

TOWN OF ONLEY, VIRGINIA
ORDINANCE 002-010
August 2, 2010

**AN ORDINANCE TO REPEAL TOWN ORDINANCE 002-07 AND TO ENACT AN
ORDINANCE REGARDING NOISE TO CONFORM TO STATE LAW**

WHEREAS, excessive sound vibration and inadequately controlled noise are serious hazards to the public health, safety and welfare, and a source of annoyance to the populace;

WHEREAS, the residents of and visitors to the Town are entitled to an environment free from excessive sound vibration and inadequately controlled noise that may endanger their health or welfare, or degrade their quality of life, comfort, repose or peace;

WHEREAS, it is the policy of the Town to prevent excessive noise that may endanger the health or welfare, or degrade the quality of life, comfort, repose or peace of residents and visitors;
and

WHEREAS, a recent decision by the Supreme Court of Virginia has made revisions to the Town's noise ordinance necessary to more precisely describe excessive noise that is prohibited.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Onley:

1. That Ordinance 002-07 of the Town is repealed and the following is adopted:

Section 1. Declaration of policy.

At certain levels, noise can be detrimental to the health, welfare, safety and quality of life of inhabitants of the town, and in the public interest noise should be restricted. Mass outdoor social gatherings, using amplified sound, in this town, unless subjected to coordination and planning efforts with the town, create excessive noise and related adverse effects for the citizens of this town. It is, therefore, the policy of the town to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful and annoying

noises from all sources subject to its police power.

Section 2. Definitions.

The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

"Excessive noise " means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. Specific examples of prohibited excessive noise are set forth in section 4 of this ordinance.

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

"Owner" means the person owning, controlling, or possessing land, premises, or personalty.

"Person" means any individual, partnership, corporation, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, city, or local government, or any agency or institution thereof.

"Public property" means any real property owned or controlled by the town or any other governmental entity or institution.

"Plainly audible" means any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley.

"Real property boundary" means the property line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by

another person.

"Residential" refers to single-unit, two-unit, and multi-unit dwellings, and residential areas of planned residential zoning district classifications, as set out in the zoning ordinance of the Town of Onley, as amended.

"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, and which propagates at a finite speed. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

"Sound amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. This term shall not include warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles used only for traffic safety purposes.

"Sponsor" means a person or persons who organizes, supports, specifically benefits from, or is in charge of a mass outdoor social gathering.

"Town Mayor" means the town mayor or the chief of police, or their respective designees.

Section 3. Excessive noise — Punishments.

Any person violating any of the provisions of this chapter shall be deemed guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars (\$300.00) for the first offense, five hundred dollars (\$500.00) for the second offense within a twelve (12) month period, and one thousand dollars (\$1,000.00) for any subsequent offense within the same twelve (12) month period. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as

such hereunder.

Section 4. Same-Specific prohibitions.

Subject to the exceptions provided in section 5, any of the following acts, or the causing or permitting thereof, is declared to be excessive noise, constituting a Class 2 misdemeanor and a public nuisance:

(a) Radios, television sets, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device:

(1) In such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building; or

(2) In such a manner as to be plainly audible at a distance of fifty (50) feet or more from the building in which it is located; or

(3) When the sound is plainly audible at a distance of fifty (50) feet or more from its source.

(b) Loudspeakers, public address systems and sound trucks. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom for any purpose between the hours of 10:00 p.m. and 8:00 a.m. in such a manner as to permit sound to be heard across a residential real property boundary, or through partitions common to two (2) dwelling units within a building.

(c) Horns, whistles, etc. Sounding or permitting the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public

property, except as a warning of danger.

(d) Explosive, fireworks and similar devices. Using or firing any explosives, fireworks or similar devices which create impulsive sound in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building, or on any public right-of-way or public property, in either case between the hours of 10:00 p.m. and 8:00 a.m. An exception to the hours limitation of this subsection may be granted by town council through a fireworks permit.

(e) Yelling, shouting, etc. Yelling, shouting, whistling or singing between the hours of 10:00 p.m. and 8:00 a.m. in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building.

(f) Schools, public buildings, places of worship, and hospitals. The creation of any noise on the grounds of any school, court, public building, place of worship, or hospital in a manner that is plainly audible within such school, court, public building, place of worship or hospital and interferes with the operation of the institution.

(g) Vehicles. Operation of a motor vehicle or operation of a motorcycle within the town that creates mechanical or exhaust noise that is plainly audible at a distance of two hundred (200) feet or more from the vehicle. Operation of sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of one hundred (100) feet from the vehicle.

(h) Defective vehicles. Operation of a motor vehicle or motorcycle so out of repair as to create mechanical or exhaust noise that is plainly audible at a distance of one hundred

(100) feet from the vehicle.

(i) Construction. The erection, including excavation, demolition, alteration, or repair of any building or improvement between the hours of 7:00 p.m. and 7:00 a.m., except in the case of emergency under a permit granted by the town mayor. In considering the granting, conditioning, or denial of the permit, the town mayor shall be guided by the following standards: (i) nature of the emergency; (ii) proposed extended hours of operation; (iii) duration of period of requested extended hours; (iv) character of the area surrounding the construction site; and (v) number of residential units which would be impacted by the extended hours of construction.

(j) Pneumatic hammer, chain saw, etc. The operation between the hours of 7:00 p.m. and 7:00 a.m. of any chain saw, pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance.

(1) Animals. The owning, keeping, or possessing of any animal or animals which frequently or habitually howl, bark, meow, squawk in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building. This subsection shall not apply to any bona fide agricultural activity.

(m) Large party public nuisance. A gathering of ten (10) or more people where the gathering is not contained within a structure, but spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces, which creates excessive noise as prohibited by this ordinance.

(n) Commercial vehicle and trash collection vehicle operation. The operation of a

commercial vehicle or trash collection vehicle between the hours of *10:00 p.m. and 7:00 a.m.*, in such a manner as to be plainly audible at any residence one hundred (100) or more yards away.

Section 5. Same-Exceptions.

Sections 3 and 4 shall have no application to any sound generated by any of the following:

- (1) Sound which is necessary for the protection or preservation of property or the health, safety, life or limb of any person.
- (2) Public speaking and public assembly activities conducted on any public right-of-way or public property.
- (3) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- (4) Parades, fireworks displays, school-related activities, and other such public special events or public activities. Activities on or in municipal, county, state, United States, or school athletic facilities, or on or in publicly owned property and facilities.
- (5) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm.
- (6) Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.
- (7) Locomotives and other railroad equipment, and aircraft.

(8) The striking of clocks.

(10) Military activities of the Commonwealth of Virginia or of the United States of America.

(11) Household tools, **and** lawnmowers, and other lawn care equipment with manufacturer's recommended mufflers installed, between 8:00 a.m. and 10:00 p.m.

(12) Agricultural activities.

(13) Lawful discharge of firearms.

Section 6. Sound amplifying equipment—Registration.

(a) Except as provided in section 5 of this chapter, no person shall use or cause to be used sound amplifying equipment in or over the town, unless such equipment is first registered with the town. Application for such registration shall be filed with the town mayor at least 48 hours in advance of the use, and shall state the following, unless the element would not be applicable:

(1) The name and address of the applicant.

(2) The address of the place of business of the applicant.

(3) The license number of any sound truck, or federal registration number of any aircraft, to be used by the applicant.

(4) The name and address of the person who owns the sound amplifying equipment.

(5) The name and address of the person having direct charge of the sound amplifying equipment.

(6) The names and addresses of all persons who will use the sound amplifying equipment.

(7) The location in the town in which sound amplifying equipment will be employed.

(8) The proposed hours of operation, which shall not begin before 10:30 a.m. or extend past 8:00 p.m. of any day.

(9) The proposed dates of operation.

(10) A general description of sound amplifying equipment to be used.

(b) The town mayor shall return to the applicant for registration under this section one copy of a complete application filed pursuant to subsection (a). This copy shall be considered as a certificate of registration, shall be filed in the office of the town clerk, shall be in the possession of the person operating the sound amplifying equipment, and shall be promptly displayed and shown to any police officer of the town upon request.

(c) In case of an emergency, or other circumstance calling for the immediate use of sound amplifying equipment, so that the 48-hour deadline set out in subsection (a) cannot be met, the town mayor may waive the deadline using the following standards as applicable: the intensity or immediacy of the emergency or circumstance; lack of alternate means of applicant's accomplishing the same goals by complying with the deadline; and avoidance of nullifying the deadline by a repeated course of conduct. The waiver shall be in writing, shall address these standards as applicable, and shall be filed in the office of the town clerk.

Section 7. Reserved.

Section 8. Other enforcement.

(a) Instead of the criminal enforcement of this chapter, the town may bring a suit for injunction, abatement, or other appropriate civil relief to remedy, correct, or abate excessive noise.

(b) Citizens of the town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in § 48-1, et seq., Code of Virginia (1950), as amended, or any other legal civil or criminal remedies that may be available to them.

2. That this ordinance shall be effective upon its adoption this 2nd day of August, 2010.


Billye D. Custis, Mayor

Attest:


Jamye Salazar, Town Clerk

I certify that the foregoing is a true copy of an ordinance adopted on August 2, 2010 by the Onley Town Council.


Jamye Salazar, Town Clerk

Council voting:
D. Dize Yes
L. Eller Yes
E. Finney Yes
B. Chance Yes
T. Marshall Yes
W. Ferguson ABSENT