



**CORTE MADERA TOWN COUNCIL
STAFF REPORT**

REPORT DATE: October 9, 2019
MEETING DATE: October 15, 2019

TO: Honorable Mayor and Members of the Town Council

FROM: Todd Cusimano, Town Manager 
Teresa Stricker, Town Attorney

SUBJECT: Introduction of Ordinance No. 989, to repeal and replace Chapter 9.36 of the Municipal Code to update and clarify the regulation of excessive and offensive noise



RECOMMENDED ACTION:

That the Town Council introduce Ordinance No. 989, to repeal and replace Chapter 9.36 of the Municipal Code to update and clarify the Town's Noise Ordinance (**Attachment 1**).

Among other changes, the proposed ordinance would update the noise level measurement provisions; modernize the maximum noise levels for mechanical devices based on zoning district; ban the use of gas-powered leaf blowers beginning in March 2020; establish updated time restrictions on the use of permissible leaf blowers that mirrors the time restrictions in place in Larkspur; exempt from the noise regulations use of emergency equipment (including generators used during power outages); establish a night time general noise restriction and update the methodology for regulating such noise; revise the penalties and remedies for violation of the Noise Ordinance; and establish how repeat noise complaints are to be addressed.

BACKGROUND:

The Town's existing Noise Ordinance is set forth in Chapter 9.36 of Corte Madera Municipal Code.

On December 19, 2017, the Town Council held a study session to discuss and provide direction to Town staff regarding ways in which the existing Noise Ordinance should be updated and improved. The minutes from this discussion are provided as **Attachment 2**.

At that time, the Town Council gave direction to staff to bring back for Council's consideration an ordinance that would modernize the noise ordinance by, among other things:

- (1) Establishing objective and easily implemented enforcement standards;
- (2) Updating and clarifying the sources of noise that are subject to the noise regulations
- (3) Expanding restrictions on the use of leaf blowers; and
- (4) Modifying the penalty provisions to provide greater consistency and clarity.

In April 2018, the Town circulated a Community Survey regarding the Noise Ordinance. Over 120 individual responses were received and the results and an update to the community were provided through the Town's website and weekly newsletter. A link to both the survey results and the newsletter are included as Attachment 4.

Based on the direction of Council, the input received from the community, and the recommendations of staff, the proposed draft ordinance was prepared in order to update and clarify the Town's noise regulations. When appropriate, staff has attempted to stay as consistent as possible with Larkspur and San Anselmo to assist the Central Marin Police Authority.

On September 20, 2019, the Town Clerk published a notice inviting the public to attend and participate in the discussion on October 1, 2019, regarding the possible introduction of this ordinance. The notice was posted on the Town's website, emailed and/or mailed to interested parties, sent to Newsflash subscribers, included in the weekly newsletter and posted on the NextDoor website.

On October 1, 2019, the Town Council considered whether to the proposed ordinance. After a robust discussion and public input, Council directed staff to consider and bring back additional revisions to the proposed ordinance to (1) reduce the maximum permissible noise levels for mechanical noises from the levels set forth in the version of the proposed ordinance then before Council, (2) consider whether to restrict the weekend hours during which noisy construction would be allowed, and (3) impose a complete ban on the operation of gas-powered leaf blowers.

DISCUSSION

I. Current Noise Regulations (Existing Chapter 9.36)

1. Enforcement Standards

Local governments may regulate noise within their jurisdictions so long as the regulations meet certain constitutional standards and do not conflict with other state or federal statutes. (Cal Const, art XI, §7.)

To avoid a challenge based on unconstitutional vagueness, local noise regulations should fairly inform the public of what conduct is prohibited. (*Grayned v City of Rockford* (1972) 408 US 104, 108-109.) This means clearly defining objective noise level criteria, establishing the ambient noise level to set a clear baseline from which excessive noise is measured, and providing explicit enforcement standards so that the regulation is not enforced in an arbitrary or discriminatory manner. (*Id.*) Staff recommends updates to the noise ordinance to maintain compliance with these requirements.

Moreover, the current noise ordinance does not set a minimum ambient noise level for the various zoning districts in the Town. Rather, the ambient is determined on a case-by-case complaint-driven basis. The ordinance does establish “specific maximum noise levels” for noises emitted by mechanical devices, but it is not clear if these sound levels are intended to include the ambient for the applicable zoning districts.

Modern noise ordinances also address due process concerns by specifying how and when law enforcement responds to noise complaints, measures noise, and determines if a violation exists. For example, San Francisco’s noise regulations explain the procedure for measuring ambient and excessive noises, how and when City departments enforce the ordinance and investigate violations, and the procedure by which noise determinations and violations are appealed. (San Francisco Police Code, Article 29.) Corte Madera’s current noise ordinance does not clearly establish the procedural enforcement standards for investigating noise complaints and issuing noise violations.

2. Sources of Noise

Recently updated noise ordinances from other jurisdictions provide generally applicable noise regulations for each zoning district and include a list of specific requirements for certain noise source. For example, noise sources that are often given special consideration in local noise regulations include construction noise, waste disposal noise, and leaf blower or other landscape equipment noise. Noise sources that are commonly exempted from local noise regulations include emergency response signals, warning or security system alarms, noise created by traffic congestion, and garage door openers.

The Town’s current noise ordinance regulates a variety of noises. Section 9.36.030 provides specific maximum noise levels for noises created by mechanical devices, which includes machinery, equipment, pumps, fans, air-conditioning units, radios, musical instruments, televisions, or similar devices. Other provisions create specific restrictions for noise due to construction and demolition work and gas-powered leaf blowers. The “general” noise regulation set forth in Section 9.36.040 broadly regulates a variety of other types of noise.

Corte Madera’s noise ordinance exempts from Section 9.36.030’s specific maximum noise levels “any burglar alarm or other emergency signaling device” and standby equipment operated in emergency situations. (Corte Madera Municipal Code, § 9.36.030(d).)

3. Leaf Blowers and Motorized Landscape Equipment

A few jurisdictions have completely banned the use of gas powered leaf blowers, but the majority of municipalities, including the Town, restrict the operation of gas powered leaf blowers to certain hours of the day. Some jurisdictions distinguish between electric, battery, and gas-powered leaf blowers.

The Town’s current noise ordinance was amended in 2016 to add restrictions on motorized landscape equipment including lawn mowers, shears, leaf blowers and similar equipment. (Corte Madera Municipal Code, § 9.36.030, subparts (c), (e), (f), and (g).)

The current provisions prohibit the operation of any motorized landscape equipment except from 7:00 a.m. to 5:00 p.m. on Monday through Friday, and from 10:00 a.m. to 5:00 p.m. on Saturday and Sunday. Operation of gas-powered leaf blowers are restricted to 8:00 a.m. to 5:00 p.m. Monday through Friday, and from 10:00 a.m. to 4:00 p.m. Saturday and Sunday. The ordinance also makes clear that persons operating leaf blowers are prohibited from allowing any leaves, dirt or any other debris to enter the storm drain system, and requires that all debris blown on to public property or in the public right-of-way be cleaned up and removed.

Other municipalities have adopted different leaf blower regulations for residential and commercial zoning districts due to the differences in land use, aesthetic needs, and sensitivity to noise. For example, the City of Larkspur exempts from its gas-powered leaf blower ban multifamily dwellings, municipal park areas, and commercial properties. (Larkspur Municipal Code, § 9.57.010.)

4. Penalties and Remedies

With the exception of violations of the leaf blower regulations, a violation of the Town's current noise ordinance constitutes a misdemeanor. A misdemeanor is punishable by a fine of not more than \$1000 and/or imprisonment in the county jail for up to six months. (Corte Madera Municipal Code, § 1.04.010.) The Corte Madera Bail Schedule provides that total bail for a misdemeanor noise ordinance violation is \$773.00.

A violation of the leaf blower restrictions, on the other hand, constitutes the lower offense of an infraction. In general, an infraction does not carry the possibility of jail time and is punishable by a fine not exceeding \$100 for a first violation, \$200 for a second violation of the same ordinance within one year, and \$500 for each additional violation of the same ordinance within one year. (Gov. Code, § 36900; Corte Madera Municipal Code, § 1.04.010.) The Town's Bail Schedule provides that total bail for an infraction under the noise ordinance is \$158.00.

The noise ordinance also provides, as an additional remedy, that the "operation or maintenance" of devices in violation of the noise ordinance are public nuisances. (Corte Madera Municipal Code, § 9.36.070.) Such public nuisances may be subject to summary abatement, a restraining order, or a temporary or permanent injunction.

The Town's general administrative penalty procedures in Chapter 9.05 of the Corte Madera Municipal Code also apply to noise ordinance violations. Section 9.05.010(C) provides that "any violation of the Municipal Code (with the exception of Chapter 9.50) shall be subject to an administrative fine, enforcement and collection proceedings." The application of administrative fines under Chapter 9.05 is at the sole discretion of the Town. But to impose administrative penalties, the Town must first issue an administrative citation in accordance with Chapter 9.05, which is subject to appeal to the Planning Commission. The issuance and appeal of administrative citations may require significant Town resources.

II. The Proposed Ordinance (New Chapter 9.36)

Because of substantial changes staff proposes to the Town’s current noise regulations, staff recommends that Council repeal current Chapter 9.36 and enacting the proposed new Chapter 9.36 as reflected in the proposed ordinance, which has been revised to reflect the direction provided by Council at the October 1, 2019 meeting and research staff has conducted based on that direction (**Attachment 1**). Attached is a “redlined” version of the proposed ordinance (**Attachment 3**) to allow the Council and the public to see the proposed changes the ordinance will make to the current regulations. The substantive changes proposed to the Town’s current noise regulations are summarized below:

1. Definition of “Noise Level Measurement” (New Section 9.36.020)

The proposed ordinance amends the definition for “noise level measurement” to specify more clearly the location from which sound measurements are to be made.

2. Specific maximum noise levels for mechanical devices (New Section 9.36.030)

The proposed ordinance establishes new maximum decibel levels for mechanical devices based on the zoning district of the property from which the noise is emitted, and makes a distinction between residential districts and all other zoning districts. Under the proposed ordinance, the maximum decibel levels permitted for mechanical noises are based on the length of time over which the noise occurs, provided that sounds over a certain decibel level are never allowed. These limits are based on the decibel levels above the ambient noise levels, something that is not clear in the current regulations. The proposed ordinance continues to require enforcement officers to take ambient noise levels on a case-by-case basis but reduces the amount of time officers must spend taking ambient noise levels from 15 minutes to 5 minutes.

The proposed ordinance contains this table which summarizes these noise level restrictions for mechanical devices. The version of the ordinance that the Council considered on October 1, 2019 provided for the following maximum noise levels for mechanical noises:

Zoning District	Sound Level Above Ambient Not to Be Exceeded (dBA)	Cumulative Time of Condition
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	40	Noise occurs more than 10 minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	50	Noise occurs more than three minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	55	Noise occurs any amount of time
C-1, C-2, C-3, C-4, M	60	Noise occurs more than 10 minutes in any hour

C-1, C-2, C-3, C-4, M	70	Noise occurs more than three minutes in any hour
C-1, C-2, C-3, C-4, M	75	Noise occurs any amount of time

Based on the direction Council provided to staff at the October 1, 2019 meeting and the additional research staff has conducted since that time, staff recommends reducing the maximum noise levels proposed above. Instead, the ordinance staff recommends that Council adopt contains the following maximum noise levels for mechanical devices:

Zoning District	Sound Level Above Ambient Not to Be Exceeded (dBA)	Cumulative Time of Condition
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	25	Noise occurs more than 10 minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	35	Noise occurs more than three minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	40	Noise occurs any amount of time
All other zoning districts	40	Noise occurs more than 10 minutes in any hour
All other zoning districts	50	Noise occurs more than three minutes in any hour
All other zoning districts	55	Noise occurs any amount of time

3. Exception for Construction and Demolition that Exceeds the Maximum Noise Levels for Mechanical Devices (New Section 9.36.0309(b)).

The proposed ordinance, like the current code, exempts certain types of mechanical devices from the maximum noise levels. One of those exceptions continues to allow construction or demolition work that exceeds the maximum decibel levels set for mechanical noise during specified times on specified days of the week as set forth in the General Plan. Under the proposed ordinance, construction and demolition work that exceeds the established decibel levels would no longer be permitted on federal holidays. The ordinance gives the Director of Planning and Building the discretion to increase the hours during which construction or demolition work will be allowed.

At the October 1, 2019 Council meeting, concerns were raised both about allowing loud construction during weekends and about restricting residents from undertaking weekend home improvement projects. On balance, staff recommends that Council continue to allow construction that exceeds the maximum decibel levels for mechanical devices from 7am-5pm weekdays and from 10am-5pm on Saturdays and Sundays, but not allow construction over the maximum noise levels on federal holidays.

Should the Council wish to further restrict weekend construction that exceeds the maximum noise levels, staff recommends that the Council consider either (1) further restricting timeframes allowed for such construction, or (2) banning such construction altogether on Sundays.

4. Other Exceptions to the Maximum Noise Levels for Mechanical Devices

The ordinance makes clear that leaf blowers are exempt from the noise limits for mechanical devices, and instead addresses leaf blowers separately as set forth below. Other types of motorized landscape equipment (for example, lawn mowers and shears) continue to be exempt from the maximum noise level restrictions on mechanical noise.

The ordinance further clarifies that vehicles are not regulated by the mechanical device maximum noise level regulations and the existing exemption from those regulations for equipment operated during an emergency extends to generators used during power outages.

5. Leaf Blower Restrictions (New Section 9.36.040)

Based on the feedback received from Council at the October 1, 2019 Council meeting, staff revised the proposed ordinance to include a complete ban on the use of gas-powered leaf blowers within the Town. To allow sufficient time for education and new equipment purchases, the ban will not take effect until March 2020. Although Town staff plans to shift to using primarily battery-operated leaf blowers by the end of the fiscal year, the ban does not apply to the Town or School District.

The proposed ordinance also imposes restrictions on when permissible types of leaf blowers may be operated in the Town. The proposed restrictions, which mirror the restrictions imposed by Larkspur, are as follows :

- On residential properties other than multi-unit residences (as defined in the ordinance), permissible types of leaf blowers may be operated only between 9:00 a.m. and 5:00 p.m.

weekdays, and between 10:00 a.m. and 4:00 p.m. on Saturdays.

- On all other types of properties, permissible types of leaf blowers may be operated only between 7:00 a.m. and 5:00 p.m. weekdays, and between 10:00 a.m. and 4:00 p.m. on Saturdays.
- The use any type of leaf blower in any area of the Town is prohibited at any time on Sundays and federal holidays.

None of the proposed leaf blower time restrictions apply to the Town or Larkspur-Corte Madera School District.

Finally, the ordinance continues the requirement under the existing code that persons operating leaf blower within the Town are prohibited from allowing any leaves, dirt or any other debris to enter the storm drain system, and must clean up and remove any such debris blown on to public property or in the public right-of-way.

4. General night time noise regulations (New Section 9.36.050)

The proposed ordinance continues to prohibits persons from making any excessive or offensive noise that disturbs the peace or quiet of any neighborhood or that is unreasonably disturbing to a person of ordinary sensitivities residing in the area, although a variety of revisions have been made to that regulation to make the standard more objective. The proposed ordinance makes clear, however, that this regulation is limited to the hours of 10:00 p.m. to 6:00 a.m. daily.

The ordinance provides for a number of factors to be considered in determining whether the general noise prohibition has been violated, the most significant of which is sound level of the noise. Other factors include, but are not limited to, the proximity of the noise to residences, hotels and other buildings containing sleeping accommodations; the nature and zoning of the property from which the noise emanates; the duration of the noise; the ambient noise level; and whether the noise is intermittent or constant.

The ordinance makes clear that the general night time noise regulations apply to mechanical devices with noise levels that are below the maximum levels set forth in section 9.36.030, but do not apply to emergency vehicles, burglar alarms or other emergency signally devices, or emergency equipment (including backup generators used during an emergency).

The proposed night time noise regulations also do not regulate noises made by animals. The Town will continue to regulate animal noises separately by enforcement of the Marin County Animal Services Ordinance which prohibits habitual animal noise that unreasonably disturbs the peace.

5. Penalties and Remedies (New Section 9.36.060)

Under the proposed ordinance, the penalty for violating any part of the ordinance is now an infraction rather than a misdemeanor.

6. Repeat Complaints (New Section 9.36.070)

A new section has been added to the proposed ordinance to address the issue of repeat complaints by the same person about the same location. A second noise complaint from the same individual about the same location will not be investigated unless the complainant is able to provide evidence that would justify opening a new and substantially different complaint. If a second complaint is filed and it is established that a violation does not exist, subsequent complaints will not be investigated unless it is deemed necessary.

7. Construction and Application (New Section 9.36.070)

The ordinance adds a new section to clarify how the ordinance should be construed and applied to avoid conflict with federal and state law. First, the provision clarifies that the ordinance is not intended to regulate types of noise the Town is preempted from regulating by federal or state law.

Second, the provision addresses the situation where noise that is the subject of a complaint involves activity protected by the First Amendment. The new provision clarifies that the ordinance is not intended, and will not be enforced, based on the content of protected speech activities, or the identity or viewpoint of the person engaged in speech activities.

FISCAL IMPACT:

The estimated fiscal impact to educate and enforce the Noise Ordinance is estimated at \$15,000 annually for code enforcement and Central Marin Police Authority services. This amount is already included in the Town's current budget for services rendered through CMPA and code enforcement.

ENVIRONMENTAL IMPACT:

This activity is not defined as a project under CEQA (Section 15378 CEQA Guidelines).

OPTIONS:

1. Introduce Ordinance No. 989
2. Provide direction to staff about further revisions to the proposed ordinance.
3. Take no action at this time.

ATTACHMENTS:

1. Draft Ordinance No. 989 containing changes made following the October 1, 2019 Council meeting
2. Excerpt of Minutes from December 19, 2017 Town Council Meeting
3. Redline version of the ordinance showing the changes proposed to the existing code provisions.
4. Results of Noise Ordinance Community Survey and Newsletter Update to the Community

ATTACHMENT 1:

Draft Ordinance No. 989

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA REPEALING AND REPLACING CHAPTER 9.36 OF THE MUNICIPAL CODE TO UPDATE AND CLARIFY THE REGULATION OF EXCESSIVE AND OFFENSIVE NOISE

WHEREAS, Based on extensive scientific research, the World Health Organization and the U.S. Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems; and

WHEREAS, the Town has a significant challenge in protecting public health from the adverse effects of community noise arising from diverse sources such as transportation, construction, mechanical equipment, entertainment, and human behavior; and

WHEREAS, In recent years, the continuing increased use of leaf blowers has an additional and significant source of disturbing noise in the Town; and

WHEREAS, The General Plan for the Town recognizes noise as a threat to the community's well-being and identifies policies and programs to address noise impacts related to new uses and construction activities; and

WHEREAS, The Town has faced ongoing challenges with implementation and enforcement of its existing noise regulations; and

WHEREAS, The Town Council wishes to update, modernize and clarify its existing noise ordinance to address these challenges.

NOW THEREFORE, the Town Council of the Town of Corte Madera does hereby ordain as follows:

SECTION 1. Repeal of *Existing* Chapter 9.36 of the Municipal Code.

Corte Madera Municipal Code Title 9, Chapter 9.36 is hereby repealed.

SECTION 2. Adoption of *New* Chapter 9.36 of the Municipal Code.

Corte Madera Municipal Code Title 9 is hereby amended by adding Chapter 9.36 thereto to read as follows:

9.36.010 - Declaration of policy.

It shall be the policy of the town to prohibit excessive and offensive noises from all sources. At certain levels, noises are detrimental to the health, safety and welfare of the citizenry and in the public interest should be systematically proscribed and declared a nuisance.

9.36.020 - Definitions.

Unless the context otherwise clearly indicates, certain words and phrases used in this chapter are defined as follows:

- (a) “Ambient noise” means the all-encompassing noise associated with a given environment, being a composite of sounds from any sources, near and far. For the purpose of this code, ambient noise level is the average over five minutes excluding random or intermittent noises and the alleged offensive noise measured at the location and time of day at which a comparison with an alleged offensive noise is to be made. Averaging may be done by instrumental analysis in accordance with American National Standards S.13-1971, or may be done manually as follows:
 - (i) Observe a sound level meter for five seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications;
 - (ii) Repeat the observations as many times as necessary to provide that observations be made at the beginning and at the end of the fifteen-minute averaging period and that there shall be at least as many additional observations as there are decibels between the lowest low indication and the highest high indication;
 - (iii) Calculate the arithmetical average of the observed central tendency indications.
- (b) “Decibel” means a unit for measuring the relative loudness of sounds equal approximately to the smallest degree of difference of loudness ordinarily detectable by the human ear whose range includes approximately one hundred thirty decibels on a scale beginning with one for the faintest audible sound.
- (c) “Mechanical device” means any machinery or equipment; pump, fan, air-conditioning apparatus, or similar device; radio receiving set, musical

instrument, phonograph, television set, or other similar device; motorized landscape equipment, including lawn mowers, shears, leaf blowers or similar equipment; and burglar alarm or other emergency signaling device. Mechanical device does not include vehicles or motor carriers.

- (d) “Multi-unit residence” means property containing two or more units with a shared wall including for example, rental complexes, common interest complexes, senior citizen residences, and nursing homes. This does not include single family homes with detached or attached accessory dwelling units or junior accessory dwelling units.
- (e) “Noise level” means the sound level in decibels dBA measured on the A-weighted scale as defined by the American National Standard Institute specifications S1.41971 or the most recent revision thereof.
- (f) “Noise level measurement.” For the purpose of enforcement of the provisions of this chapter, noise level shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 1 sound level meters as defined in American National Standard Section 1.4-1971 or the most recent revisions thereof. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to each measurement, the meter shall be verified, and adjusted to ± 0.3 decibel by means of an acoustical calibrator.

The location selected for measuring noise levels shall be at any appropriate point at the property plane of the property from which the noise is emitted. Where feasible, the microphone shall be at a height of three to five feet above ground level and at least four feet from walls or similar reflecting surfaces.

- (g) “Person” means a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private.
- (h) “Powered construction equipment” means any tools, machinery or equipment used in connection with construction operations which can be driven by energy in any form other than manpower, including all types of motor vehicles when used in the construction process on any construction site, regardless of whether such construction site be located on-highway or off-highway.

- (i) “Property plane” means the vertical line through the property line which determines the property boundaries in space.
- (j) “Residential property” means a building containing one or more “dwelling units” as the term is “dwelling unit” is defined in Title 18 of this code.
- (k) “Zoning districts” shall be as defined and described in Title 18 of this code.

9.36.030 - Specific maximum noise levels for mechanical devices.

- (a) Except as provided in subsections (b)-(d) below, it is unlawful for any person to operate any mechanical device in any manner so as to create any noise which would cause the noise level at the property plane of the property from which the noise is emitted to exceed the following values:
 - (i) For noises emitted from residential zoning districts (R-1-A, R-1-B, R-1-C, R-1, R-2, R-3), a noise level more than twenty five (25) dBA above the local ambient for a cumulative period of more than ten (10) minutes in any hour, a noise level more than thirty five (35) dBA above the local ambient or a cumulative period of more than three (3) minutes in any hour, or a noise level more than forty (40) dBA above the local ambient noise level for any amount of time.
 - (ii) For noises emitted from all zoning districts other than those listed in subsection (a)(i), a noise level more than forty (40) dBA above the local ambient for a cumulative period of more than ten (10) minutes in any hour, a noise level more than fifty (50) dBA above the local ambient for a cumulative period of more than three (3) minutes in any hour, or a noise level more than fifty five (55) dBA above the local ambient noise level for any amount of time.

TABLE 1

The noise limits described in subsection (a) are as follows:

Zoning District	Sound Level Above Ambient Not to Be Exceeded (dBA)	Cumulative Time of Condition
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	25	Noise occurs more than 10 minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	35	Noise occurs more than three minutes in any hour
R-1-A, R-1-B, R-1-C, R-1, R-2, R-3	40	Noise occurs any amount of time
All other zoning districts	40	Noise occurs more than 10 minutes in any hour
All other zoning districts	50	Noise occurs more than three minutes in any hour
All other zoning districts	55	Noise occurs any amount of time

- (b) Except on federal holidays, the provisions of subsection (a) shall not apply to construction or demolition work performed during the following times: Monday through Friday from seven a.m. to five p.m.; and Saturday and Sunday from ten a.m. to five p.m.; provided, that all powered construction equipment is equipped with intake and exhaust mufflers recommended by the manufacturers thereof; and provided, further, pavement breakers and jackhammers shall also be equipped with acoustical attenuating shields or shrouds recommended by the manufacturers thereof. In lieu of or in the absence of manufacturer’s recommendations, the town engineer shall have the authority to prescribe such means of accomplishing maximum noise attenuation as that person deems to be in the public interest, considering the available technology and economic feasibility. The Director of Planning and Building shall have the sole discretion to increase the hours exempt from the provisions

of subsection (a) for construction or demolition work. Such decision shall be based upon the likelihood of noise impacts to residential uses and the emergency nature and/or purpose of construction activities, and shall be made in writing, specifying the exempt hours and any conditions under which such exemption shall apply.

- (c) The provisions of subsection (a) shall not apply to: (1) motorized landscape equipment, including lawn mowers, shears, leaf blowers or similar equipment; (2) any burglar alarm or other emergency signaling device; or (3) any standby machinery or equipment necessarily operated in emergency situations, including but not limited to generators used in emergency periods such as during power outages.

9.36.040 - Leaf Blower Restrictions.

- (a) **Ban on Gas-Powered Leaf Blowers:** Beginning on March 1, 2020, it shall be unlawful for any person to operate a gas-powered leaf blower at any time in the town.
- (b) **Restricted Hours for Leaf Blowers:** It shall be unlawful for any person to operate any leaf blower during the following times:
 - (1) **Residential Properties other than Multi-Unit Residences:** No leaf blower may be operated at any residential property that is not a multi-unit residence except between the hours of nine a.m. and five p.m. on weekdays and between the hours of ten a.m. and four p.m. on Saturdays.
 - (2) **Other Properties:** No leaf blower may be operated at any multi-unit residence or nonresidential property except between the hours of seven a.m. and five p.m. on weekdays, and between the hours of ten a.m. and four p.m. on Saturdays.
 - (3) **Sundays and Holidays:** It shall be unlawful for any person to operate a leaf blower in any area of the town on Sundays or federal holidays.
- (c) **Debris Removal:** It shall be unlawful for any person who operates a leaf blower within the town to allow any leaves, dirt or any other debris blown to enter the storm drain system. All leaves, dirt, or any other debris blown on to public property or in the public right-of-way must be cleaned up and removed.

- (d) Exemption for Use by Town or School District: The restrictions in subsections (a)-(b) above do not apply to the use of leaf blowers by on-duty staff or contractors of the Town or Larkspur-Corte Madera School District on property owned or leased by the Town or School District.

9.36.050 – Night Time General Noise Regulations.

- (a) It is unlawful for any person without justification to make or continue, or cause to permit to be made or continued, between the hours of ten p.m. and six a.m. daily, any excessive or offensive noise that disturbs the peace or quiet of any neighborhood or that is unreasonably disturbing to a person of ordinary sensitivities residing in the area. The standards that shall be considered in determining whether a violation of this section exists shall include, but not be limited to:
 - (1) The level of the noise, which shall be the primary standard utilized;
 - (2) Whether the nature and origin of the noise is usual or unusual;
 - (3) Whether the origin of the noise is natural or unnatural;
 - (4) The level of ambient noise;
 - (5) The proximity of the noise to residences, hotels and other buildings containing sleeping accommodations;
 - (6) The nature and zoning of the property from which the noise emanates;
 - (7) The duration of the noise; and
 - (8) Whether the noise is intermittent or constant.
- (b) Subsection (a) is intended to regulate, among other types of noises, noises created by mechanical devices that do not exceed the maximum noise levels set forth in section 9.36.030; provided, however, that subsection (a) shall not be construed to regulate noises made by (1) emergency vehicles, (2) any burglar alarm or other emergency signaling device, or (3) any standby machinery or equipment necessarily operated in emergency situations, including but not limited to generators used in emergency periods such as during power outages,

- (c) Subsection (a) shall not be construed to regulate noises made by animals. Rather, pursuant to Section 8.040.010 of this Code, the Town regulates animal noise by enforcement of section 8.04.179 of the Marin County Animal Services Ordinance, or successor ordinance, which prohibits habitual animal noise that unreasonably disturbs the peace.

9.36.060 - Violation—Penalty and Remedies.

- (a) A violation of any provisions of this chapter shall constitute an infraction.. Each calendar day any such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.
- (b) As an additional remedy, the operation or maintenance of any device, instrument, vehicle or mechanical device in violation of any provision of this chapter shall be deemed and is declared to be a public nuisance and may be subject to summary abatement, to a restraining order, or to a temporary or permanent injunction issued by a court of competent jurisdiction.
- (c) The penalties and remedies provided in this section shall be in addition to any other remedy, remedies, or penalties provided in this code or any other law or ordinance, including but not limited to public nuisance. Application of remedies in addition to or in place of those provided in this subsection (a) shall be at the sole discretion of the Town, and shall conducted in accordance with the code provisions, ordinance or laws providing for such additional remedies or penalties.

9.36.070 - Repeat Complaints.

After an initial complaint under this ordinance is resolved with a determination that there was no violation, subsequent complaints from the same individual about the same location will not be investigated unless the complainant is able to provide evidence that would justify opening a new and substantially different complaint. To prevent abuse of the noise ordinance, unfair business practices, and/or harassment, if a second complaint is filed and it is established that a violation does not exist, subsequent complaints will not be investigated unless it is deemed necessary by the Town.

9.36.080 Construction and Application.

- (a) This chapter shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations, including but not limited to the federal Noise Control Act (42 U.S.C. section 4971) and the California Vehicle Code, or their successor statutes. Nothing in this chapter shall authorize any Town agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such agency or department action is taken.
- (b) To the extent the regulations set forth in this chapter affect speech activity protected by the federal or California Constitution, they are to operate as reasonable time, place and manner regulation of that activity. This chapter shall not be construed to authorize its enforcement, and shall not be enforced or applied, based on the content of protected speech activities, or the identity or viewpoint of the person engaged in such speech activities.

SECTION 3. CONFORMITY WITH THE GENERAL PLAN.

The Town Council finds that this Ordinance is consistent with the policies and programs of the 2009 Town of Corte Madera General Plan. Specifically, the Ordinance updates the current noise ordinance of the Town consistent with Policy PSH – 5.5 and Implementation Program PSH – 5.5.a, related to exemptions from noise standards for emergency vehicles and emergency generators; Policy PSH – 5.7 and Implementation Program PSH – 5.7.a, related to permitted hours and allowances for construction activities; and Policy – 5.6 related to updating the Town’s noise ordinance with the standards and policies in the General Plan.

The General Plan contains several other policies and programs related to noise that relate specifically to performance standards for new proposed uses in the Town and the evaluation of such standards during the planning and development review process. This Ordinance complements and supplements the policies of the General Plan by addressing uses and sources of noise for approved projects and the existing environment.

SECTION 4. Severability.

The Town Council hereby declares every section, paragraph, sentence, clause and phrase in this ordinance is severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional,

the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unconstitutionality.

SECTION 5. Inclusion in the Corte Madera Municipal Code.

It is the intention of the Corte Madera Town Council that the text in Section 2 be made a part of the Corte Madera Municipal Code and that the text may be renumbered or re-lettered and the word “Ordinance” may be changed to “Section”, “Chapter”, or such other appropriate word or phrase to accomplish this intention.

SECTION 6. Compliance with the California Environmental Quality Act.

The Town Council finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the changes to the Corte Madera Municipal Code (activity in question) will have a significant effect on the environment. This Ordinance updates, clarifies, and modernizes the existing noise ordinance to address ongoing challenges with implementation and enforcement of existing noise standards. The Ordinance will not have any effect on the existing ambient noise levels in Town, cause ground borne vibration or noise levels, or have any effect on aircraft flight paths since the Ordinance will not facilitate any particular project, but rather clarify and modify the Town’s standards under which certain noises will be determined to be excessive and offensive.

Additionally, the Town Council finds that the proposed Ordinance is within the scope of the Program EIR for the 2009 General Plan, certified by the Town Council on April 21, 2009, and therefore no subsequent EIR is required pursuant to CEQA Guidelines Section 15162 and 15168, since the Ordinance implements two programs of the Town of Corte Madera General Plan, as described in Section 3 above.

SECTION 7. Effective Date.

This Ordinance shall go into effect thirty (30) days following its adoption. The prohibition against operation of gas-powered leaf blowers set forth in Municipal Code section 9.36.040 (a) shall not take effect until March 1, 2020.

SECTION 8. Posting.

The Town Clerk shall cause a summary of this ordinance to be published in the Marin Independent Journal within 5 days prior to passage and within 15 days after passage.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Corte Madera Town Council held on _____, 2019 and thereafter passed and adopted by the Corte Madera Town Council on _____, 2019 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

James H. Andrews, Mayor

ATTEST:

Rebecca Vaughn, Town Clerk

ATTACHMENT 2:

Excerpt of Minutes from December 19, 2017 Town Council Meeting
(The full meeting minutes are also available via the following link:
https://www.townofcortemadera.org/AgendaCenter/ViewFile/Minutes/_12192017-618)

ATTACHMENT 3:

Redline version of the ordinance showing the changes proposed to the existing code provisions

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA REPEALING AND REPLACING CHAPTER 9.36 OF THE MUNICIPAL CODE TO UPDATE AND CLARIFY THE REGULATION OF EXCESSIVE AND OFFENSIVE NOISE

WHEREAS, Based on extensive scientific research, the World Health Organization and the U.S. Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems; and

WHEREAS, the Town has a significant challenge in protecting public health from the adverse effects of community noise arising from diverse sources such as transportation, construction, mechanical equipment, entertainment, and human behavior; and

WHEREAS, In recent years, the continuing increased use of leaf blowers has an additional and significant source of disturbing noise in the Town; and

WHEREAS, The General Plan for the Town recognizes noise as a threat to the community's well-being and identifies policies and programs to address noise impacts related to new uses and construction activities; and

WHEREAS, The Town has faced ongoing challenges with implementation and enforcement of its existing noise regulations; and

WHEREAS, The Town Council wishes to update, modernize and clarify its existing noise ordinance to address these challenges.

NOW THEREFORE, the Town Council of the Town of Corte Madera does hereby ordain as follows:

SECTION 1. Repeal of *Existing* Chapter 9.36 of the Municipal Code.

Corte Madera Municipal Code Title 9, Chapter 9.36 is hereby repealed.

SECTION 2. Adoption of *New* Chapter 9.36 of the Municipal Code.

Corte Madera Municipal Code Title 9 is hereby amended by adding Chapter 9.36 thereto to read as follows:

9.36.010 - Declaration of policy.

It shall be the policy of the town to prohibit ~~unnecessary~~, excessive and offensive noises from all sources. At certain levels, noises are detrimental to the health, safety and welfare of the citizenry and in the public interest should be systematically proscribed and declared a nuisance.

9.36.020 - Definitions.

Unless the context otherwise clearly indicates, certain words and phrases used in this chapter are defined as follows:

- (~~a~~) "Ambient noise" means the all-encompassing noise associated with a given environment, being a composite of sounds from any sources, near and far. For the purpose of this code, ambient noise level is the average over five ~~fifteen~~ minutes excluding random or intermittent noises and the alleged offensive noise measured at the location and time of day at which a comparison with an alleged offensive noise is to be made. Averaging may be done by instrumental analysis in accordance with American National Standards S.13-1971, or may be done manually as follows:
 - (~~i~~A) Observe a sound level meter for five seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications;
 - (~~ii~~B) Repeat the observations as many times as necessary to provide that observations be made at the beginning and at the end of the fifteen-minute averaging period and that there shall be at least as many additional observations as there are decibels between the lowest low indication and the highest high indication;
 - (~~iii~~C) Calculate the arithmetical average of the observed central tendency indications.
- (~~b~~2) "Decibel" means a unit for measuring the relative loudness of sounds equal approximately to the smallest degree of difference of loudness ordinarily detectable by the human ear whose range includes approximately one hundred thirty decibels on a scale beginning with one for the faintest audible sound.

(c) "Mechanical device" means any machinery or equipment; pump, fan, air-conditioning apparatus, or similar device; radio receiving set, musical instrument, phonograph, television set, or other similar device; motorized landscape equipment, including lawn mowers, shears, leaf blowers or similar equipment; and burglar alarm or other emergency signaling device. Mechanical device does not include vehicles or motor carriers.

(d) "Multi-unit residence" means property containing two or more units with a shared wall including for example, rental complexes, common interest complexes, senior citizen residences, and nursing homes. This does not include single family homes with detached or attached accessory dwelling units or junior accessory dwelling units.

(e) "Noise level" means the sound level in decibels dBA measured on the A-weighted scale as defined by the American National Standard Institute specifications S1.41971 or the most recent revision thereof.

(ef4) "Noise level measurement." For the purpose of enforcement of the provisions of this chapter, noise level shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 1 sound level meters as defined in American National Standard Section 1.4-1971 or the most recent revisions thereof. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to each measurement, the meter shall be verified, and adjusted to ± 0.3 decibel by means of an acoustical calibrator.

The location selected for measuring noise levels shall be at any appropriate point at the property plane of the property from which the noise is emitted. Where feasible, the microphone shall be at a height of three to five feet above ground level and at least four feet from walls or similar reflecting surfaces. For outside measurements the microphone shall be not less than four feet above the ground, at least four and a half feet distant from walls or similar large reflecting surfaces, and shall be protected from the effects of wind, noises and other extraneous sounds by the use of screens, shields or other appropriate devices. For inside measurements, the microphone shall be at least three feet distant from any wall, and the average sound measurement shall be determined from at least three microphone positions throughout the room.

(fg5) "Person" means a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private.

(gh6) "Powered construction equipment" means any tools, machinery or equipment used in connection with construction operations which can be driven by energy in any form other than manpower, including all types of motor vehicles when used in the construction process on any construction site, regardless of whether such construction site be located on-highway or off-highway.

(i7) "Property plane" means the vertical line through the property line which determines the property boundaries in space.

~~(8)(j) "Residential property" means a building containing one or more "dwelling units" as the term is "dwelling unit" is defined in Title 18 of this code.~~

~~(9) "Unnecessary, excessive or offensive noise" means, in the absence of specific maximum noise levels, a noise level which exceeds the ambient noise level by 5 dBA or more, when measured at the nearest property line or, in the case of multiple family residential buildings, when measured anywhere in one dwelling unit with respect to a noise emanating from another dwelling unit or from common space in the same building.~~

(k10) "Zoning districts" shall be as defined and described in Title 18 of this code.

9.36.030 - Specific maximum noise levels for mechanical devices.

(a) Except as provided in subsections (b)-(d) below, it is unlawful for any person to operate any mechanical device in any manner so as to create any noise which would cause the noise level at the property plane of the property from which the noise is emitted to exceed the following values:

(i) For noises emitted from residential zoning districts (R-1-A, R-1-B, R-1-C, R-1, R-2, R-3), a noise level more than twenty five (25) dBA above the local ambient for a cumulative period of more than ten (10) minutes in any hour, a noise level more than thirty five (35) dBA above the local ambient or a cumulative period of more than three (3) minutes in any hour, or a noise level more than forty (40) dBA above the local ambient noise level for any amount of time.

(ii) For noises emitted from all zoning districts other than those listed in subsection (a)(i), a noise level more than forty (40) dBA above the local ambient for a cumulative period of more than ten (10) minutes in any hour, a

noise level more than fifty (50) dBA above the local ambient for a cumulative period of more than three (3) minutes in any hour, or a noise level more than fifty five (55) dBA above the local ambient noise level for any amount of time.

TABLE 1

The noise limits described in subsection (a) are as follows:

<u>Zoning District</u>	<u>Sound Level Above Ambient Not to Be Exceeded (dBA)</u>	<u>Cumulative Time of Condition</u>
<u>R-1-A, R-1-B, R-1-C, R-1, R-2, R-3</u>	<u>25</u>	<u>Noise occurs more than 10 minutes in any hour</u>
<u>R-1-A, R-1-B, R-1-C, R-1, R-2, R-3</u>	<u>35</u>	<u>Noise occurs more than three minutes in any hour</u>
<u>R-1-A, R-1-B, R-1-C, R-1, R-2, R-3</u>	<u>40</u>	<u>Noise occurs any amount of time</u>
<u>All other zoning districts</u>	<u>40</u>	<u>Noise occurs more than 10 minutes in any hour</u>
<u>All other zoning districts</u>	<u>50</u>	<u>Noise occurs more than three minutes in any hour</u>
<u>All other zoning districts</u>	<u>55</u>	<u>Noise occurs any amount of time</u>

~~(a) — Except as modified provided in subsections (c) and (d) below, it is unlawful for any person to operate any machinery or equipment, pump, fan, air conditioning apparatus, or similar mechanical device or any radio receiving set, musical instrument, phonograph, television set, or other similar device in any manner so as to create any noise which would cause the noise level at the property plane of the property from which the noise is emitted to exceed the following values:~~

TABLE 1

<u>Zoning District</u>	<u>Time</u>	<u>Sound Level dBA</u>
<u>R-1-A, R-1, R-2</u>	<u>10 p.m.—7 a.m.</u>	<u>50</u>
<u>R-1-A, R-1, R-2</u>	<u>7 a.m.—10 p.m.</u>	<u>55</u>

P, C	10 p.m.—7 a.m.	60
P, C	7 a.m.—10 p.m.	70

- (b) ~~If the measurement location is on a boundary between two zoning districts, the lower sound level shall apply. Except on federal holidays, t~~The provisions of subsection (a) shall not apply to construction or demolition work performed during the following times: Monday through Fridays from seven a.m. to five p.m.; and Saturdays and Sundays from ten a.m. to five p.m.; provided, that all powered construction equipment is equipped with intake and exhaust mufflers recommended by the manufacturers thereof; and provided, further, pavement breakers and jackhammers shall also be equipped with acoustical attenuating shields or shrouds recommended by the manufacturers thereof. In lieu of or in the absence of manufacturer's recommendations, the town engineer shall have the authority to prescribe such means of accomplishing maximum noise attenuation as ~~he~~ that person deems to be in the public interest, considering the available technology and economic feasibility. The Director of Planning and Building shall have the sole discretion to increase the hours exempt from the provisions of subsection (a) for construction or demolition work. Such decision shall be based upon the likelihood of noise impacts to residential uses and the emergency nature and/or purpose of construction activities, and shall be made in writing, specifying the exempt hours and any conditions under which such exemption shall apply.
- (c) ~~Additionally, t~~The provisions of subsection (a) shall not apply to: (1) motorized landscape equipment, including ~~lawn mowers, shears, leaf blowers and or~~ similar equipment) ~~excepting gas powered leaf blowers, operated during the following times. Monday through Friday from seven a.m. to five p.m. and Saturdays and Sundays from ten a.m. to five p.m.;~~ (2)
- (dd) ~~The provisions of subsection (a) shall not apply to any burglar alarm or other emergency signalling device; or (3), nor to any standby machinery or equipment necessarily operated in emergency situations, including but not limited to generators used in emergency periods such as during power outages.~~
- (e) ~~It shall be unlawful for any person to operate a gas powered leaf blower within the town except on Monday through Friday from eight a.m. to five p.m. and on Saturdays and Sundays from ten a.m. to four p.m. This provision shall not apply to on-duty town staff while on town property or other public property in the normal course of their duties. The provisions of subsection (a) shall not apply to gas powered leaf blowers.~~

~~(f) — It shall be unlawful for any person who operates any leaf blower within the town to allow any leaves, dirt or any other debris to enter the storm drain system. All leaves, dirt, or any other debris blown on to public property or in the public right-of-way must be cleaned up and removed.~~

~~(g) — Violations of Section 9.36.030(e) or (f) regarding leaf blowers shall be subject to an enforcement process that includes, but is not limited to, a verbal or written cease and desist warning. Any violation of subsection (e) or (f) shall constitute an infraction. Each calendar day any such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.~~

9.36.040 - Leaf Blower Restrictions.

(a) Ban on Gas-Powered Leaf Blowers: Beginning on March 1, 2020, it shall be unlawful for any person to operate a gas-powered leaf blower at any time in the town.

(b) Restricted Hours for Leaf Blowers: It shall be unlawful for any person to operate any leaf blower during the following times:

(1) Residential Properties other than Multi-Unit Residences: No leaf blower may be operated at any residential property that is not a multi-unit residence except between the hours of nine a.m. and five p.m. on weekdays and between the hours of ten a.m. and four p.m. on Saturdays.

(b2) Other Properties: No leaf blower may be operated at any multi-unit residence or nonresidential property except between the hours of seven a.m. and five p.m. on weekdays, and between the hours of ten a.m. and four p.m. on Saturdays.

(e3) Sundays and Holidays: It shall be unlawful for any person to operate a leaf blower in any area of the town on Sundays or federal holidays.

(d) Debris Removal: It shall be unlawful for any person who operates a leaf blower within the town to allow any leaves, dirt or any other debris blown to enter the storm drain system. All leaves, dirt, or any other debris blown on to public property or in the public right-of-way must be cleaned up and removed.

(ed) Exemption for Use by Town or School District: The restrictions in subsections (a)-(eb) above do not apply to the use of leaf blowers by on-duty staff or contractors of the Town or Larkspur-Corte Madera School District on property owned or leased by the Town or School District.

9.36.040-050 -- Night Time General Noise Regulations.

- (a) ~~Notwithstanding any other provision of this chapter, and in addition thereto,~~ It is unlawful for any person without justification to make or continue, or cause to permit to be made or continued, between the hours of ten p.m. and six a.m. daily, any ~~unnecessary,~~ excessive or offensive noise, ~~as defined in Section 9.36.020~~ which that disturbs the peace or quiet of any neighborhood or ~~which that is unreasonably disturbing to a person of ordinary sensitivities~~ causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. The standards ~~which that~~ shall be considered in determining whether a violation of this section exists shall include, but not be limited to:
- (1) The level of the noise, which shall be the primary standard utilized;
 - (2) Whether the nature and origin of the noise is usual or unusual;
 - (3) Whether the origin of the noise is natural or unnatural;
 - (4) The level of ~~the background ambient~~ noise, if any;
 - (5) The proximity of the noise to residences, hotels and other buildings containing sleeping accommodationstial sleeping facilities;
 - (6) The nature and zoning of the area property within from which the noise emanates;
 - ~~(7) The density of the inhabitation of the area property from within which the noise emanates;~~
 - ~~(8) The time of the day or night the noise occurs~~
 - ~~(9) —~~
 - ~~(78) —~~ The duration of the noise; and
 - ~~(810)~~ Whether the noise is recurrent, intermittent or constant.
- (b) Subsection (a) is intended to regulate, among other types of noises, noises created by mechanical devices that do not exceed the maximum noise levels set forth in section 9.36.030; provided, however, that subsection (a) shall not be construed to regulate noises made by (1) emergency vehicles, (2) any burglar alarm or other emergency signalling device, or (3) any standby machinery or equipment necessarily operated in emergency situations, including but not limited to generators used in emergency periods such as during power outages.
- (c) Subsection (a) shall not be construed to regulate noises made by animals. Rather, pursuant to Section 8.040.010 of this Code, the Town regulates animal noise by enforcement of section 8.04.179 of the Marin County Animal Services

Ordinance, or successor ordinance, which prohibits habitual animal noise that unreasonably disturbs the peace.

9.36.050-0660 - Variances.

~~Where practical difficulties, unnecessary hardship, or results inconsistent with the purposes of this chapter may result from a strict application of the requirements of this chapter, a variance from such requirements may be granted as provided in Chapter 18.28 of this code.~~

9.36.060-0670 - Violation—Penalty and Remedies.

(a) A violation of any provisions of this chapter shall constitute an infraction. misdemeanor. -Each calendar day any such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

~~9.36.070—Violation—Additional remedies~~

(b) As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery—mechanical device in violation of any provision of this chapter shall be deemed and is declared to be a public nuisance and may be subject to summary abatement, to a restraining order, or to a (temporary or permanent) injunction issued by a court of competent jurisdiction.

(c) The penalties and remedies provided in this section shall be in addition to any other remedy, remedies, or penalties provided in this code or any other law or ordinance, including but not limited to public nuisance. Application of remedies in addition to or in place of those provided in this subsection (a) shall be at the sole discretion of the Town, and shall conducted in accordance with the code provisions, ordinance or laws providing for such additional remedies or penalties.

9.36.070 - Repeat Complaints.

After an initial complaint under this ordinance is resolved with a determination that there was no violation, subsequent complaints from the same individual about the same location will not be investigated unless the complainant is able to provide evidence that would justify opening a new and substantially different complaint.

To prevent abuse of the noise ordinance, unfair business practices, and/or harassment, if a second complaint is filed and it is established that a violation does not exist, subsequent complaints will not be investigated unless it is deemed necessary by the Town.

~~9.36.080 Violation Enforcement by private action.~~

~~In addition to the other remedies specified herein, any person affected or whose property is affected by a violation of this chapter, which shall be established according to the standards contained in this chapter, shall have a direct right of action against the violator in any court of competent jurisdiction for the abatement of such violation and/or to recover not to exceed five hundred dollars plus court costs and reasonable attorney fees for each day a violation has occurred, provided such action is commenced not later than sixty days from the date of such violation.~~

9.36.080 Construction and Application.

(a) This chapter shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations, including but not limited to the federal Noise Control Act (42 U.S.C. section 4971) and the California Vehicle Code, or their successor statutes. Nothing in this chapter shall authorize any Town agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such agency or department action is taken.

(b) To the extent the regulations set forth in this chapter affect speech activity protected by the federal or California Constitution, they are to operate as reasonable time, place and manner regulation of that activity. This chapter shall not be construed to authorize its enforcement, and shall not be enforced or applied, based on the content of protected speech activities, or the identity or viewpoint of the person engaged in such speech activities.

SECTION 3. CONFORMITY WITH THE GENERAL PLAN.

The Town Council finds that this Ordinance is consistent with the policies and programs of the 2009 Town of Corte Madera General Plan. Specifically, the Ordinance updates the current noise ordinance of the Town consistent with Policy PSH – 5.5 and Implementation Program PSH – 5.5.a, related to exemptions from noise standards for emergency vehicles and emergency generators; Policy PSH – 5.7 and Implementation Program PSH – 5.7.a, related to permitted hours and allowances for construction activities; and Policy – 5.6 related to updating the Town’s noise ordinance with the standards and policies in the General Plan.

The General Plan contains several other policies and programs related to noise that relate specifically to performance standards for new proposed uses in the Town and the evaluation of such standards during the planning and development review process. This Ordinance complements and supplements the policies of the General

Plan by addressing uses and sources of noise for approved projects and the existing environment.

SECTION 4. Severability.

The Town Council hereby declares every section, paragraph, sentence, clause and phrase in this ordinance is severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unconstitutionality.

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It is the intention of the Corte Madera Town Council that the text in Section 2 be made a part of the Corte Madera Municipal Code and that the text may be renumbered or re- lettered and the word “Ordinance” may be changed to “Section”, “Chapter”, or such other appropriate word or phrase to accomplish this intention.

SECTION 6. Compliance with the California Environmental Quality Act.

The Town Council finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the changes to the Corte Madera Municipal Code (activity in question) will have a significant effect on the environment. This Ordinance updates, clarifies, and modernizes the existing noise ordinance to address ongoing challenges with implementation and enforcement of existing noise standards. The Ordinance will not have any affect on the existing ambient noise levels in Town, cause groundborne vibration or noise levels, or have any affect on aircraft flight paths since the Ordinance will not facilitate any particular project, but rather clarify and modify the Town’s standards under which certain noises will be determined to be excessive and offensive.

Additionally, the Town Council finds that the proposed Ordinance is within the scope of the Program EIR for the 2009 General Plan, certified by the Town Council on April 21, 2009, and therefore no subsequent EIR is required pursuant to CEQA Guidelines Section 15162 and 15168, since the Ordinance implements two programs of the Town of Corte Madera General Plan, as described in Section 3 above.

SECTION 7. Effective Date.

This Ordinance shall go into effect thirty (30) days following its adoption. The prohibition against operation of gas-powered leaf blowers set forth in Municipal Code section 9.36.040 (a) shall not take effect until March 1, 2020.

SECTION 8. Posting.

The Town Clerk shall cause a summary of this ordinance to be published in the Marin Independent Journal within 5 days prior to passage and within 15 days after passage.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Corte Madera Town Council held on _____, 2019 and thereafter passed and adopted by the Corte Madera Town Council on _____, 2019 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

James H. Andrews, Mayor

ATTEST:

Rebecca Vaughn, Town Clerk

ATTACHMENT 4:

Results of Noise Ordinance Community Survey and Newsletter Update to the Community

Results of Noise Ordinance Community Survey:

- Summary of Results:
<https://www.townofcortemadera.org/DocumentCenter/View/3830/Noise-Ordinance-Overall-Survey-Results>
- Complete listing of results:
<https://www.townofcortemadera.org/DocumentCenter/View/3831/Noise-Ordinance-Individual-Response-Survey-Results->

April 13, 2018 Corte Madera Chronicles Newsletter Introducing the Community Survey:

- <https://www.townofcortemadera.org/ArchiveCenter/ViewFile/Item/2112>

August 24, 2018 Corte Madera Chronicles Newsletter Discussing the Results of the Survey:

- <https://www.townofcortemadera.org/ArchiveCenter/ViewFile/Item/2333>