

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE
COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION
CENTER ON TUESDAY, MAY 25, 2010

**ORDINANCE 052510-13 AMENDING ARTICLE II. NOISE OF CHAPTER
13 – OFFENSES-MISCELLANEOUS OF THE ROANOKE COUNTY
CODE TO PROVIDE FOR REVISED DEFINITIONS, EXCEPTIONS,
SPECIFIC PROHIBITIONS, AND PENALTIES**

WHEREAS, a recent decision by the Virginia Supreme Court has made it
necessary to amend Roanoke County's noise ordinance; and

WHEREAS, the Board of Supervisors has held three work sessions over the past
fourteen months to review various alternatives and to consider recommendations from
citizens and County staff; and

WHEREAS, the Board of Supervisors has determined that public health, safety,
and welfare require these amendments to the Roanoke County Code; and

WHEREAS, that the first reading of this ordinance was held on March 23, 2010
and the second reading and public hearing was held on May 25, 2010.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Roanoke
County, Virginia, as follows:

1. That the following sections of Article II. Noise of Chapter 13 – Offenses-
Miscellaneous of the Roanoke County Code are amended to read and provide as
follows:

Sec. 13-18. Definitions.

The following words and phrases, when used in this article shall have the meaning
assigned to them in this section.

Emergency work shall mean work made necessary to restore property, public or
private, to a safe condition following a state of emergency or a local emergency as

defined by the Commonwealth of Virginia Emergency Services and Disaster Law of 1973, Chapter 3.2 of Title 44 of the Code of Virginia, 1950, as amended, or its successor, or work required to protect persons or property from immediate exposure to danger, including work performed by the Western Virginia Water Authority, the Town of Vinton Public Works department, or by public service companies when emergency inspection, repair of facilities or restoration of services is required for the immediate health, safety or welfare of the community.

Instrument, machine or device means and refers to any musical instrument, drum, radio, phonograph, compact disc player, cassette tape player, MP3 player, video player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

Motor vehicle shall mean a self-propelled vehicle including passenger cars, trucks, truck-trailers, semitrailers, campers, racing vehicles, and any motorcycles (including, but not limited to, motor scooters, mini-bikes, all-terrain vehicles and three-wheelers) as defined in section 46.2-100 of the Code of Virginia.

Noise disturbance means any sound which (a) endangers or injures the safety or health of any person; (b) annoys or disturbs humans and which causes or tends to cause an adverse psychological or physiological effect on humans; or (c) endangers or injures personal or real property.

Person shall mean any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency or any legal successor, representative, agent or agency thereof.

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 area means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks, and buildings.

Residential dwelling means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.

Sec. 13-19. Exceptions from this article.

The provisions of this article shall not apply to:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work;
- (2) Music, bells, chimes or other sounds which are emanating from a church, temple, synagogue or other place of worship;
- (3) Sound generated from school or county sponsored athletic or recreational events, including band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools, colleges, or universities;
- (4) Agricultural activities;
- (5) Gardening, lawn care, tree maintenance or removal, and other landscaping activities, provided such exemption shall terminate between the hours of 10:00 p.m. and 7:00 a.m. the following day;
- (6) Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution;
- (7) Sound generated by activities which are an official or approved part of any county or state approved or licensed parade, festival or activity, provided such exemption shall terminate at 10:00 p.m.;
- (8) Sound generated by commercial and industrial uses permitted in the underlying zoning districts or sounds regulated by a special use permit, proffered condition, variance or approved by the zoning administrator or which are normal, routine, necessary and incidental to the uses permitted therein; and
- (9) Sound for which a waiver has been granted in accordance with section 13-23 of this article; and,
- (10) Activities for which the regulation of noise has been preempted by federal law.
- (11) Locomotives and other railroad equipment, and aircraft.
- (12) Lawful discharge of firearms.

Sec. 13-20. Reserved.

Sec. 13-21. Specific acts as noise disturbances.

The following acts are declared to be noise disturbances in violation of this article unless specifically excepted in Section 13-19.

- (1) Engaging in, or operating or causing to be operated any equipment used in the construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (2) Repairing, rebuilding or modifying any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. the following day in a manner so as to be plainly audible at a distance of fifty (50) feet or more from the vehicle.
- (3) Loading or unloading trucks outdoors within one hundred (100) yards of a residential dwelling between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (4) Sounding the horn or warning device of a vehicle, except when necessary as a warning during the operation of the vehicle.
- (5) Operating or permitting the use or operation of any instrument, , machine or any other device for the production of sound, at a volume sufficient to be plainly audible through partitions common to two (2) residences within a building or plainly audible at fifty (50) feet or more from such device or its source.
- (6) Using or operating a loudspeaker or other sound amplification devices in a fixed or movable position exterior to any building, or mounted upon any motor vehicle or mounted in the interior of a building with the intent of providing service to an exterior area for the purpose of commercial advertising, giving instruction, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property, between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (7) Using or operating any motor vehicle without factory installed mufflers or their equivalent conforming to Sections 46.2-1047 and 46.1-1049 of the Code of Virginia, on any public street or road in the county or on private property within a residential zoning district.

(8) Using a radio receiving set, an audio cassette player, a compact disc player, or other device for the production of sound in a motor vehicle at a volume sufficient to be plainly audible at fifty (50) feet or more from such vehicle.

(9) Failure to deactivate an alarm system plainly audible at fifty (50) feet or more from such alarm within such reasonable time as is established by section 16-23 of this Code.

(10) The operation of a 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.

Sec. 13-22. Penalties.

(a) A violation of any provisions of this article shall constitute a Class 3 misdemeanor. Each separate act on the part of the person violating this article shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall constitute a separate offense. Any person who violates a provision of this article within one (1) year after a previous conviction under this article shall be guilty of a Class 2 misdemeanor.

(b) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is reputably presumed to be operating or controlling the noise source.

(c) In addition to and not in lieu of the penalties prescribed in this section, the county may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article and may seek any other remedy or relief authorized by law.

(d) Citizens of the county believing that a noise disturbance constituting a public nuisance exists may utilize the procedure set forth in Section 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 from and after the date of its adoption.

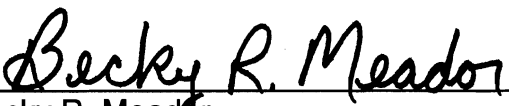
On motion of Supervisor Moore to adopt the ordinance, and carried by the following recorded vote:

AYES: Supervisors Moore, Altizer, Flora, Church

NAYS: None

ABSENT: Supervisor Elswick

A COPY TESTE:



Becky R. Meador
Clerk to the Board of Supervisors

cc: Paul M. Mahoney, County Attorney