

Chapter 6.11

Public Nuisance

Sections:

6.11.000	Authority
6.11.010	Purpose
6.11.020	Definitions
6.11.030	Disorderly Conduct
6.11.040	Excessive Sound
6.11.050	Public Urination / Defecation
6.11.060	Public Nudity
6.11.070	Soliciting – General Provisions
6.11.080	Soliciting - Regulations
6.11.090	Soliciting – Violations
6.11.100	Aggressive panhandling prohibited
6.11.110	Defacing Buildings, Structures and signs
6.11.120	Alcohol
6.11.130	Open Fires
6.11.140	Fireworks
6.11.150	Enforcement
6.11.160	Violations – Penalties
6.11.170	Severability

6.11.000 Authority.

- A. This ordinance is enacted pursuant to 24 V.S.A., Section 2291, et seq. It shall constitute a civil ordinance within the meaning of 24 V.S.A., Chapter 59.

6.11.010 Purpose.

- A. The purpose of this ordinance is to preserve the public health, safety and welfare by prohibiting general nuisance behavior, which is unreasonable or unsuitable for a particular time and place. Such behavior is detrimental to the peace and good order of the community. Typically, nuisance behavior disrupts the public peace and affects the quality of life within the Town of Essex.

6.11.020 Definitions.

- A. **Aggressive manner** shall mean any of the following:
- a. Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another or damage to or loss of property or otherwise be intimidated into giving money or other thing of value.
 - b. Continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting.
 - c. Intentionally or recklessly touching or causing physical contact with another person or that person's property without that person's consent in the course of soliciting.
 - d. Intentionally or recklessly blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact.
 - e. Using violent, obscene or threatening gestures toward a person solicited.
 - f. Following the person being solicited, with the intent of asking that person for money or other things of value.
 - g. Speaking in a volume unreasonably loud under the circumstances.
 - h. Soliciting from anyone who is waiting in line.
- B. **Average sound level:** A sound level during a given period of time found by the general rule of combination of sound levels. Also called equivalent sound level.
- C. **Decibel (dB):** means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

- D. **Fireworks:** shall mean any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, including blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, balloons that are propelled by explosives, firecrackers, torpedoes, sky rockets, Roman candles, cherry bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except sparklers. The term "fireworks" does not include toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper or plastic caps that contain less than 0.2 grains of explosive mixture. The term "fireworks" does not include fixed ammunition for firearms, or primers for firearms. The term "sparkler" means a sparkling item that is in compliance with the United States Consumer Product Safety Commission regulations and is one of the following:
- a. A hand-held wire or wood sparkler that is less than 14 inches and has no more than 20 grams of pyrotechnic mixture; or
 - b. A snake, party popper, glow worm, smoke device, string popper, snapper, or drop pop with no more than 0.25 grains of explosive mixture.

Cross References:

See 20 V.S.A. § 3131.

- E. **Food:** shall have its usual and ordinary meaning and shall include all items designed for human consumption, including, but not limited to, candy, coffee, gum, popcorn, hot dogs, sandwiches, peanuts, soft drinks and dairy products.
- F. **Instantaneous maximum sound:** means either a single pressure peak or a single burst (multiple pressure peaks) that has duration of less than one second.
- G. **Merchandise:** shall have its usual and ordinary meaning, including, but not limited to, such items as tools, clothing, furniture, toys, and appliances.
- H. **Mobile ice cream vendor:** means a person, firm or corporation, either as a principal or agent, which engages in the mobile vending of ice cream and/or frozen novelty items for immediate human consumption.
- I. **Mobile vending:** means offering food, merchandise or services for sale to the general public from a vehicle, conveyance, or a nonpermanent structure or place of business.
- J. **Mobile vendor:** means the person, firm or corporation, either as a principal or agent, which engages in mobile vending as defined herein.
- K. **Nudity:** shall mean the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque

covering of any portion of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

- L. **Open beverage container**: A container, bottle, can or vessel containing malt or vinous beverages or spirituous liquors, which is opened.
- M. **Plainly audible**: shall mean any sound that can be detected by a person using his or her unaided hearing faculties. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.
- N. **Premises**: shall mean any building, structure, land, utility or portion thereof, including all appurtenances, and shall also include yards, lots, courts, inner yards and real properties without buildings or improvements, owned or controlled by a person.
- O. **Property line** shall mean that real or imaginary line and its vertical extension which separates real property owned or controlled by any person from contiguous real property owned or controlled by another person. The vertical and horizontal boundaries of a dwelling unit in a multi-dwelling-unit building, condominium, or townhouse complex shall not be considered property lines separating one (1) premises from another.
- P. **Public celebration**: means Independence Day activities or any other time of public celebration designated by the municipality, such as Memorial Day or such events as sidewalk sales, parades, and street fairs which are officially authorized by the legislative body.
- Q. **Public Place**: shall mean any indoor or outdoor space or area that is open temporarily or permanently to the public or general circulation of traffic or pedestrians; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors within the Town of Essex.
- R. **Receiving Property**: The location that is receiving the sound in question.
- S. **Sample period**: shall mean 15 minutes of continuous monitoring.
- T. **Services**: shall have its usual and ordinary meaning and shall include the performance of any act done for compensation, including, but not limited to the acts of cleaning, repairing, entertaining, delivering, advising, adjusting, moving, insuring, protecting, and/or maintaining.
- U. **Solicitation or Soliciting**: shall mean asking for money or objects of value, selling, offering or exposing for sale, or trading, dealing, or trafficking in any personal property, food, merchandise, or service, either at wholesale or retail, in the town by going from house to house, business to business, or from place to place or by indiscriminately approaching individuals, businesses, or organizations, including sales by sample or for future delivery.
- V. **Solicitor**: means the person, firm or corporation, either as a principal or agent, which engages in solicitation as defined herein.

- W. **Sound measurement standards:** Sound shall be measured in accordance with standards specified by the American National Standards Institute (ANSI).
- X. **Source premises:** shall mean the premises (residential, commercial, industrial, or public) as listed in Table A that is emitting **Sound** that is crossing one (1) or more property lines and impacting the receiving property.
- Y. **Sponsor:** Any individual, business or organization with which a solicitor or peddler is economically affiliated, in relation to soliciting, in an employer-employee, master-servant, independent contractor, agency, joint venture of similar arrangement.
- Z. **Standard working day:** means Monday through Friday, 8:00 a.m. to 5:00 p.m., except weekends and holidays.
- AA. **Unreasonable Sound:** shall mean any excessive or unusually loud sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.

6.11.030 Disorderly Conduct

- A. No person in a public place shall behave in a rude or disorderly manner or use indecent, profane, or insulting language with the intent to annoy or disturb another person.
- B. No person shall make graffiti, indecent figures, letters, words or write indecent or obscene words upon a fence, building, sidewalk, or public place.
- C. No person, shall, by sound, gesture, or other means, wantonly and designedly frighten a horse in a street or other public place.
- D. No person shall throw stones or other missiles in or upon a public street, common, or other ground belonging to the municipality.

*Cross References. Breach of the Peace,
See, Disorderly Conduct 13 V.S.A. § 1026.*

6.11.040 Excessive Sound

- A. General Prohibition:
- a. It shall be unlawful for any person to make or cause to be made, assist in making or continue any excessive or unreasonable loud sound. Sound shall be deemed unreasonable when it disturbs, injures, or endangers the comfort, peace or health of a person in the immediate vicinity of the sound disturbance.
- b. It shall be considered a sound disturbance and public nuisance provided the sound source is plainly audible from the receiving property line.

B. Express Prohibitions:

- a. The following acts, which enumerations shall not be deemed to be exclusive, are declared to be sound disturbances:
 - i. Operating or permitting the use or operation of radios, television sets, musical instruments, phonographs and similar devices. The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.
 - ii. The operation or permitting the operation of any radio, stereo or other sound amplification equipment from a motor vehicle that is audible at twenty-five (25) feet from such vehicle. The term "motor vehicle" shall mean any car, truck, or motorcycle.
 - iii. Parties and other social events. Notwithstanding section (a)(i), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud sound. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud sound is sound that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premise to allow a party or other social event occurring in or about the premises to produce unreasonably loud sound. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All residents of the premises are responsible for such unreasonable sound made, each having joint and several liability.
 - iv. Machinery. The operation or permitting or directing the operation of any power equipment or machinery outdoors between the hours of 9:00 p.m. and 6:00 a.m. except in emergency situations, ex: Construction sound. The excavation, demolition, erection, construction, alteration or repair of any premises or structure between the hours of 9:00 p.m. and 6:00 a.m. except in emergency situations.
 - v. Loudspeakers, amplifiers. The use of loudspeakers or other sound amplification equipment upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or site.
 - vi. The removal of household and commercial trash by authorized commercial trash haulers utilizing mechanized conveyances within 500 feet of a residential property between the hours of 9:00 p.m. and 6:00 a.m. is prohibited.

- vii. Defect in vehicle or operation of a vehicle. The operation of an automobile or motorcycle which creates squealing, squealing of tires, loud and unnecessary grating, grinding, exploding type, rattling or other sounds.
- viii. Dogs, cats and other animals. The keeping of any dog, cat or other animal which shall become a nuisance to another person in the vicinity where such dog, cat or other animal is kept, by frequent or continued barking, howling, yelping or screaming, except as permitted at kennels or boarding facilities in accordance with Section 4.04.080.

C. Prohibitions for Residential Premises

- a. It shall be a violation of this section for anyone to create or allow the creation of sound not otherwise specified under General Provisions, in excess of the following stated limits (Table A) during the stated time periods for the sound generated on the properties being used for other than residential purposes.
- b. Sound measurements shall be made at the receiving property line.
- c. This standard shall not apply to unoccupied receiving properties.
- d. Sound level measurements shall be take with a sound level meter meeting the minimum American Standards Insitutite (ANSI) requirements for Type I or Type II accuracy, and shall have a fast response setting.
- e. Nothing in this section shall prevent the Town of Essex from imposing additional sound control measures beyond that needed to reach the limits below.

D. Prohibitions for Non-Residential Premises

- a. It shall be a violation of this section for anyone to create or allow the creation of sound not otherwise specified under General Prohibitions or Expressed Prohibitions, in excess of the sample period (15 continuous minutes) for sound generated on properties being used for other than residential purposes. Refer to Table A.
- b. Sound measurements shall be made at the property line of the receiving premises.
- c. Sampling will be conducted with a sound level instrument using sound measurement standards. (American National Standards Institute (ANSI))
- d. Nothing in this section shall prevent the Town of Essex from imposing additional sound control measures beyond that needed to reach the limits below.

E. *Table A: Allowable Sound Levels (in dB) with Time of Day Allowance*

	Residential Receiving Premises			
	Sample Period (15 mins)		Instantaneous Maximum (db)	
Source Premises	7am-10pm	10pm-7am	7am-10pm	10pm-7am
Residential	60	55	80	60
Commercial	65	60	80	60
Industrial	80	75	90	70

F. Notification by Property Owners of Rental Housing.

- a. Owners of rental housing shall be required to provide a copy of this section to a tenant at the start of the tenancy. However, the failure of an owner to provide a copy of the ordinance shall not be a defense to a violation of this section.

G. Exemptions:

- a. Sound from the following sources shall be exempt from the prohibitions specified herein:
 - i. Any person or organization that has obtained a sound waiver from the Town of Essex. (Parade, block parties, fireworks, etc.)
 - ii. All safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work, including, but not limited to, police, fire and rescue vehicle sirens.
 - iii. The repair and maintenance to the Town of Essex facilities, services, or public utilities when such work must be accomplished outside of daytime hours.
 - iv. Any construction activity that has obtained approval from the Town of Essex to occur between the hours of 9:00 p.m. and 6:00 a.m. and that is deemed to be in the best interest of public health, safety, and welfare.
 - v. Equipment for maintenance of lawn and grounds during the hours of 6:00 a.m. to 9:00 p.m. (including but not limited to lawn mowers, hedge trimmers, weed trimmers, chain saws, snow blowers and leaf blowers) assuming they are properly muffled.
 - vi. Snow removal equipment operated within the manufacturer's specifications and in proper operating condition.

- vii. Musical, recreational, and athletic events conducted by and on the site of a school or educational institution or is sponsored by the Town of Essex, state or federal government.
- viii. Events and activities conducted by or permitted by the Town of Essex. Persons operating an event or activity under authority of an entertainment permit, parade/street event permit, solid waste license, or parks special use permit shall comply with all conditions of such permits or licenses with respect to sound control issues.
- ix. Construction or repair work which must be done to address an emergency health or safety concern and that cannot be accomplished during daytime hours and is not work which includes normal maintenance and repair.
- x. Sound associated with standard agricultural operations.
- xi. Sounds created by bell, carillons, or chimes associated with specific religious observances.
- xii. The use of firearms when used for hunting in accordance with state Fish and Wildlife laws.

*Cross References. Breach of the Peace; Disturbances.
See Noise in the nighttime 13 V.S.A. § 1022;
See Disorderly conduct 13 V.S.A. § 1026.*

6.11.050 Public Urination / Defecation

- A. No person shall urinate or defecate on any street, sidewalk, parking lot, recreational path, in a park or other public place.

6.11.060 Public Nudity

- A. No person shall knowingly or intentionally in a public place:
 - a. Engage in sexual intercourse.
 - b. Appear in a state of nudity.
 - c. Fondle his/her/their genitals.
 - d. Fondle the genitals of another person.
 - e. Fondle his/her/their breasts.
 - f. Fondle the breasts of another person.

- B. No person who owns, leases or controls property shall knowingly allow any person to engage in the conduct described in subsection (A) of this section at any time such property is open to the public.

Cross References. Obscenity.

See Obscenity 13 V.S.A. § 2801 et seq.

6.11.070 Soliciting General Provisions

- A. **Purposes:** To regulate the activities of solicitors and peddlers within the Town of Essex for the protection of the public health, safety, welfare, and convenience, and to protect the residents of the Town of Essex from unscrupulous, fraudulent, and immoral business practices.
- B. **Exclusions :** This ordinance shall not be construed as impairing the rights conferred by 24 V.S.A. Section 2181. (Sale of Produce. Owners and renters of land shall have the right to vend or sell all products of such land without obtaining licenses from such towns).

6.11.080 Soliciting - Regulations

- A. No solicitor shall conduct business without first obtaining a permit from the Town of Essex Clerk office.
 - a. The following information shall be gathered:
 - i. The full name, address and telephone of the group, business or organization.
 - ii. The full name, address and telephone of a contact person for the group, business or organization.
 - iii. The purpose of the solicitations to be conducted in the Town of Essex.
 - iv. The description of services, food or merchandise being offered for sale.
 - v. A list of the full names, contact information and identification of the persons acting on behalf of the group, business or organization and the dates and times during which they will be soliciting in the municipality.
 - vi. The license plate and description of the vehicle used in transporting persons who will be soliciting.
- B. Persons acting on behalf of the group, business or organization qualifying under this subsection shall always during the solicitations wear identification clearly showing their affiliation with said group or organization.
- C. **Sound.** No solicitor or peddler shall shout, cry out, or use any sound-making device (including horns, bells, loudspeakers, sound amplifying systems) from the town's streets, sidewalks, or other public property in a manner which unreasonably disturbs the peace or constitutes a public nuisance.
- D. **Offensive Practices.** No solicitor or peddler shall physically accost, restrain or otherwise interfere with the free movement of any individual during the course of the solicitor's or peddler's activities.

- E. Conduct on Private Property. No solicitor or peddler shall enter upon private property which contains a sign or other notice that soliciting is prohibited. Solicitors and peddlers shall promptly depart from private property upon the request of the owner or resident thereof.
- F. Hours: No solicitor or peddler shall solicit between the hours of 9 p.m. and 7 a.m.

6.11.090 Soliciting – Violations

- A. Failure to comply with any of the above requirements, or the following, shall be a violation of this chapter:
 - a. Failure to obtain a permit.
 - b. Parking regulations as contained Title 7.
 - c. Shall not, by causing a congregation of people, obstruct the passage along any sidewalk, street, alley or parking lot, annoy, injure or endanger the public safety, health, or comfort; nor unreasonably disturb the peace.
 - d. Shall not sell on the street side of the vehicle or conveyance.
 - e. Shall comply will all clauses and regulations of State of Vermont Department of Health regarding food handling.
 - f. Shall not misrepresent facts to the town clerk / police department or to the public.
 - g. Shall not sell, operate or supply any good or service unless properly licensed by the state and/or county.
 - h. Shall not shout, cry out, or use sound making devices (including horns, whistles, bells, loudspeakers sound amplification systems).
 - i. Shall not physically accost, restrain or otherwise interfere with the free movement of any individual.
 - j. Shall not enter upon private property that contains a sign or notice that soliciting is prohibited. Solicitors shall also promptly leave when requested by the owner or resident.
 - k. Shall comply with all requirements enumerated in this chapter.
- B. Violations will be issued in a manner described in 6.11.160 of this chapter.
- C. Violations may be cause for the Town Clerk to revoke the permit and privileges to solicit.

6.11.100 Aggressive panhandling prohibited

- A. The Town of Essex finds that aggressive begging, panhandling, or solicitation negatively affects the following significant governmental interests set forth herein. This law is intended to promote these governmental interests and combat the negative effects of aggressive begging, panhandling or solicitation. It is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. The following are to be obtained by the enactment of this ordinance:
 - a. Protection of citizens from physical threats or injury and from damage to property.
 - b. Prevention of harassment and intimidation of members of the public.
 - c. Prevention of violent crime.
 - d. Traffic control and public safety.

- e. Orderly movement of traffic and pedestrians.
- f. Provision and maintenance of a safe, aesthetically attractive environment in areas designed to attract tourist revenue.

B. It shall be unlawful for any person to panhandle in an aggressive manner within the Town of Essex.

6.11.110 Defacing Buildings, Structures and Signs

- A. No person shall apply or cause to be applied any paint, varnish, lead, crayon, wax, ink, dye or other indelible substance, nor shall any person carve, chisel or write any figure or letter on the exterior or interior walls or on the windows of any building or structure or deface or any sign or signal without having authority from the owner or authorized agent.

*Cross References. Trespass and Malicious Injuries to Property.
See, Unlawful Mischief 13 V.S.A. § 3701;
See, Interference with devices or signals 23 V.S.A. § 1028.*

6.11.120 Alcohol

- A. No person shall have constructive or actual possession of an open beverage container in any public place or in any motor vehicle located in a public place.
- B. No person shall consume the contents of an open beverage container in any public place or in any motor vehicle in a public place.
- C. Notwithstanding subsections (1) to (2) hereof, it shall not be unlawful to possess an open beverage container or to consume the contents where permits have been issued by the Town of Essex.
- D. Violations of this section are punishable by the penalties listed below. However, the penalty shall be waived upon the successful completion of a restorative or reparative justice program through the Community Justice Center.

*Cross References. Operation of Vehicles,
See, Open Container 23 V.S.A. § 1134(a)*

6.11.130 Open Fires

- A. Burning materials other than brush, grass, natural unpainted, unstained, untreated dimension lumber and wood products is not allowed in the Town of Essex.
- B. Materials such as tires, solid waste, composite materials, treated, painted or stained, pressure treated materials, other like materials and/or trash are specifically prohibited.

- C. Residents wishing to burn brush, grass, natural unpainted, unstained, untreated dimension lumber, wood products shall obtain a permit online using the manner (online or in person) specified by the Essex Fire Department prior to burning. The times of burning will be allowed by the fire warden or fire chief.
- D. Individuals with a valid permit are responsible for control of the fire at all times preventing its escape from their property. Fires must have extinguishment resource within twenty (20) feet of the fire. Fires must be ten (10) feet away from a structure and must be built where they will not escape.
- E. Cooking or outdoor fireplaces are allowed with proper fuels to include charcoal, firewood, liquid propane (LP) or natural gas.
- F. This prohibition shall not include training exercises by the Essex Junction Fire and Essex Town Fire Departments. The Legislative body, with the concurrence of the Essex Town Fire Chief, may approve a burn permit for a community event provided that the Essex Town Fire Department is present.

6.11.140 Fireworks

- A. Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership or corporation to offer for sale, expose for sale, sell at retail or wholesale, possess, use or explode any fireworks; and it shall also be unlawful for any person, firm, co-partnership or corporation to transport fireworks except in interstate commerce.

*Cross References. Internal Security and Public Safety,
See, Fireworks, 20 V.S.A. § 3132 et seq.*

6.11.150 Enforcement

- A. This is a civil ordinance and shall be enforced in accordance with 24 V.S.A. § 1974a et seq. and 1977.

6.11.160 Violations – Penalties

- A. Any person in violation of any provisions of this chapter shall be considered a civil violation. If any violation continues, each day shall constitute a new violation. Offenses shall be counted on a calendar year basis.
 - a. Waiver Fees

An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First Offense	\$50.00
Second Offense	\$100.00
Third Offense	\$200.00
Fourth and subsequent Offense	\$400.00

- *Fire calls only - fine plus fire department expense up to \$800.00*

b. Civil Penalties

An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First Offense	\$100.00
Second Offense	\$200.00
Third Offense	\$400.00
Fourth and subsequent Offense	\$800.00

- *Fire calls only - fine plus fire department expense up to \$800.00.*

c. Fire Department expenses

- i. Fire Engine \$200.00 per hour including crew.
- ii. Tanker \$125.00 per hour including crew.
- iii. Utility vehicles \$75.00 per hour including crew.

B. In addition to the enforcement procedures available before the Judicial Bureau, the Manager or their designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

6.11.170 Severability

A. If any portion of this ordinance and any amendments made hereto are held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this ordinance shall be amended this ordinance shall be deemed to refer to such statute as amended.