outdoor amplified sound. This would apply even to those facilities utilizing background music for outdoor dining, and those with no potentially sensitive receptors in close proximity.
OPTION #2 - Allow outdoor amplified music, any day, and regulate it pursuant to the limits in Table I during daytime hours (7:00 AM to 9:00 PM). During nighttime hours (9:00 PM to 7:00 AM) the applicable standard would be the prohibition against plain audibility inside a dwelling [Specific Prohibited Acts §149-7(A)(1)].
PROS – This is relatively simple. If the sound is below the permissible limit, it's compliant. If it's above, it's not. Objective limits allow for some level of activity, and a facility can calibrate their system to remain compliant, and/or conduct measurements to self-police to remain so.
CONS – outdoor music is a volitional noise. The facility chooses when, how and where to emit the noise. There are affected parties who do not want to be exposed to even compliant levels all of the time it would be permissible. Deterrence is limited to the penalties in §149-15, which can escalate to a misdemeanor on the third offense. There is no specific provision for depriving a recidivist facility from the right to utilize outdoor amplification during daytime hours (assuming no intervention from NYS State Liquor Authority (SLA)). I would suggest that we state in the code that Beacon finds it disorderly for a commercial establishment that serves alcohol to violate Chapter 149: "any facility whose permit is revoked is determined to be disorderly pursuant to the NYS State Liquor Authority Handbook for Retail Licensees" (or somesuch). The SLA requires compliance with all state and local laws and regulations, and if a facility is in violation they "face disciplinary action by the SLA". Thus, the meaning and import of declaring the revocation of an outdoor music permit to represent a disorderly operation will be quite clear, and hopefully deterrent.
OPTION #3 – Annual permit, specified number of days/annum (e.g., 1 day per week).
PROS – same as Option #2. In addition, if there is amplified outdoor sound on a non-permitted day, simple observation of its use is prima facie evidence of a violation and no measurements are required. This option has a limited number of permitted days, and abutting properties can plan accordingly with an established calendar of "amplified days" and "non-amplified days". This approach is less burdensome on the City than having to permit each individual date. Includes

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provision for revocation of permit upon 2nd or 3rd violation. Revocation or non-reissuance of the permit may prove a more compelling penalty than the penalties in § 149-15, especially if this can be reported to the SLA to some potential effect .

The available days/times could be limited (e.g., the applicant can choose Fridays and Saturdays 4PM-9PM, and Sundays 12PM-5 PM).

CONS – outdoor music is a volitional noise. The facility chooses when, how and where to emit the noise. There are affected parties who do not want to be exposed to even compliant levels. However, this objection would be partially addressed by limiting the number of days/annum.

If the choice is to permit outdoor amplified sound one day per week, and that day is not fixed (e.g., Saturdays), this will create a layer of complexity for enforcement officers who will have to check a master list to determine if outdoor amplification is permitted for that date at that facility. That list could be kept with the dispatcher.

This provision, unamended (see option below), would apply even to those facilities utilizing background music for outdoor dining, and those with no potentially sensitive receptors in close proximity. The result would be a potentially unnecessary limitation on the days they can employ such amplification. That said, if there were no complaints there would be no investigation. However, if there were a complaint and the facility either had not applied for a permit or was had outdoor amplification on a non-permitted date they would be in violation, regardless of the level.

Language similar to the following would address this situation: "if the sound production device is used for the purposes of providing low-level background music for outdoor dining and the device is more than 100 feet from the property line of any potentially affected person, the requirement to obtain a permit is waived". "For the purposes of this provision 'low-level background music' shall mean music that does not exceed 65 dBA at a distance of 10 feet from any speaker or other sound production device". This sound level would propagate to 45 dBA at 100 feet, which is below the night time permissible limit. This limit is substantially more restrictive than Table 1, however it would allow these facilities to employ outdoor amplification all the time, without the need for a permit. If they wanted to play their music louder, they could apply for a permit and that would get them one day per week at the Table 1 limits.

The amendments for background music could also be crafted to allow low-level music in front of shops or restaurants, facing a public right of way (the sidewalk, and not towards residences), in a manner that would allow such music more frequently than a permitting scheme would allow.