

**AN ORDINANCE TO ABATE EXCESSIVE RESIDENTIAL NOISE
WHERE SUCH NOISE IS DEEMED A PUBLIC NUISANCE**

WHEREAS, the County Commission of Morgan County, West Virginia has received public comment and expert opinion testimony that certain levels of noise may constitute a threat to the public health and safety of the community; and

WHEREAS, in some circumstances such levels of noise may also constitute a public nuisance; and

WHEREAS, Chapter 7, Article 1, Section three-k-k of the West Virginia Code of 1931, (W.Va.Code § 7-1-3kk) as amended, authorizes county commissions to enact ordinances and issue orders for the elimination of hazards to public health and safety of the community and to abate or cause to be abated anything which the county commission determines to be a public nuisance, and further authorizes that such ordinances may provide for a misdemeanor penalty for violation thereof.

BE IT THEREFORE ENACTED AS FOLLOWS:

Section 1. Excessive Noise Levels.

The County Commission of Morgan County, West Virginia does hereby declare noise levels in excess of 65 decibels (dB), which levels are either intermittent or continuous for a duration of at least thirty minutes, to be a hazard to public health and safety in Morgan County, West Virginia, exclusive of any municipality therein, and where such noise levels rise to the level of a public nuisance, the same are subject to abatement by the procedures set forth herein..

Section 2. Definitions.

For purposes of this ordinance only the following terms are defined:

- (a) "Complaint" shall mean a written statement of the essential facts constituting the offense charged. It shall be made upon the oath of a law enforcement officer before a magistrate. The complaint shall set forth the facts of the allegation of excessive noise; name the complainant or complainants with complete address and telephone number; name the alleged perpetrator or perpetrators of the excessive noise and his, her or its complete address and telephone number; set forth the names, addresses and telephone numbers of all persons who are impacted by the alleged excessive noise and the approximate area of impact of the excessive noise.
- (b) "Excessive Noise" shall mean:
 - (1) ***Radios, television sets, musical instruments, phonographs, compact disc players, and similar devices.*** It shall be unlawful to operator permit the use of any radios, television sets, musical instruments, phonographs, compact disc players, and similar devices as to be plainly audible through the walls of apartment units within the range of the same building, from another property

line, or from the street between the hours of 11:00 p.m. to 6:00 a.m.

(2) ***Parties and other social events.*** It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce noise in a manner such that the noise is plainly audible through the walls of apartment units within the range of the same building, from another property line, or from the street between the hours of 11:00 p.m. to 6:00 a.m. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at that event and resides on the premises involved or is a person who lives in or on the premises involved and has authorized the use of the premises for such event. For parties or other social events on public property with no permit, or on private property with no owner or resident present and no clearly identified person in charge, all attendees shall be issued a violation.

(3) ***Domestic use of power tools and equipment.*** It shall be unlawful to operate or permit the use of non-commercial or non-industrial power tools and landscaping and yard maintenance equipment that produces a plainly audible sound level through the walls of apartment units within the range of the same building, from another property line, or the street between the hours of 11:00 p.m. to 6:00 a.m.

(4) ***All terrain vehicles, motorcycles, snowmobiles, scooters and other motorized vehicles.*** It shall be unlawful to operate or permit the use of all terrain vehicles (ATVs), motorcycles, snowmobiles, scooters or other motorized vehicles that produce a plainly audible sound level from the property line of the complainant or the street at any time, day or night.

(5) ***Domestic animals.*** Any person keeping or harboring domestic animals that create unreasonably loud and disturbing noises of such character, intensity and duration as to disturb the peace, quiet and good order of the neighborhood or such resident or business neighbors as may be in close proximity shall be held responsible for violations of this ordinance. It shall be unlawful for said person to permit domestic animals to produce audible sound above the allowed level between the hours of 11:00 p.m. to 6:00 a.m.

Any person, who shall allow such animal to habitually remain, be lodged or fed within or on any property, dwelling, building, yard or enclosure, which he/she occupies or owns, shall be considered as harboring such animal.

- (c) “Public Nuisance” shall mean excessive noise that affects no fewer than two households that live within a residential area of Morgan County.

- (d) “Residential area” shall mean any subdivision, development or other similar area used primarily for residential purposes located in Morgan County but which is not within the boundaries of any municipality therein.
- (e) “Household” shall mean any apartment, townhouse, unit, or freestanding home which serves as a residence of persons who live in that same dwelling, sharing its furnishings, facilities, accommodations, and expenses. A building with multiple apartments, townhouses or units may, accordingly, contain multiple households.

Section 3. Procedures.

- (a) Any person complaining of excessive noise that rises to the level of a public nuisance as defined herein, may contact local law enforcement officers who may then investigate the complainant’s report and, if appropriate, such officers may file a complaint with the Morgan County Magistrate Court. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue to any officer authorized by law to execute it. The summons shall issue in the same form as a warrant, except that it shall summon the defendant to appear before a magistrate at a stated time and place. An authorized person shall cause a copy of the complaint and summons to be served upon the alleged perpetrator or upon each of the alleged perpetrators.
- (b) The Clerk of the Morgan County Magistrate Court shall notify the assigned Morgan County Magistrate when any complaint has been filed and when service thereof has been made. The assigned Magistrate shall schedule a hearing on the complaint and notify the complainant or complainants and alleged perpetrator or perpetrators of the hearing date and time.
- (c) Upon request by the defendant, a hearing on the complaint shall be heard by the assigned Morgan County Magistrate according to the West Virginia Rules of Criminal Procedure for Magistrate Courts.

Section 4. Nuisance Abatement and Penalties.

- (a) The Morgan County Magistrate, having found that a perpetrator or perpetrators during any twelve month period has caused or have allowed the production of excessive noise which constitutes a public nuisance may order the perpetrator or perpetrators to abate the public nuisance and may order the perpetrator or perpetrators to pay a civil penalty not less than \$50 nor more than \$300.
- (b) A second or subsequent knowing and willful violation of this ordinance during a twelve month period shall subject the perpetrator or perpetrators to pay a civil penalty not less than \$150 nor more than \$500.
- (c) Repeated similar violations of this ordinance which occur on separate, subsequent days shall be separate offenses under this ordinance.
- (d) Morgan County Magistrate Court shall pay any and all civil penalties collected under this ordinance to Morgan County Commission.

Section 5. Exempted Activities.

- (a) All activities within the bounds of any municipalities are exempt from application of this ordinance.
- (b) The following activities are also exempted from application of this ordinance:
 - (1) Emergency or public safety vehicles;
 - (2) Emergency repair activity directed at vital services;
 - (3) Any public or private emergency or alarm device;
 - (4) Sounds emanating from any place of worship;
 - (5) Licensed motor vehicles on any roads, highways or private roadways;
 - (6) Airports;
 - (7) Railroads;
 - (8) Non-Motorized Sporting events;
 - (9) Authorized public activities for which a permit has been granted by an appropriate agency of the federal, state or local governments;
 - (10) Authorized construction activities or demolition activities;
 - (11) Farm equipment, farm activities and farm animal husbandry;
 - (12) Legal use of firearms including hunting and shooting activities; and
 - (13) Activities by the federal, state or local governments.
 - (14) Fairs, Festivals, and Carnivals
- (c) Hardship Waiver. The County Commission may grant a waiver from the provisions hereof upon application by a citizen for a waiver of the applicability of this ordinance for a limited period of time but only after a public hearing. Morgan County Magistrates are not authorized to grant such a hardship waiver.

Section 6. Severability.

The several sections and subsections of this ordinance are severable, and if any section or subsections hereof shall be held unconstitutional, all the remaining sections or subsections shall remain valid.

Section 7. Purpose.

It is the purpose of this ordinance to promote the public health and safety of the community and as such it should be liberally construed to give effect to the purposes hereof.

Section 8. Appeals.

Appeals to the Circuit Court shall be made pursuant to West Virginia Rule of Criminal Procedure for Magistrate Courts 20.1.

Section 9. Civil Cause of Action not Precluded.

Nothing contained in this ordinance shall be construed to limit or preclude the right of any individual or entity from pursuing any civil cause of action otherwise authorized by law for either injury or damage arising from any noise which creates either a public or private nuisance under law.

This Ordinance shall be effective May 1, 2007.

Done this 6th day of April, 2007, at Berkeley Springs, Morgan County, West Virginia.

Glen R. Stotler, President

Thomas R. Swaim, Commissioner

Brenda J. Hutchinson, Commissioner