

Introduction – November 19, 2014
Public Meeting – October 8, 2014
Adopted – December 10, 2014
Effective – December 31, 2014

ORDINANCE NO. 454

ORDINANCE OF THE COMMISSIONERS OF ST. MICHAELS AMENDING THE CODE OF THE TOWN OF ST. MICHAELS, CHAPTER 216 (NOISE) BY AMENDING §216-3 (DEFINITIONS AND WORD USAGE) TO INCLUDE A DEFINITION OF THE TERMS “COMMERCIAL LAWN CARE CONTRACTOR” “dBA”, “DECIBEL”, AND “PUBLIC EVENT” AND “VENUE”; AMENDING §216-4 (B) TO DELETE OTHER COMMERCIAL OR INDUSTRIAL ZONES FROM THE NOTED PROHIBITIONS AND TO INCLUDE A PROVISION FOR AN ANNUAL PERMIT FOR OUTDOOR SPEAKERS; AMENDING §216-4(D) AS IT RELATES TO THE MEASURING OF NOISE; AMENDING §216-5 TO INCLUDE A NEW SUBSECTION (C) RELATING TO BUSINESSES IN THE CENTRAL COMMERCIAL, HISTORIC REDEVELOPMENT AND MARITIME COMMERCIAL ZONES; AMENDING §216-6 (C) BY DELETING EXISTING LANGUAGE AND INSERTING NEW LANGUAGE REGARDING THE USE AND MAINTENANCE OF LAWN CARE EQUIPMENT; AMENDING §216-6 (K) TO GRANT A PERMIT TO USE AUDIO SPEAKERS OUT-OF-DOORS IN THE CENTRAL COMMERCIAL, HISTORIC REDEVELOPMENT AND MARITIME COMMERCIAL ZONES; AMENDING §216-6 (L) TO REMOVE THE LIMITATION ON THE NUMBER OF EXEMPTIONS PERMITTED PER CALENDAR YEAR AND THE CUMULATIVE NUMBER OF DAYS ASSOCIATED WITH THE PERMIT ISSUANCE, TO DELETE THE REQUIREMENT OF A RECOMMENDATION FROM THE TOURISM BOARD, TO ADD A LIMIT ON THE NUMBER OF PERMITS THAT MAY BE ISSUED IN A GIVEN DAY, AND TO INCLUDE REFERENCE TO §250-14 OF THE CODE; AMENDING § 216-8 (VIOLATIONS) TO INCLUDE LANGUAGE REFERENCING VIOLATIONS AND PENALTIES RELATING TO NOISE ASSOCIATED WITH PUBLIC EVENTS; PROVIDING THAT THE TITLE OF THIS ORDINANCE SHALL BE DEEMED A FAIR SUMMARY, AND GENERALLY RELATING TO NOISE IN THE TOWN OF ST. MICHAELS

WHEREAS, the Commissioners of St. Michaels (the “Commissioners”) are authorized by Md. Code Ann., Local Gov’t § 5-202 to enact such ordinances as it deems necessary to assure the good government of the Town, and to protect the health, comfort and convenience of the citizens of the Town; and

WHEREAS, pursuant to Md. Code Ann., Envir. § 3-105, the Commissioners are authorized to adopt noise control ordinances, rules and regulations that are not less stringent than the environmental noise standards, sound level limits and noise control rules and regulations adopted under Title 3, Subtitle 1 of the Environment Article of the Maryland Annotate Code, which standards, limits and rules and regulations are promulgated in COMAR 26.02.03; and

WHEREAS, the Code of the Town of St. Michaels, Maryland (the “Code”) in its entirety was adopted by the Commissioners on June 8, 2006 and became effective on June 28, 2006; and

WHEREAS, pursuant to Ordinance No. 342, the Commissioners repealed and re-enacted Chapter 216 (Noise) of the Code in its entirety; and

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WHEREAS, pursuant to Ordinance No. 431, the Commissioners amended Chapter 216 (Noise) of the Code in the interest of the health, welfare and safety of the citizens and guests of the Town, and of the good government of the Town;

WHEREAS, the Commissioners recognize the potential impacts of noise as it relates to the use of outdoor speakers associated with Public Events and commercial businesses; and

WHEREAS, the Commissioners recognize that the use of such speakers are considered by many as an integral part of such events and businesses; and

WHEREAS, the Commissioners believe that with the proposed ordinance changes, a balance between the rights of the Town's citizens, businesses and tourists can be obtained.

NOW, THEREFORE BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 216 (Noise) of the Code of the Town of St. Michaels is hereby amended as follows, with new language shown in *italics and underlined* and deleted language shown in (parenthesis) and with a ~~striketrough~~.

SECTION 1

Chapter 216 Noise

§ 216-1. Short title.

This chapter shall be known and may be cited as the "Noise Control Ordinance."

§ 216-2. Findings.

This chapter was passed by The Commissioners of St. Michaels in recognition that the people, business owners, and visitors of the Town have a right to an environment that is free from excessive noise, which jeopardizes their health, general welfare, or property, or otherwise degrades the quality of their lives in the Town.

§ 216-3. Definitions and word usage.

For the purposes of this chapter, the following words, terms, phrases, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, words used in the singular number include the plural number, and the pronoun of any gender shall include all other genders. The word "shall" is always mandatory and not merely directory.

AGENT – A person who has been expressly authorized, or placed in a position, by another person (called the "principal") to act for the principal. An agent shall include an employee acting within the actual or apparent scope of his employment for his employer; an officer of a corporation or other legal entity acting within the scope of his actual or apparent authority; and a

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person who is expressly placed in a position of, or allowed to act in, temporary control of property by a person who has the legal right to control or occupy that property.

COMMERCIAL LAWN CARE CONTRACTOR – Persons who, for a fee, use mowers and tractors for the purpose of cutting grass, and provide other miscellaneous services associated with lawn maintenance.

COMMISSIONERS – The governing body of the Town of St. Michaels, Maryland.

dBA – The abbreviation for the sound level in decibels by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band.

DECIBEL (dB) – A unit of measure equal to ten times the logarithm to the base ten of the ratio of the square of the sound pressure to the square of a standard reference pressure. For the purpose of this chapter, 20 micro-pascals shall be the standard reference pressure.

NOISE – The intensity, frequency, duration, and character of sound, including sound and vibration of sub-audible frequencies.

NOISE POLLUTION –

- A. The presence of noise of sufficient loudness and character, from a single source or from multiple sources, which is, or may be predicted with reasonable certainty to be, injurious to health or which unreasonably interferes with the proper enjoyment of property or with any lawful business or activity; or
- B. Sound in such intensity, frequency, duration and/or character as to fit the description of noise pollution in §216-5 of this chapter.

PERSON – Any natural person or legal entity.

PUBLIC EVENT – Any event to which the public is invited

PUBLIC GATHERING AREA – Any outdoor area, whether publicly or privately owned, regularly open to congregations of the public

SOURCE – A person or thing that is actively producing noise or noise pollution.

TOWN – That Maryland municipal corporation known as "The Commissioners of St. Michaels."

VENUE – Any location where an activity or event occurs which is specifically associated with an event

§ 216-4. Prohibited acts.

- A. A person shall not:

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(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 agent.

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

(1) 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 §216-5(C) of this chapter;

(2) 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.

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

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 paragraph "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., vocal disturbances (e.g. shouting, whistling or singing) in the public streets or public areas or from 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.

(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 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.

§ 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.

Table 1

Maximum Allowable Noise Level (dBA) for Receiving Land Use Categories

	Industrial	Commercial	Residential
Day	75	67	65
Night	75	62	55

B. In Table 1 "Day" means 7:00 a.m. to 10:00 p.m.; "Night" means 10:00 p.m. to 7:00 a.m. Measurements to determine compliance with the limits in Table 1 shall:

(1) Employ equipment and techniques recommended by the Maryland Department of the Environment;

(2) Employ sound level meters set to the A-weighting network for all measurements;

~~((3) Be taken at locations in accord with the following instructions:~~

~~(a) If the source of the noise is in a residential zoning district, The measurement shall be taken on the property line of the receiving property, as close as possible to the noise source; additional measurements may be taken from points farther away.~~

~~(b) If the source of the noise is in a nonresidential zone, the measurement shall be taken on the boundary of the zoning district, as close as possible to the noise source; additional measurements may be taken from points farther away.~~

~~(c) Measurements may be taken on any property in a residential zone reached by the noise.))~~

(3) Measurements shall be taken on the property line of the receiving property.

C. In the Central Commercial, Maritime Commercial and Historic Redevelopment zones, music accessory to a business, whose primary use is the offering of ~~((meals))~~ 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.

(3) Music shall stop by 9 p.m. on Sunday – Thursday and 10 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, multiple

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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.

§ 216-6. Exemption.

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

- A. Sound produced by the operation or testing of authorized emergency equipment.
- B. Sound produced by the operation of tools and machinery, or the loading or unloading of supplies, used in construction, drilling, repair, alteration, renovation, maintenance, dredging, pile driving, or demolition during normal daytime business hours, or such similar activities as may be required during other times under emergency conditions may not exceed 90 dBA, A-weighted. For the purposes of this Subsection B, normal daytime business hours are Monday through Friday 7:00 a.m. to 5:30 p.m. and Saturday 9:00 a.m. to 4:30 p.m., excluding federal holidays. For homeowners working on their own property (but not for commercial contractors), the Saturday hours apply also to Sundays and federal holidays.
- C. The use and maintenance of lawn maintenance equipment by the property owner, where such use and maintenance is in accordance with the manufacturer's specifications. This exemption applies only from 8:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday and Sunday.

The use of lawn maintenance equipment by a Commercial Lawn Care Contractor. This exemption applies from 8:00 a.m. to 6:00 p.m. Monday through Friday and 10:00 a.m. to 4:30 p.m. on Saturdays unless weather conditions have prohibited normal lawn maintenance. The use of lawn maintenance equipment by a Commercial Lawn Care Contractor is prohibited on Sundays and federal holidays.
- D. Motor vehicles on public roads and boats on state waters.
- E. Air-conditioning and heat-pump equipment used to cool or heat housing on residential property may not exceed 70 dBA for air-conditioning units and 75 dBA for heat pumps.
- F. Emergency operations.
- G. Agricultural field machinery when used in and maintained in accordance with the manufacturer's specifications.
- H. Sound not electronically amplified created by sporting, amusement, and entertainment events and other public gatherings operating according to laws of St. Michaels. This exception includes but is not limited to athletic contests, carnivals, parades, and public celebrations.

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- I. Outdoor speakers aboard tour boats, used during tours to announce the sights to passengers.
- J. Church bells.
- K. The Commissioners of St. Michaels may, in their sole discretion, as a part of a Public Event Permit, allow the use of audio speakers out-of-doors in the Central Commercial, Historic Redevelopment and Maritime Commercial Zones. The noise level associated with these permits shall not exceed 65 dBA, measured as set forth in 216-4(B)
- 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 zone 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 re-occurrence of the noise violation occurs at any time during the event, the exemption for that specific venue will be voided. Furthermore permit holder shall be subject to the provisions of Chapter 250-14 (Penalty) of the Town Code. Consideration of future requests may be affected by the issuance of a citation.

§ 216-7. Enforcement.

This chapter shall be enforced by any sworn police officer of the Town. With the exception of the provisions of §216-6 (Exemptions) (~~6~~) above, any person who shall be in violation of this chapter shall be issued a written warning. Any person who, after first being issued such a written warning, shall thereafter within 30 days commit the same violation, shall be subject to being issued a citation for a municipal infraction. No such written warning or citation shall be issued except upon first-hand knowledge of the police officer giving such warning or issuing such citation, but the citation need not be issued by the same police officer who gave the written warning relating to the same violation. A person who is cited for a municipal infraction for the violation of this chapter occurring at a property need not be the same person who was issued the written warning relating to the same violation at the same property, provided that both persons

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who are issued such warning and citation were, at the time they were issued such warning or citation, an owner, lessee, tenant or otherwise in control of that property. Procedures set forth in Chapter 33 (Municipal Infractions), as amended from time to time, for issuance of citations, payment of fines, election to stand trial, and court proceedings shall apply.

§ 216-8. Violations and penalties.

Any person, who shall, after receiving a written warning from a sworn police officer for the violation of this chapter, be in violation of the same provision of this chapter shall be guilty of a municipal infraction, and shall be subject to a fine of \$500.00 for the violation of this chapter. Each act of violation of this chapter shall constitute a separate offense. An action under this section shall be in addition to, and shall not prohibit, an action for nuisance, declaratory judgment and/or injunctive relief arising out of the same violation. Failure to pay the fines in full may result in the denial of future permits.

Violations and penalties related to noise associated with Public Events, are set out in Chapter §250-14 of the Town Code,

§ 216-9. Civil action.

The Town or any person adversely affected by the repeated or continued violation of this chapter may bring any civil action permitted by law arising from the facts constituting a violation of this chapter and, in addition thereto, may bring an action for declaratory judgment and/or to enjoin the continued violation of this chapter. No such declaratory and/or injunctive action may be brought until the person bringing such action has given written notice of the continued or repeated violation to the person against whom such action is to be brought, and a reasonable time has lapsed after such notice for the offending person to comply with this chapter. The Town shall be furnished written notice of the filing of any such injunctive action under this chapter, and if it so chooses, the Town may intervene in such action as a party thereto.

SECTION 2

AND BE IT FURTHER ORDAINED AND ENACTED, that this Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of The Commissioners of St. Michaels and having been passed by a yea and nay vote of The Commissioners of St. Michaels.

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HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a Public Meeting of the Commissioners of St. Michaels held on this 10th day of December, 2014 in the meeting room of the Edgar M. Bosley, Jr. Municipal Administration Building (Town Office), St. Michaels, Maryland.

BORDERS	_yea__
CLARK	_yea__
HARROD	_yea__
MYERS	_yea__
WINDON	_yea__

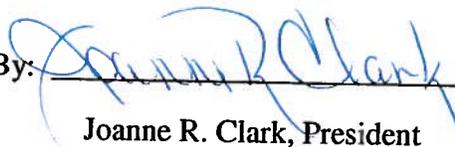
I HEREBY CERTIFY that the above Ordinance No. 454 was passed by a yea and nay vote of The Commissioners of St. Michaels on the 10th day of December, 2014.

ATTEST

THE COMMISSIONERS OF ST. MICHAELS



Jean R. Weisman,
Town Clerk / Manager

By:  _____ (SEAL)
Joanne R. Clark, President

I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 11th day of December, 2014, at 8:30 o'clock a.m. to the 31st day of December, 2014, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 454, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read 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: 11/5/15, 2014

 _____ (Seal)
Jean R. Weisman
Town Clerk/Manager