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To: Planning and Zoning Commission
From: Robin Newton, AICP, CZEO Town Planner
Date: September 5, 2024
RE: Noise Regulations Section VI.B

This text amendment is to remove Section VI.B Noise Regulations pursuant to the CT Appellate Court Case Berlin Batting Cages vs. Zoning Commission of Berlin (76 Conn. App. 199). This information was previously shared with the Commission as part of a Court Case settlement discussion in September of last year. The findings in this Appellate Court case which is binding were as follows:

"The commission relied in part on § X (D)(3) of the regulations as a basis for denying the site plan applications. That regulation, listed under § X, entitled "Environmental and Related Regulations," provides: "Noise — Any noise emitted outside the property from which it originates shall comply with the provisions of Sections 22a-69-1 to 22a-69-7.4 of the Regulations of the Connecticut Department of Environmental Protection ('Control of Noise')." The court concluded that this regulation was ineffective because it conflicted with state statutes governing noise pollution control. We agree."

"The legislature has provided, in unambiguous language, that "[n]o ordinance shall be effective until such ordinance has been approved by the commissioner. . . ." General Statutes § 22a-73 (c). The commission concedes that it did not obtain such approval. It acknowledges § 22a-67 et seq., but posits that General Statutes § 8-2 empowered the commission to adopt § X (D)(3) of the regulations. Specifically, the commission argues that "[t]he type of regulation provided for in chapter 442 of the General Statutes [titled 'Noise Pollution Control'], by ordinance, is entirely different from the land use regulation adopted by the Berlin planning and zoning commission. Indeed, § X (D)(3) of the zoning regulations applies only to site plan review while an ordinance adopted pursuant to chapter 442 would regulate noise emissions in all situations and not merely when a site plan is under review."

"We reject the commission's argument for several reasons. Most importantly, we read chapter 442, § 22a-67 et seq., as a comprehensive scheme for state and local efforts aimed at controlling noise pollution. Second, § 8-2, which grants local zoning commissions the authority to promulgate regulations, does not govern noise pollution laws. In fact, § 8-2, which sets forth in nearly exhaustive detail the types of regulations that local zoning commissions may promulgate, does not even mention noise or noise pollution. Although § 8-2 (a) does provide that regulations "shall be designed . . . to promote health and the general welfare," we do not read that language in the enabling statute to necessarily confer authority in the zoning commission to promulgate regulations concerning noise pollution and, moreover, we certainly do not read that language to

contradict the legislature's specific enactment in § 22a-67 et seq. In construing statutes, we are mindful that "specific terms covering the given subject matter will prevail over other general language of the same or another statute which might otherwise prove controlling." (Internal quotation marks omitted.) Southern New England Telephone Co. v. Dept. of Public Utility Control, 261 Conn. 1, 23, 803 A.2d 879 (2002). "

This case established that Zoning Regulations may not regulate noise as it is not authorized under the Zoning enabling statute and the statutes pertaining to noise control require the regulatory mechanism to be by ordinance. As such the Section VI.B Noise Regulations are being removed from the Zoning Regulations as they invalidated by the Court case.