

# TOWN OF ONLEY

## ORDINANCE No. 002-07

APRIL 2007

### AN ORDINANCE TO CONTROL EXCESSIVE NOISE IN THE TOWN OF ONLEY

#### Sec.1. Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*ANSI* means the American Standards Institute or its successor bodies.

*Daytime hours* means 7:00 a.m. to 12:00 a.m. midnight, local time

*dB (A)* is the abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third octave band data.

*Decibel (dB)* means a unit of measure, on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this ordinance, 20 micropascals shall be the standard reference pressure.

*Nighttime hours* mean 12:00 a.m. midnight of one day through 7:00 a.m.

*Noise* means the intensity, frequency, duration, or character of sound.

*Person, firm, or entity* means any individual, group of individuals, lessee, lessors, guest, licensee, firm partnership, voluntary association, or private or public corporation, specifically including any person in charge of or supervising any property owned or possessed by any such person, firm, or entity.

*Sound-level* means, in decibels, the weighted sound-pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971, Specifications for Sound-Level Meters. The terms "sound level" and "noise level" are synonymous.

*Sound-level meter* means an instrument meeting ANSI SI.4, 1971, Specifications for Sound-Level Meters, comprising a microphone, and amplifier, an output meter, and

frequency weighting networks, that is used for the measurement of sound-pressure levels in a specified manner.

*Source* means any person or property, real or personal, contributing to noise.

## **Sec. 2. Authority**

This article is adopted pursuant to the authority contained in the Charter and Code of Virginia, § 15.2-1102.

## **Sec. 3. Exemptions for nonprofit organizations**

This article shall not apply to any temporary function or activity and the noise emanating therefrom conducted by any nonprofit organization if the public health and safety will not be impaired by the function or activity.

## **Sec. 4. Exemptions for governmental functions**

This article shall not apply to the use of any machines or the noise emanating from the use thereof when operated or utilized by the Town while performing municipal functions, such activities and noises being expressly exempted from this article.

## **Sec. 5. Exemptions for use of grass cutters, tillers, or other similar mechanical devices**

This article shall not apply to the operation of any grass cutter, tiller, or other similar mechanical device utilizing a gasoline or diesel powered engine creating an emanating sound plainly audible beyond the property line of the property at which the device is being utilized between the hours of 7:00 a.m. and 9:00 p.m., Monday through Sunday, inclusive.

## **Sec. 6. Measurement of noises**

(a) Wherever in this article any noise level is prohibited by or is to be determined by decibel level, the measurement of such emanating sound shall be conducted at the nearest corner of the main structure on the real estate owned, possessed, or being lawfully used by any affected party who makes complaint thereof. Such measurement shall be conducted at a height of at least three feet above ground and at least three feet from any reflecting surface. Any response, using the A-weighting network, exceeds the specified level.

(b) Measurement equipment shall be sound-level meters complying with ANSI SI.4, 1983, American National Standard Specifications for Sound-Level Meters, ANSI SI.4a, 1985, and amendment to ANSI SI. 4 or IEC 651-1979, "Sound Level Meters", of at least type 2 quality and sensitivity, comprising a microphone, amplifier,

output meter, and frequency weighting network. The meter operation shall be as prescribed by the equipment manufacturer, from time to time.

(c) Measurement equipment operators shall be officers of the police department who have been trained in the proper use of the sound-level meter by the equipment manufacturer. Representatives of the manufacturer may also train those department officers who are certified instructors, as designated by the Commonwealth Department of Criminal Justice Services, who may train other officers within the department.

#### **Sec. 7. Cease and desist**

No prosecution shall be initiated under this article unless and until there has been a complaint by any affected person, firm, or entity, excepting noises emanated from publicly used and/or owned property and as described in Sec. 11 (3) (b) and (4) of this ordinance, and such person, firm, or entity has failed to cease and desist such unlawful noise. For the purposes of this section, any such warning to any such violation of this article and such person, firm, or entity shall be continuous and sufficient for the 30-day period then following as to the same noise or the same type or similar or like noise, and no further warning shall be required during such period.

#### **Sec. 8. Violation and penalties**

Any violation of this article shall constitute a misdemeanor and shall be punishable by the confinement in jail for a period not to exceed 12 months and/or a fine of not more than \$500.00.

#### **Sec. 9. Injunctive relief**

In addition to any criminal penalty for the violation of this article, the mayor is further authorized on behalf of the town to initiate and seek injunctive relief in the circuit court of the county to prohibit any such unlawful noises as provided for in this article.

#### **Sec. 10. Unreasonably loud noises prohibited**

(a) It shall be unlawful for any person to make, continue, or cause to be made any unreasonably loud noise or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the corporate limits.

(b) It shall be unlawful for any person, firm, or entity to knowingly permit the making of any such unreasonably loud noise which annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of others upon any premises owned, possessed, or under control of any such person, firm, or entity within the corporate limits.

#### **Sec.11. Certain prohibited noises enumerated**

The following act and/or noises are declared to create and/or constitute unreasonably loud noises prohibited by this ordinance, and it is expressly provided that such enumeration shall not be exclusive, and the failure to enumerate a specific act and/or noise shall not be deemed to exclude any such act and/or noise from this ordinance:

(1) *Generally, district levels.*

The making of any noise at a sound/noise level exceeding that level permitted in decibels in the applicable zoning district of the Town within the specified period, measured as follows, excepting such noises as are either expressed regulated by other sections of this article or exempted:

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
<i>Residential R-1</i>	<b>65</b>	<b>55</b>
<i>Residential R-2</i>	<b>65</b>	<b>55</b>
<i>Business B-G</i>	<b>70</b>	<b>60</b>
<i>Industrial M-1</i>	<b>70</b>	<b>60</b>

(2) *Horns, signaling devices, etc.*

- A. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any town street, way, avenue or alley, or other public place, except danger warning;
- B. The creation by means of any such horn or signaling device of any unreasonably loud or harsh sound;
- C. The sounding of any such horn or signaling device for any unnecessary or unreasonable length of time;
- D. The use of any horn or signaling device operated by engine exhaust; and
- E. The use of any horn or signaling device when traffic is for any reason stopped and such horn or signaling device is not being reasonably utilized as a danger warning.

(3) *Radios, phonographs, musical instruments, loudspeakers, etc.*

- A. Use of, operation of, or permitting to be played, used, or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound on private property that is above the permitted decibel level as measured in a zoning district as specified in this ordinance;

B. Use of, operation of, or permitting to be played, used, or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing of sound on the public streets or other public ways in such a manner as is unreasonably loud so as to disturb the peace, quiet, and comfort of other persons or a louder volume than is necessary for the convenient hearing of the individual carrying the instrument, machine, or device or those individuals immediately adjacent thereto and who are voluntary listeners thereto;

C. Using, operating, or permitting to be played, used, or operated any radio, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any location.

(4) *Yelling, shouting, hooting, whistling, or singing.*

Yelling, shouting, hooting, whistling, or singing on the public streets or public areas or from private property at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any dwelling, motel, hotel, residence, business, or in the vicinity of any such noise.

(5) *Animals, birds, etc.*

The maintaining of any animal or bird which, by causing frequent or long noise, shall disturb the comfort or repose of any person in the vicinity.

(6) *Steam whistles.*

The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper town authorities.

(7) *Exhausts.*

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

(8) *Defect in vehicle or equipment.*

The operation of any automobile, motorcycle, or vehicle so out of repair, so equipped, or in such a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.

(9) *Loading or off-loading of vehicle or vessel.*

The loading or off-loading of any vehicle creating loud and disturbing noise between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between 6:00 p.m. and 7:00 a.m. on the weekends, with the exception of the loading or off-loading of perishable products, and except when a permit is granted by the mayor, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the mayor.

(10) *Schools, courts, churches, hospitals, etc.*

The creation of excessive noise on any street adjacent to any school, institution of learning, church, hospital, clinic, or public building, when such is in use, which unreasonably interferes with the working of such institution or building, provided that conspicuous signs are displayed on such streets indicating that such a school, church, hospital, clinic, or other public building.

(11) *Hawkers, peddlers, etc.*

The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

**Sec. 11. Construction noises.**

(a) The erection, excavation, demolition, alteration, or repair of any building or other improvement, other than that between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, inclusive, is prohibited, except when a permit is granted by the mayor, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the mayor.

(b) The making of any noises at a sound/noise level exceeding 89 decibels from any construction site, as measured as provided in this article, is prohibited at any time.

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John Willis Kellam, Mayor