

APR 12 2011

ORDINANCE NO. 56A-17BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15, OFFENSES - MISCELLANEOUS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 15-20, NOISES PROHIBITED IN RESIDENTIAL AREAS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 15, Offenses - Miscellaneous, is hereby amended and reordained by amending Section 15-20, Noise regulations.

Chapter 15. Offenses - Miscellaneous

Section 15-20. ~~Noises prohibited in residential areas~~ regulations.

~~It shall be unlawful for any person to, within the limits of the county, make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise on any premises of such a character as to either disturb, injure or endanger the quiet, comfort, repose, health, peace or safety of others; provided, that this section shall apply only to residential zoned areas and all uses provided for in such a zoning classification.~~

~~The following acts, among others, are declared to be loud, disturbing and unnecessary noise in violation of this section, but such enumeration shall not be deemed to be exclusive:~~

- ~~(a) *Horns, signaling devices, etc.*—The sounding of any horn or signaling device on any automobile, motorcycle, bicycle or other vehicle on any street or public place of the county, except as a danger warning; the creation by means of any signaling device of any unreasonable loud or harsh sound; and the sounding of any signaling device for an unnecessary and unreasonable period of time.~~
- ~~(b) *Radios, phonographs, etc.*—The using, operating or permitting to be played, used or operated, any radio receiving set, tape recorder, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument,~~

~~phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.~~

- ~~(c) *Loudspeakers, amplifiers for advertising.*—The using, operating or permitting the playing, using or operating of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building, structure or vehicle.~~
- ~~(d) *Animals.*—The keeping of any animal which, by causing frequent or continued noise, shall disturb the comfort or repose of any person in the vicinity.~~
- ~~(e) *Exhausts.*—The discharge into open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.~~
- ~~(f) *Defects in vehicle.*—The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.~~
- ~~(g) *Hawkers.*—The shouting and crying of peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood.~~
- ~~(h) *Musical instruments.*—The use of any drums or other musical instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.~~

~~Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding \$100.00, or be imprisoned in jail for a period not exceeding ten days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.~~

(A) Title. *This section shall be known and may be cited as the “James City County, Virginia, Noise Ordinance” or simply the “Noise Ordinance.”*

(B) Findings. *The board of supervisors hereby finds and declares that excessive noise is a serious hazard to the public health, welfare, peace and safety and the quality of life. It is, therefore, the policy of the county and the purpose of this section to prevent such excessive noise.*

(C) Definitions. *The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where context clearly indicates a different meaning:*

Consecutive means following one after another without interruption.

Dwelling unit means one or more rooms in a dwelling designed for living or sleeping purposes, and having at least one kitchen.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier, loudspeaker, bullhorn, or any other machine or device, including a motor vehicle, for producing, reproducing or amplification of sound.

Motor vehicle means every vehicle defined as a motor vehicle by section 46.2-100 of the Code of Virginia (1950), as amended.

Noise means any sound which may cause or tend to cause an adverse psychological or physiological effect on humans.

Officer means any employee or agent designated by the county administrator to enforce the provisions of this section.

Permit means any permit issued or approved by the board of supervisors or county staff which regulates or permits noise, including but not limited to a temporary noise permit, fireworks permit, or outdoor gathering permit.

Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties. Specific words or phrases need not be discernable. The detection of bass reverberations is sufficient to constitute a plainly audible sound.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristics of such sound, including duration, intensity and frequency.

(D) Temporary permits.

(1) Requirements and procedures. The county administrator is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity. The county administrator may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this subsection shall contain all conditions upon which the permit has been granted, including the period of time for which the permit has been granted.

(2) Violation of temporary permit. Failure to comply with any condition of a temporary permit issued pursuant to this subsection shall constitute a violation and shall result in enforcement procedures and penalties as set forth in this section.

(3) Revocation of temporary permit. Any temporary permit may be immediately revoked if the county administrator finds that an emergency condition exists involving serious danger to the public health, safety, or welfare; if the permit holder failed to disclose or misrepresented material information in the permit application or in the permit application process; or that there was a failure to comply with any condition of a particular temporary permit.

(E) Specific prohibitions.

(1) Residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts. The following acts, among others, are declared to be plainly audible noise in violation of this section, but such enumeration shall not be deemed to be exclusive:

(a) Animals. The keeping of any animal, which shall be the source of any noise or sound which is plainly audible across a residential property line or through the partitions common to two dwelling units between the hours of 11:00 p.m. and 7:00 a.m.

(b) Construction and landscaping activities. The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 6:30 a.m. except when operated in the course of emergency work or as authorized by the county administrator.

(c) Defects in motor vehicles. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create excessive grating, grinding, rattling or other noise which is plainly audible at a distance of 50 feet from its source.

(d) Exhausts. The discharge into open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive excessive noises therefrom.

(e) Horns, signaling devices, etc. The sounding of any horn or signaling device on any motor vehicle, motorcycle, bicycle, or other vehicle on any street or public place of the county, continuously or intermittently for more than ten consecutive seconds, except as a danger warning or as permitted by state code.

(f) Instruments, machines, or devices. The using, operating or permitting to be played, used or operated, any instrument, machine, or device for the producing or reproducing of sound in such a manner where the sound is plainly audible to any person other than the player(s) or operator(s) of the instrument, machine, or device and those who are voluntarily listening to the sound and is plainly audible and discernable at a distance of 50 feet or more from the source of the sound or through partitions common to two dwelling units; provided, however that the provisions of this subsection shall not apply to any event sponsored by the county, state, or federal government, or for which the county has granted a permit. The operation of any such instrument, machine, or device between the hours of 11:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of 50 feet from the source of the sound or through partitions common to two dwelling units shall be prima facie evidence of a violation of this section.

(g) Loudspeakers, amplifiers for advertising. The using operating or permitting the playing, using or operating of any instrument, machine, or device for the producing or reproducing of sound upon the public streets for the purpose of advertising or attracting the attention of the public to any building, structure or vehicle.

(h) Peddlers. The shouting and crying of peddlers and vendors, shall be prohibited if the sound is reproduced continuously or intermittently for more than ten consecutive seconds and is plainly audible at a distance of 50 feet from its source.

(2) Mixed use zoned districts. *The following act, among others, is declared to be plainly audible noise in violation of this section, but such enumeration shall not be deemed to be exclusive:*

(α) Amplified sound at restaurants, bars, coffee shops, cafes, etc. The using, operating, or permitting the playing, using, or operating of any instrument, machine, or device for the producing or reproducing of sound which is plainly audible at a distance of 50 feet from its source between the hours of 12:00a.m. and 7:00a.m.

(F) General prohibitions. *In addition to, and not in limitation of the Specific Prohibitions above, the following is declared to be plainly audible noise in violation of this section:*

(1) Residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts. *No person shall cause or permit to be caused any noise which is plainly audible across a residential property line or through the partitions common to two dwelling units between the hours of 11:00 p.m. and 7:00 a.m.*

(2) Uses adjacent to residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts. *No person shall cause or permit to be caused any noise which is plainly audible at a distance of 100 feet from its source between the hours of 9:00 p.m. and 7:00 a.m.*

(G) Exceptions. *No provisions of this article shall apply to (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the county, state, or federal government; (4) activities authorized by permit; (5) theme parks and/or outdoor centers of amusement; (6) noise necessarily or directly related to a use or activity approved by the county; or (7) activities for which the regulation of noise has been preempted by county, state, or federal law.*

(H) Administration and enforcement. *This section shall be administered and enforced by the county administrator.*

(I) Procedures.

(1) Warnings.

(a) Oral warnings. *If an officer observes a violation of this section without a complaint having been made, the officer may first issue one oral courtesy warning per day and inform the violator that the violator will be subject to penalties if the violation continues.*

(b) Written warnings. An officer shall first issue a written warning to immediately cease the violation prior to issuing a notice of violation unless one written warning has been issued within 180 days preceding the date of violation. The written warning shall be substantially in the same form as the notice of violation. Failure to correct the violation within 15 minutes of the issuance of a written or oral warning shall result in the issuance of a notice of violation pursuant to this section.

(2) Notice of violation.

(a) If an officer determines that a violation of this chapter has occurred, the officer may cause a notice of the violation to be served on any or all persons committing, permitting, assisting in or attempting such violation.

(b) The notice shall provide that the person charged with a violation may elect to make an appearance in person, or in writing by mail, to the treasurer of the county, and admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time period fixed in the notice.

(c) If a person charged with a violation does not elect to admit liability or plead no contest, and abate the violation, within the time period fixed in the notice, the violation shall be tried in general district court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law. In the event the violation exceeds the jurisdictional limits of the general district court, the violation shall be tried in circuit court.

(d) A finding of admission of liability or a plea of no contest to a civil violation shall not be deemed a criminal violation for any purpose.

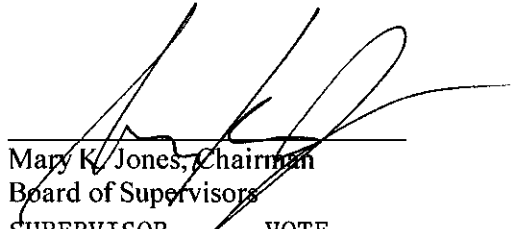
(J) Civil Penalties. *Any person who commits, permits, assists in or attempts any violation of this section, whether by act or omission, shall be liable for a civil penalty. All payments of these civil penalties are to be paid to the treasurer of the county. The penalties are as follows:*

First violation. The first violation of this section shall be punished by a civil penalty in the amount of \$50.00.

Second violation. The second violation of this section by the same person, property, or set of operative facts within 180 days of the first violation of this section shall be punished by a civil penalty in the amount of \$100.00.

Third violation. The third violation of this section by the same person, property, or set of operative facts within 180 days of the second violation of this section shall be punished by a civil penalty in the amount of \$500.00.

Additional violations. The fourth, or subsequent, violation of this section by the same person, property, or set of operative facts within 180 days of the third, or previous, violation of this section shall be guilty of a Class 4 misdemeanor. Additionally, the county may apply to the circuit court to enjoin continuing violations of this section.



Mary K. Jones, Chairman
Board of Supervisors

<u>SUPERVISOR</u>	<u>VOTE</u>
KENNEDY	AYE
GOODSON	AYE
MCGLENNON	AYE
ICENHOUR	AYE
JONES	AYE

ATTEST:



Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2011.