

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

BLT, LLC,

Plaintiff,

v.

TOWN OF EAST GREENWICH and
PATRICIA SUNDERLAND in her
capacity as Finance Director,

Defendants.

C.A. No.

COMPLAINT

Plaintiff BLT, LLC complains and alleges as follows:

Introduction

1. This complaint is brought by BLT, LLC, operating under the name BLU on the Water (“BLU”) seeking relief for violations of the Fifth and Fourteenth Amendment of the United States Constitution; 42 U.S.C. Section 1983; Article I Section 2 of the Rhode Island Constitution; R.I. Gen. Laws § 3-7-7.3; and R.I. Gen. Laws § 45-24-51. BLU operates a popular seasonal restaurant, bar and marina on the Town of East Greenwich’s (“Town”) waterfront. BLU’s property is zoned Commercial Highway. BLU and the predecessor owners have operated in the same manner and in the same location since 1984.

2. BLU is seeking to invalidate the Town’s November 12, 2019 amendment to its sound ordinance, a true and accurate copy of which is attached hereto as **Exhibit A** (“Sound Amendment”), as illegal and unconstitutional for a number of reasons, including but not limited to:

- (a) The Sound Amendment singles out BLU for different, more restrictive, treatment than every other business located in a Commercial Highway zone in the Town;
- (b) The Town's new limitations in the Sound Amendment impose maximum sound levels in a commercial zone that would be violated on a daily basis by normal, everyday sounds that already exist, even when BLU is closed and empty;
- (c) Unlike for every other Commercial Highway zoned property in East Greenwich, the Town's new maximum sound levels imposed only on BLU's Commercial Highway zoned property (during its hours of operation) are the same as in the RESIDENTIAL zones throughout the Town from 7:00 a.m. to 10:00 p.m.;
- (d) A conversation among patrons of BLU in its parking lot would violate the Town's Sound Amendment, thus imposing a wholly unreasonable standard;
- (e) The Town's expert, Dr. Miller, described the change in maximum noise levels in the Sound Amendment as "like going from 120 miles per hour to 40 miles per hour." As with such speed reduction on a highway, such a reduction in noise level in a commercial zone is per se unreasonable;
- (f) East Greenwich is the only municipality in the State of Rhode Island that utilizes an unreasonable dbC scale which the Town selectively and disparately applies ONLY in its waterfront area;
- (g) BLU has never been cited for violating the Town's zoning or other Town

ordinances and only seeks to continue its commercial activities that have been ongoing for nearly four decades; and

- (h) Under the Town's new Sound Amendment there is no lawfully permitted use of BLU's Commercial Highway property that would not result in violations of the sound limits.

3. The Town's disparate treatment of BLU through its passage and implementation of the Sound Amendment is unconstitutional under the State and Federal constitutions and is facially unreasonable insofar as the limits sought to be imposed are already exceeded independently by either the existing ambient conditions unrelated to any business activity of BLU, or the sound produced by patrons of any business engaging in friendly conversation. The Town's Sound Amendment makes it impossible to run long standing, allowed commercial uses in the waterfront Commercial Highway district within these restrictive limits. The Sound Amendment is unconstitutionally vague as it gives the Town Council free reign to terminate BLU's license based on an undefined standard and has knowingly created a situation where BLU cannot operate its lawful business and not violate the disparately applied standards in the Sound Amendment. The enforcement of the Sound Amendment would also constitute an unconstitutional taking, insofar as ANY commercial operation in this Commercial Waterfront District would violate the Town's Sound Amendment because of the existing ambient sound conditions at the property and the unattainably low sound levels established by the Town.

Parties

4. BLT, LLC, d/b/a BLU, is a Rhode Island limited liability corporation with an address at 20 Water Street, East Greenwich, Rhode Island.

5. The Town of East Greenwich is a duly chartered and incorporated Rhode Island municipal entity.

6. Patricia Sunderland is the Finance Director of the Town of East Greenwich.

Jurisdiction and Venue

7. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1343 and 1367.

8. Venue is proper under 28 U.S.C. § 1391 in that Defendants are residents of this district and a substantial part of the acts and omissions alleged occurred in Rhode Island.

Background Facts

9. BLU on the Water is a seasonal harborside restaurant in East Greenwich operating on the BLU Property.

10. The BLU Property is located in a commercial zone at the end of King Street. King Street is one of two access roads to the section of the Town between Amtrak's Northeast Corridor railroad tracks and Greenwich Cove. BLU is approximately one hundred (100) yards from the railroad tracks where passing trains routinely far exceed the decibel limits applicable to BLU.

11. BLU is located in an area zoned Commercial Highway ("CH").

12. The BLU Property has been operated by BLU and its predecessors for approximately four decades as a restaurant, bar, and marina offering a large outdoor deck with live entertainment.

13. BLU's business is almost entirely seasonal, only operating from mid-May through late September ("In-Season") and for rentals during the balance of the year ("Off-Season").

14. BLU offers live music In-Season on Thursday, Friday and Saturday nights as well as on Sunday until 10 p.m. and legal holidays.

15. All of the live music is performed on an outside deck located below the mean high-water mark.

16. BLU has historically offered live music less than 60 nights a year.

17. BLU has operated at the BLU Property in the same manner since 2012, purchasing the property in 2016 and investing approximately six million dollars to purchase, renovate and improve the facility.

18. BLU's multi-million dollar investment was made in reliance on the historic use of the property, the zoning, the language in the Town's Comprehensive Plan and the existing Town ordinances.

19. As part of BLU's rehabilitation and improvement of the BLU Property, BLU worked with the Town including the departments of planning and building as well as the Town's Historic Commission.

20. BLU has at all times satisfied all of the Town's ordinances and regulations.

21. The Town's zoning ordinance states that the purpose of a Commercial Highway zoning district is to provide for uses which generate a high amount of vehicular traffic.

22. High amounts of vehicular traffic generate loud ambient noise far exceeding 60 dbA/65 dbC, which are the limits established in the Town's Sound Amendment.

23. BLU has both indoor and outdoor seating for its patrons.

24. BLU holds a Class B retailer's license to serve alcohol.

25. BLU holds a CV victualer's license to serve food.

26. BLU also holds an entertainment license. During the summer season, BLU offers live music on the outdoor deck of the restaurant located within the confines of a

sound dampening enclosure and separated from the adjacent parking area and property line by a fence.

27. BLU has become an anchor business of the successful East Greenwich waterfront.

28. The business generated by BLU is also a business engine that supports the business activity on Main Street in East Greenwich, helping to make East Greenwich a destination for many Rhode Islanders during the summer months.

29. East Greenwich's Main Street area is also zoned Commercial Highway and has historic mixed uses (commercial and residential) in close proximity.

30. A number of the commercial buildings on Main Street have residences on the upper floors and also have live music.

31. BLU is also a regular destination during the In-Season for many East Greenwich residents, including residents of the neighboring properties in the waterfront area who moved to the neighborhood because of its vibrant nature during the summer season.

32. The configuration of BLU's facility is such that it is not practicable to offer live music entertainment only indoors during the summer season since most of its capacity is outdoors and most patrons come to enjoy the expansive waterfront deck.

33. The outside entertainment is an indispensable aspect of BLU's successful operation during the short In-Season.

34. The Town's Comprehensive Plan recognizes the "highly popular waterfront" as an economic engine. 2014 Comprehensive Plan at 88.

35. A stated policy of the Town's Comprehensive Plan is to "encourage restaurants along the waterfront." 2014 Comprehensive Plan, page 91, ED 2.

36. The Comprehensive Plan's implementation section states that any resulting ordinances for the Waterfront District "should include mixed uses." 2014 Comprehensive Plan, page 187, LUR 11.

37. The Town's selective implementation of unreasonably low noise limits acts as a de facto prohibition of live music only at restaurants along the waterfront, and is inconsistent with the Comprehensive Plan, the Zoning Ordinance, and the historic use of the property.

38. BLU has made a significant contribution to the revitalization of the waterfront area of East Greenwich and to business activity along East Greenwich's Main Street commercial district.

39. BLU has voluntarily taken steps to minimize the travel of sound from its business to neighboring properties, including installing additional soundproofing material, removing subwoofers, eliminating certain bands that incorporate brass horns, and closely monitoring volume levels during performances.

40. BLU has never been cited by the Town for any infraction of the Town's noise ordinance, liquor regulations, or any other Town ordinance or regulation.

41. BLU has generally enjoyed a harmonious relationship with both its commercial and residential neighboring property owners, with one noted exception.

42. The owner/occupant of 88 King Street has made numerous complaints to the East Greenwich Police and elected officials regarding the sound emanating from BLU and the other waterfront businesses.

43. The property located at 88 King Street is situated two lots to the west of the BLU Property and directly abuts the historic stone train trestle that serves Amtrak's Northeast corridor.

44. The 88 King Street property is zoned Commercial Highway.

45. Residential uses are prohibited in the Commercial Highway zone in East Greenwich.

46. Prior to the mid 1990's when the owner first took title to 88 King Street, the property was utilized as a single-family residence, a non-conforming use.

47. As of the mid 1990's, the BLU Property was already operated as a bar and restaurant with live entertainment at the time.

48. In the mid 1990's, the owner of 88 King Street petitioned for and obtained dimensional zoning relief to convert the property into a commercial use on the first floor.

49. The first floor of 88 King Street was converted into a commercial use and operated as such for over five years.

50. Upon converting 88 King Street from a non-conforming residential use back to a conforming commercial use, the non-conforming residential use of 88 King Street was abandoned.

51. After the commercial use of 88 King Street closed, the owner illegally converted the property into a single-family residence, an illegal non-conforming use that is not a permitted use in the Commercial Highway zone and that was abandoned at the time of the conversion to a commercial use.

52. The actions voluntarily taken by BLU such as eliminating subwoofers and adding sound insulation did satisfy the owner of 88 King Street during certain periods, but he continued to file complaints against other businesses and BLU.

53. Following the election of the present Town Council in November of 2018 (replacing 4 out of 5 council members), BLU was advised that a new sound ordinance would be enacted that would change the sound levels only for BLU and two other waterfront businesses as well as the Firemen’s Club located in the waterfront area.

54. BLU agreed to work with the Town Council to address the several issues that the council identified at the waterfront including the need for: increased police presence, beautification of the waterfront, picking-up after patrons and sound issues.

55. BLU took steps to address each of the issues and established a direct line of communication with neighbors to address any new isolated issues immediately.

56. The success of BLU’s voluntary improvements to the public areas was noted by the Council both privately and on the record during Town Council meetings.

57. BLU also agreed, at the request of the Town Council, to share in the cost of James H. Miller (“Miller”), a professor of oceanography at URI who was charged with obtaining sound data at the East Greenwich waterfront.

58. Prior to November 12, 2019, the Town’s noise ordinance (the “Old Ordinance”) established maximum noise levels for each of the Town’s zoning districts. The noise levels varied by time of day, as follows:

Zoning District	Time	Sound Level (dbA)
R-6, R-10, R-20, R-30	10:00 p.m. to 7:00 a.m.	55
R-6, R-10, R-20, R-30	7:00 a.m. to 10:00 p.m.	60
F, F-1, F-2	10:00 p.m. to 7:00 a.m.	55

Zoning District	Time	Sound Level (dbA)
F, F-1, F-2	7:00 a.m. to 10:00 p.m.	60
CD, CL, CH	10:00 p.m. to 7:00 a.m.	65
CD, CL, CH	7:00 a.m. to 10:00 p.m.	70
W	10:00 p.m. to 7:00 a.m.	65
W	7:00 a.m. to 10:00 p.m.	70
M	Any time	75

59. All commercial zoning districts in East Greenwich uniformly had maximum noise levels of 70 dbA from 7:00 a.m. to 10:00 p.m. and 65 dbA from 10:00 p.m. to 7:00 a.m.

60. All maximum noise levels under the Old Ordinance also allowed for a 5 dbA buffer that was applied to increase all maximum noise levels.

61. The Old Ordinance also specified noise levels for property located east of the railroad tracks, north of Rocky Hollow Road, and bounded by East Greenwich Cove and the East Greenwich Town line (the “Waterfront”), regardless of zoning district. The levels for specified hours (the “Waterfront Hours”) from Memorial Day weekend through Labor Day were as follows:

Day	Time	Sound Level (dbA)	Sound Level (dbC)
Monday	6:00 p.m. to 10:00 p.m.	55	65
Tuesday	6:00 p.m. to 10:00 p.m.	55	65
Wednesday	8:00 p.m. to 10:00 p.m.	65	75
Thursday	8:00 p.m. to 12:00 midnight	65	75
Friday	5:30 p.m. to 12:30 a.m.	65	75
Saturday	2:00 p.m. to 12:30 a.m.	65	75
Sunday*	2:00 p.m. to 10:00 p.m.	65	75
Monday holidays	2:00 p.m. to 10:00 p.m.	65	75
* Except on holiday weekends: 12:00 midnight			

62. The Old Ordinance applied this dual measurement system of both dbA and dbC only to the Waterfront which impacted only four businesses in East Greenwich, including BLU.

63. No other municipality in Rhode Island utilizes a dbC measurement in its noise ordinance other than East Greenwich.

64. The Old Ordinance allowed sound-amplifying equipment to be operated out of doors in the Waterfront area during the Waterfront Hours.

65. Under the Old Ordinance, exceeding the specified maximum sound levels by more than five (5) decibels triggered a fine. An entertainment license holder fined four times in one year would have its entertainment license suspended for three months.

66. The Old Ordinance required every person seeking to use sound-amplifying equipment to obtain a permit from the Police Department.

67. BLU was never cited or fined under the Old Ordinance.

68. Professor Miller used portable equipment to take measurements of the sound decibel levels in the Waterfront area on various days between June 15 and July 20, 2019.

69. On or about August 30, 2019, Miller prepared a report entitled “Noise at the East Greenwich Waterfront.” The report concluded that “electronically-amplified music from bars on the East Greenwich, Rhode Island waterfront significantly impact [sic] local residents.” The report also concluded that “[d]iscussions with residents indicate that sound levels from the music above 65 dBC and 60 dBA at the property lines of the bars are particularly annoying.” The report recommended that “60 dBA and 65 dBC be used in a revised noise ordinance for the Town of East Greenwich[.]”

70. The Report was presented to the Town Council at a meeting on September 9, 2019. Miller also appeared at the meeting to answer questions.

71. At the September 9th Town Council meeting, Miller was questioned about the basis for his opinion that 60 dBA/65dBC was the level above which neighbors found the noise “annoying.” Miller stated that his opinion was based on reports from “primarily one person.” September 9, 2019 Tr. at 20.

72. At the September 9th Town Council meeting, Miller was asked “[i]f we eliminated all the music, would there still be a noise problem down there?” Miller agreed that “there still might be a noise problem, due to traffic.” September 9, 2019 Tr. at 24-25. Miller stated that “this is a very complicated acoustic environment with lots of reflecting surfaces, the trestle. There are the motorcycles. There’s trains going by, which are incredible, you know, sources of sound, and many of those regular high levels are from the trains. There’s also trucks and things especially during the day.” September 9, 2019 Tr. at 77.

73. Miller acknowledged that the only neighbor he consulted with was the owner of 88 King Street, a property that is located in a Commercial Highway zone in which single-family residential uses are non-conforming.

74. Miller also agreed that sound could go from a neighboring restaurant “through BLU and create a circumstance where they [BLU] are in violation, when they can’t control that.” September 9, 2019 Tr. at 79.

75. On November 12, 2019, the Town Council adopted the Sound Amendment. The Sound Amendment adopted new maximum permitted noise levels only for the Waterfront area and maintained the old sound levels for all of the Town’s other zoning districts. The Sound Amendment eliminated the 5 dbA buffer.

76. The Sound Amendment set new maximum sound levels in the Waterfront area and established new Waterfront Hours as follows:

Day	Time	Sound Level (dbA)	Sound Level (dbC)
Monday, Tuesday, Wednesday	6:00 p.m. to 10:00 p.m.	60	65
Thursday	8:00 p.m. to 12:00 midnight	60	65
Friday	5:30 p.m. to 12:30 a.m.	60	65
Saturday	2:00 p.m. to 12:30 a.m.	60	65
Sunday*	2:00 p.m. to 10:00 p.m.	60	65
Monday holidays	2:00 p.m. to 10:00 p.m.	60	65
* Except on holiday weekends: 12:00 midnight			

77. The sound levels established for the Waterfront (*i.e.* three businesses and the Fireman’s Club) was a codification of Miller’s recommendation that was based on the lay opinion of only one neighbor, the owner of 88 King Street.

78. The Sound Amendment sharply reduced the noise levels applicable to the Waterfront area. For example, on Friday and Saturday nights, the allowable dbA sound level dropped from 70 (the maximum noise level plus the 5 dbA buffer) to a stated maximum of 60. The allowable dbC noise level dropped from 80 (the maximum noise level plus the 5 dbC buffer) to a maximum of 65.

79. Miller described the change in maximum noise levels as “like going from 120 miles per hour to 40 miles per hour.”

80. A noise level of 60 dbA is generally understood in the field of acoustics to be comparable to the level of ordinary conversation between two people.

81. The 60 dbA maximum sound level applicable during Waterfront Hours to BLU, located in the Commercial Highway zone, is the same maximum sound level applicable to residential zones of the Town from 7:00 a.m. to 10:00 p.m.

82. BLU conducted ambient sound measurements at its property line and at the property line of 88 King Street in December 2019. These measurements showed that even when the restaurant is closed, the average ambient noise levels in the area regularly exceed 60 dbA and 65 dbC. Maximum dbC levels are in the 90 to 100 dbC range or more.

83. Sound levels from BLU's outdoor seating area, when BLU reopens for the summer season under existing ambient conditions, will exceed the stated maximum sound level of 60 dbA even with no music.

84. The Sound Amendment provides that for any violation, "[a]ny holder of any Town-issued license may be summoned for a Show Cause hearing as to why said license should not be suspended or revoked." New Ordinance § 152-5B. Accordingly, a single violation of the New Ordinance subjects a licensee to potential revocation of any or all Town issued licenses, effectively putting the licensee out of business.

85. The Sound Amendment does not set forth any standards for: imposing a suspension as opposed to a revocation; determining when a violation of the New Ordinance would result in the suspension or revocation of more than one license held by the licensee; or determining whether a suspension and/or revocation is warranted.

86. The Sound Amendment also amended the permitting provisions of the Old Ordinance. The New Ordinance distinguishes between amplified sound permit applications for Entertainment License Holders and for Non-entertainment license holders. Non-entertainment license holders apply to the Police Chief, as before. In contrast, entertainment license holders are required to apply to the Town Council, which "shall hold a public hearing on all such applications, and may approve, approve with conditions, or disapprove of such amplification permit, consistent with the purposes of this chapter." New Ordinance § 152-9.

COUNT I – Violation of R.I. Gen. Laws § 3-7-7.3

87. Plaintiff reasserts the allegation of paragraphs 1-86 as if fully set forth herein.

88. Rhode Island General Laws § 3-7-7.3 governs municipal restrictions on entertainment at facilities holding a Class B liquor license. Any municipal restriction must be in accordance with objective standards approved by the Department of Business Regulation and must be applied uniformly to all licensed facilities.

89. The Sound Amendment is ultra vires, illegal and void on the grounds that it has the intended purpose and effect of restricting live music entertainment offered by BLU, a Class B retailer in East Greenwich, that: (a) was not approved by the Department of Business Regulation; (b) fails to provide any objective standards for the Town Council to issue a permit to BLU and other Class B retailers for outdoor sound amplification, instead purporting to grant the Town Council the power to approve or disapprove such permits based on the vague and non-objective “purposes of this chapter;” (c) fails to provide any objective and predictable standard for the Town Council to impose penalties on BLU and other Class B retailers in East Greenwich for violations of the New Ordinance; (d) does not apply uniformly to all Class B retailers in Commercial Highway zones, but instead singles out BLU; and (e) establishes a maximum decibel level that is both impossible to meet and measures sound that does not originate from the location at issue.

COUNT II – Violation of R.I. Gen. Laws § 45-24-51

90. Plaintiff reasserts the allegation of paragraphs 1-89 as if fully set forth herein.

91. The Sound Amendment has the intended purpose and effect of materially altering the allowable uses of commercially zoned property in the Waterfront area by imposing

the same maximum noise levels applicable in Residential Zones to Commercial Highway zones in the Waterfront area during business hours.

92. Altering the allowable uses of commercially zoned property in the Waterfront area by imposing residential zone noise levels during business hours is inconsistent with the Town's Comprehensive Plan which encourages mixed use of the waterfront and specifically encourages restaurants.

93. The Sound Amendment is ultra vires, illegal and void because it materially alters the allowable uses of commercially zoned property in the Waterfront area without following the procedures for zoning amendments set forth in R.I. Gen. Laws § 45-24-51.

94. The Sound Amendment's disparate treatment of mixed use commercial properties on Main Street which have maximum noise limits of 70 dbA from commercial properties on the Waterfront that are burdened with unreasonably low residential noise limits is ultra vires, illegal and otherwise void.

**COUNT III –Violations Under the State and Federal
Constitutions and 42 USC Section 1983**

95. Plaintiff reasserts the allegation of paragraphs 1-94 as if fully set forth herein.

96. The Sound Amendment sets a maximum sound level of 60 dbA and 65 dbC in the Waterfront area during the Waterfront Hours.

97. The sound level of 60 dbA is equivalent to the noise produced by normal conversation between two people.

98. No legally permitted use of BLU's subject property, that is located in a Commercial Highway zone, may be operated without violating the Sound Amendment.

99. The sound level allowed in the Waterfront area in the afternoon and evening (60 dbA) is 10 dbA less than the sound level allowed from 7:00 a.m. to 10:00 p.m. (70 dbA) in all other parts of the Town that are zoned commercial.

100. The maximum sound level allowed in commercial zones in the Waterfront area in the afternoon and evening (60 dbA) is less than the maximum sound level allowed in commercial zones in the Waterfront area overnight (65 dbA). In other words, the New Ordinance arbitrarily and irrationally allows louder sounds in the Waterfront area in the middle of the night than during business hours.

101. The Sound Amendment is not reasonably related to protecting the health and welfare of residents of East Greenwich. The Sound Amendment is intended to and has the effect of denying BLU the reasonable, permitted and historic use of its outdoor seating areas during the summer season and the general operation of its facility, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and Article I § 2 of the Rhode Island Constitution.

102. The Sound Amendment is ultra vires, illegal and void for vagueness. The penalty provisions of the New Ordinance provide that a single violation by the holder of a Town issued license may result in the revocation or suspension of the license, but the Sound Amendment does not set forth any standards for imposing a suspension as opposed to a revocation; standards for when a violation of the Sound Amendment would result in the suspension or revocation of more than one license held by the licensee; or standards for determining that a suspension or revocation is warranted. The failure to provide any objective and predictable standard for the Town Council to impose penalties encourages arbitrary and discriminatory enforcement and violates BLU's right to due process of law.

103. The sound amplification permit provisions for entertainment license holders are also void for vagueness. The Sound Amendment fails to provide any objective standards for the Town Council to issue a permit for outdoor sound amplification to entertainment license holders. The failure to provide any objective and predictable standard for the Town Council to issue sound amplification permits encourages arbitrary and discriminatory enforcement and violates BLU's right to due process of law.

104. The Town Council has used and continues to use arbitrary standards in awarding both entertainment licenses and liquor licenses to businesses applying for renewals in 2019.

105. The Town Council has and continues to act in an ultra vires manner in conditioning the issuance of licenses based on seating capacities over which the Town Council, sitting as the Licensing Board, has no jurisdiction.

106. The Town Council sitting as the Licensing Board has and continues to act in an ultra vires manner by seeking to enforce the zoning ordinance and fire code over which it has no jurisdiction and where there has been no violation.

107. The Town Council has and continues to take actions and promulgate and impose policies designed to deprive BLU and its owners of its and their rights, privileges, and property rights under color of law which actions have and continue to cause damage to BLU and its owners.

108. The Town Council has and continues to take actions, promulgate and impose policies and enact ordinances that, when enforced, will deprive BLU of all beneficial use of its property, thereby constituting a taking.

Prayer for Relief

Wherefore Plaintiff BLU prays for the following relief:

- A. A declaration that the Sound Amendment is ultra vires, illegal, unconstitutional, and void in whole or in part;
- B. Preliminary and permanent injunctive relief restraining the Town and its agents from enforcing the Sound Amendment;
- C. Damages, costs and attorneys' fees as provided by applicable Federal and State law, including but not limited to all damages for a taking of BLU's property.
- D. Punitive damages against the Town of East Greenwich arising out of the actions of the Town Council and their agents; and
- E. Such other and further relief as the Court deems appropriate under the circumstances.

BLT, LLC

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Jeffrey H. Gladstone

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DATED: February 12, 2020

JURY TRIAL DEMAND

The Plaintiff demands a trial by jury on all issues so triable.

BLT, LLC

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Jeffrey H. Gladstone

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DATED: February 12, 2020

3686735.7/16271-2

EXHIBIT A
(Sound Amendment)

ORDINANCE NO. 889

ADOPTED: NOVEMBER 12, 2019

AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF EAST GREENWICH, CHAPTER 152 THEREOF, ENTITLED "NOISE".

The Town Council of the Town of East Greenwich hereby ordains:

Section 1. Chapter 152 Noise, of the Code of the Town of East Greenwich, is hereby amended as follows:

Chapter 152 – Noise

Article I – General Provisions

§ 152-1. Statement of public policy.

The Town Council hereby finds and declares that:

A. Excessive noise is a serious hazard to public health and welfare and the quality of life in the Town of East Greenwich.

B. A substantial body of science and technology exists by which excessive noise can be substantially abated without serious inconvenience to the public.

C. Certain of the noise-producing equipment in this community is essential to the quality of life herein and should be allowed to continue at reasonable levels with moderate regulation.

D. Each person has a right to an environment reasonably free from noise which jeopardizes health or welfare or unnecessarily degrades the quality of life.

E. It is the declared policy of the Town of East Greenwich to promote an environment free from excessive noise (otherwise properly called noise pollution), which unnecessarily jeopardizes the health and welfare and degrades the quality of the lives of the residents of this Town without unduly prohibiting, limiting or otherwise regulating the function of certain noise-producing equipment which is not amenable to such controls and yet is essential to the quality of life in the community.

§ 152-2. Definitions.

For the purposes of this chapter, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

AMBIENT NOISE

The all-encompassing noise associated with a given environment, exclusive of a particular noise being tested, being usually a composite of sounds from many sources, near and far, exclusive of intruding noises from isolated identifiable sources.

DECIBEL (db)

A unit of measure often used in describing the amplitude of sound which denotes the ratio between two quantities which are proportional to power; the number of decibels corresponding to the ratio of two amounts of power is 10 times the logarithm to the base 10 of this ratio.

EMERGENCY WORK

Work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger, or work by private or public utilities when restoring utility service.

ORDINANCE NO. 889

ADOPTED: NOVEMBER 12, 2019

MOTOR VEHICLES

Includes, but is not limited to, minibikes and go-carts.

MAXIMUM PERMITTED SOUND LEVEL

The maximum permitted sound level, as used in this chapter, is the maximum sound level that may be lawfully made pursuant to this chapter and any sound exceeding this sound level is punishable pursuant to § 152-5.

SOUND-AMPLIFYING EQUIPMENT

Any machine or device for the amplification of the human voice, music or any other sound. Sound-amplifying equipment shall not include standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. Sound-amplifying equipment as used in this chapter shall not include warning devices on any vehicle used only for traffic safety purposes.

SOUND LEVEL (also NOISE LEVEL), IN DECIBELS (db)

The sound measured with the "A" or "C" weighting, as set forth herein and slow response (one second averaging) by a sound-level meter.

SOUND-LEVEL METER

An instrument, including a microphone, amplifier, RMS detector, integrator or time averager, output or display meter, and weighting networks, used to measure sound pressure levels, which complies with ANSI Standard 1.4-1971, as the same may be revised.

SOUND TRUCK

Any motor vehicle or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto any sound-amplifying equipment.

TOWN

The Town of East Greenwich, Rhode Island.

§ 152-3. Sound level measurement criteria.

[Amended 5-12-2014 by Ord. No. 835]

Any sound level measurement made pursuant to the provisions of this chapter shall be measured with a sound-level meter using the "A" weighting. For amplified musical material, sound level measurements shall also be measured using the "C" weighting.

§ 152-4. ~~Ambient base~~Maximum permitted noise level.

[Amended 5-12-2014 by Ord. No. 835]

A. The noise levels listed in this section shall be the ~~ambient base~~maximum permitted sound noise levels used for the purposes of this chapter, unless another maximum permitted sound level is provided for in this chapter:

Zoning District	Time	Sound Level (dbA)
R-6, R-10, R-20, R-30	10:00 p.m. to 7:00 a.m.	55
R-6, R-10, R-20, R-30	7:00 a.m. to 10:00 p.m.	60
F, F-1, F-2	10:00 p.m. to 7:00 a.m.	55
F, F-1, F-2	7:00 a.m. to 10:00 p.m.	60

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Zoning District	Time	Sound Level (dbA)
CD, CL, CH	10:00 p.m. to 7:00 a.m.	65
CD, CL, CH	7:00 a.m. to 10:00 p.m.	70
W	10:00 p.m. to 7:00 a.m.	65
W	7:00 a.m. to 10:00 p.m.	70
M	Any time	75

B. Irrespective of zoning district, these stated sound maximum permitted sound levels and times shall apply to property located east of the railroad tracks, north of Rocky Hollow Road, and bounded by the East Greenwich Cove and the East Greenwich Town line (hereinafter referred to as the "Waterfront Area"). ~~Irrespective of~~ As provided in § 152-5, sound in excess of these stated limits shall constitute a violation of this ~~section~~ chapter. ~~Irrespective of § 152-12B, s~~ Sound-amplifying equipment may only be operated out of doors in the Waterfront Area during the stated dates and hours stated below. The maximum permitted sound limits are as follows:

(1) From Friday of Memorial Day weekend to the end of Labor Day weekend:

Day	Time	Sound Level (dbA)	Sound Level (dbC)
Monday, Tuesday, Wednesday	6:00 p.m. to 10:00 p.m.	55 <u>60</u>	65
Tuesday	6:00 p.m. to 10:00 p.m.	55	65
Wednesday <u>Thursday</u>	8:00 p.m. to 12:00 midnight	65 <u>60</u>	75 <u>65</u>
Thursday	8:00 p.m. to 12:00 midnight	65	75
Friday	5:30 p.m. to 12:30 a.m.	65 <u>60</u>	75 <u>65</u>
Saturday	2:00 p.m. to 12:30 a.m.	65 <u>60</u>	75 <u>65</u>
Sunday*	2:00 p.m. to 10:00 p.m.	65 <u>60</u>	75 <u>65</u>
Monday holidays	2:00 p.m. to 10:00 p.m.	65 <u>60</u>	75 <u>65</u>

* Except on holiday weekends: 12:00 midnight

(2) Then, from the Labor Day weekend to the last weekend of September:

[Amended 4-24-2017 by Ord. No. 867]

Sound Level (dbA) Sound Level (dbC)

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Thursday	7:00 p.m. to 12:00 midnight	6560	7565
Friday	7:00 p.m. to 12:00 midnight	6560	7565
Saturday	7:00 p.m. to 12:00 midnight	6560	7565
Sunday	4:00 p.m. to 8:00 p.m.	6560	7565

←----- Form:

§ 152-5. Violations and penalties.

A. No person or entity shall make, continue or cause to be made or continued, unless as herein permitted, any sound exceeding the maximum permitted sound level ~~by more than five decibels the ambient base noise level as defined in § 152-4 hereof~~ at the property line of any adjoining property, including a public street or, if a condominium or apartment house, at the common wall of any adjoining dwelling unit.

B. Any person found in violation of any provision of this chapter shall, upon conviction, be punished by a fine of up to not more than \$200 for a first offense, \$300 for a second offense, \$450 for a third offense, and \$500 for a fourth each offense. Any holder of any Town-issued license may be summoned for a Show-Cause hearing as to why said license should not be suspended or revoked, if found in violation of this chapter. Any entertainment license holder ~~convicted of a fourth offense in one calendar year shall suffering a three-month suspension of~~ said entertainment license shall have such suspension carried over into a future year if the license is seasonal in nature.

C. Any violation of this chapter is declared to be a public nuisance and shall also be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

§ 152-6. Exceptions.

The provisions of this chapter shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency;
- B. The emission of sound in the performance of emergency work;
- C. Noncommercial public speaking and public assembly activities conducted on any private property, public space or public right-of-way;
- D. The emission of sound in the performance of governmental military operations;

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E. The emission of sound in the discharge of weapons or in fireworks displays licensed by the Town;

F. The emission of sound in the operation of snow removal equipment; ~~and~~

G. The emission of sound relative to permitted construction and demolition activities, provided that such activities do not occur between 9:00 p.m. and 7:00 a.m.; and

H. The emission of sound by a train that is in motion through the Town.

Article II. Amplified Sound

§ 152-7. Findings and purpose.

The Town Council enacts this legislation for the sole purpose of securing and promoting the public health, comfort, safety and welfare of its citizenry. While recognizing inherent constitutional rights of freedom of speech and assembly, the Council nevertheless finds that it is obligated to reasonably regulate the use of sound-amplifying equipment in order to protect the correlative constitutional rights of the citizens of this Town to privacy and freedom from the public nuisance of loud noise.

§ 152-8. Permit required.

It shall be unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the Town sound-amplifying equipment out of doors in a fixed or movable position or mounted upon any sound truck for any purpose without first obtaining a permit from the Town Council if held by an entertainment license holder, and from the Chief of Police or his designee if not by an entertainment license holder.

§ 152-9. Filing and approval or disapproval of permit.

~~A. Filing of permit statement~~Application for Non-entertainment License Holder. Every person not holding an entertainment license, and seeking to use sound-amplifying equipment shall file a permit ~~statement application~~ with the Police Department. A permit ~~for use by an entertainment license holder shall be valid for a period of six months. All other permits issued hereunder shall be valid for a maximum period of one week; application shall be made at least 24 hours prior to issuance. The statement application shall contain the following information:~~

- (1) The name, address and telephone number of the person to whom the permit is to be issued;
- (2) The license and motor number if a sound truck is to be used;
- (3) A general description of the sound-amplifying equipment which is to be used; and
- (4) Whether the sound-amplifying equipment will be used for commercial or noncommercial purposes.

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B. Approval of Non-entertainment License Holder permit statements applications. The Police Chief shall return to the applicant an approved certified copy of the permit statement unless he or she finds that:

- (1) The conditions of the motor vehicle movement are such that, in the opinion of the Chief of Police, the use of the equipment would constitute a detriment to traffic safety;
- (2) The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or
- (3) The permit statement would violate one or more of the provisions set forth elsewhere in § 152-12 of this chapter or any other pertinent provision hereof.

C. Disapproval of Non-entertainment License Holder permit. In the event the permit statement application is disapproved, the Chief of Police shall endorse thereupon his or her reasons for disapproval and return it forthwith to the applicant.

D. Application for Entertainment License Holder. Every person holding an entertainment license, and seeking to use sound-amplifying equipment shall file a permit application with the Town Clerk, with such application to be developed by the Town Manager and Town Clerk. A permit for use by an entertainment license holder shall be valid for a period of up to one year.

E. Approval or Disapproval of Entertainment License Holder Applications. The Town Council shall hold a public hearing on all such applications, and may approve, approve with conditions, or disapprove of such amplification permit, consistent with the purposes of this chapter.

§ 152-10. Permit fees.

Prior to the issuance of the permit statement, the applicant shall pay the Town a fee in the amount of \$30100 for a six-month permit by an entertainment license holder, or \$10 for a one-week permit for a non-entertainment holder shall be paid to the Town if the loudspeaker or sound-amplifying equipment is to be used for commercial purposes. No fee shall be required for the operation of sound-amplifying equipment for noncommercial purposes by a non-entertainment license holder.

§ 152-11. Appeals.

Any person aggrieved by disapproval of a permit application by the Chief of Police statement may appeal to the Town Council. There shall be no appeal within the Town of disapproval of an entertainment license holder permit application.

§ 152-12. Prohibited acts.

The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:

- A. The only sounds permitted shall be either music or human speech, or both.

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B. The operation of sound-amplifying equipment by holders of entertainment licenses in the Waterfront Area shall only occur in the hours set forth in Section 152-4(B), and outside of the Waterfront Area shall only occur between the hours of 10:00 a.m. and the legal closing hour of the establishment. The hours of operation may be further restricted by the issuer of the permit.

C. The operation of all other sound-amplifying equipment shall only occur between the hours of 10:00 a.m. and 10:00 p.m. each day except Sundays and legal holidays. No operation of said other sound-amplifying equipment for commercial purposes shall be permitted on Sundays or legal holidays. The operation of sound-amplifying equipment for noncommercial purposes on Sundays and legal holidays shall only occur between the hours of 10:00 a.m. and 7:00 p.m. The hours of operation may be further restricted by the issuer of the permit.

D. The sound level emanating from nonstationary sound-amplifying equipment shall not exceed ~~15~~10 dbA or 10 dbC decibels above the maximum permitted sound ~~ambient base noise level~~, as ~~defined~~set forth in § 152-4 hereof.

E. Notwithstanding any other provision of this chapter to the contrary, sound-amplifying equipment shall not be operated within 200 feet of ~~churches~~, schools, hospitals or Town buildings.

Article III. Motor Vehicles and Equipment
[Added 11-9-2009 by Ord. No. 804]

§ 152-13. Violations and penalties relating to traffic.

Every person violating any of the provisions of any ordinance of the Town relating to traffic shall be liable to pay a fine specified by the individual ordinance or a fine of \$20 for each such offense if no fine is specified, except violators of the consecutive parking violation provisions as set forth in §§ 248-35 and 248-46.

§ 152-14. Excessive vehicular noise.

A. Unnecessary, excessive or offensive vehicular noise. Any sound or noise emanating from any vehicle(s) in motion, parked or standing on any streets, land parcels or properties, public or private, within the Town of East Greenwich, plainly audible to a person of reasonably sensitive hearing at a distance of 200 feet from its source, shall be deemed a prima facie violation of this article.

B. For the purposes of this section, “plainly audible” means any sound which clearly can be heard by unimpaired auditory senses based on a direct line of sight of 200 feet or more from the source of the sound and which crosses a property boundary line or boundary between two dwelling units; however, words or phrases need not be discernible, and said sound shall include base reverberation.

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C. Any operator of any vehicle violating the provisions of this chapter shall be fined according to the following:

(1) First offense: \$100.

(2) Second offense: \$250.

(3) Third and subsequent offenses: \$500.[1]

[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).

D. Any and all emergency vehicles engaged in official business requiring audible warning or public address shall be exempt from any provision of this article.

Section 2: This ordinance shall become effective upon adoption.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BLT, LLC

(b) County of Residence of First Listed Plaintiff Kent
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey H. Gladstone, Robert K. Taylor, Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100, Providence, RI 02903 401-861-8200

DEFENDANTS

TOWN OF EAST GREENWICH and PATRICIA SUNDERLAND in her capacity as Finance Director

County of Residence of First Listed Defendant Kent
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC 881 690 Other	375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609
			IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	
			PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent - Abbreviated New Drug Application 840 Trademark	
			SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983

Brief description of cause:
Constitutional Violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 02/12/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeffrey H. Gladstone

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____