

ORDINANCE

MERCER COUNTY, WEST VIRGINIA

NOISE ORDINANCE

BE IT ORDAINED AND ORDERED

BY THE COUNTY COMMISSION OF MERCER COUNTY, WEST VIRGINIA, A PUBLIC BODY CORPORATE OF MERCER COUNTY, WEST VIRGINIA, AS FOLLOWS:

The Mercer County Commission recognizes that, at certain levels, noise can be detrimental to the health, welfare, safety, and quality of life of the inhabitants of the county, and in the public interest, noise should be restricted. It is, therefore, the policy of the Mercer County Commission to reduce noise in the community and to prohibit unnecessary, excessive, and annoying noises from all sources subject to its police power.

SECTION 1. KEEPING OF ANIMALS CAUSING A PUBLIC NUISANCE.

It shall be unlawful for any person knowingly to keep or harbor any animal which habitually barks, howls, cries or yelps to the great discomfort of the peace and quiet of the neighborhood, or in such manner as to materially disturb or annoy persons in the neighborhood who are ordinary sensibility. Such animals are hereby declared to be a public nuisance.

SECTION 2. PETITIONS COMPLAINING OF BARKING DOGS AND CRYING CATS.

- (a) Whenever any person shall complain to the Mercer County Sheriff's Department that an animal which habitually barks, howls, cries, or yelps, the Sheriff's Department shall notify the owner of said animal that the person should take whatever steps necessary to alleviate the barking, howling, yelping, or crying problem.
- (b) If the warning given to the person alleged to be keeping an animal as set forth in subsection (a) above is ineffective, then a verified complaint of at least two (2) citizens, not from the same family or household, or by a deputy sheriff, may be presented to the magistrate, alleging that an animal who habitually barks, howls, cries, or yelps is being kept by any person within the county. The Sheriff's Department shall inform the owner of such animal or the owner of the property at which the animal is being kept or harbored that said petition has been filed and shall cite the owner of the animal for the violation alleged in said petition.

SECTION 3. DEFINITIONS

The following words, when used, shall have the following respective meanings, unless

the context clearly indicates a different meaning:

- (a) “Motor vehicle” means every vehicle defined as a motor vehicle by § 17B-1-1 of the West Virginia Code, as amended.
- (b) “Noise disturbance” means any sound which, by its character, intensity, and duration:
 - (1) Endangers or injures the health or safety of persons within the county; or
 - (2) Annoys or disturbs reasonable persons of normal sensitivities within the county.
- (c) “Public property” means any real property owned or controlled by the County of Mercer or any other governmental entity.
- (d) “Public right-of-way” means any street, avenue, boulevard, highway, sidewalk, or alley.
- (e) “Real property boundary” means the property line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

SECTION 4. NOISE DISTURBANCE – PROHIBITED GENERALLY.

It shall be a misdemeanor and a public nuisance for any person to wilfully make, permit, continue, or cause to be made, permitted, or continued any noise disturbance.

SECTION 5. SPECIFIC PROHIBITIONS.

Subject to the exceptions provided herein, any of the following acts, or the causing or permitting thereof, among others, is declared to be a noise disturbance constituting a misdemeanor and public nuisance, but such enumeration shall not be deemed to be exclusive nor to limit the scope or application of the general prohibitions as provided herein.

- (a) Radios, television sets, musical instruments, and similar devices. Operating, playing, or permitted the operation or playing of any amplifier, television, record, tape, or compact disc player, musical instrument, or similar device:
 - (1) Between the hours of 12:00 a.m. and 7:00 a.m. in such manner as to permit sound to be heard across a residential real property boundary; or
 - (2) When the sound is located within a motor vehicle in or upon a public right-of-way or public property and the sound can be heard more than fifty (50) feet from its source.
- (b) Yelling, shouting, etc. Yelling, shouting, whistling, or singing:
 - (1) Between the hours of 12:00 a.m. and 7:00 a.m. so as to create a noise disturbance on a public right-of-way or public property; or
 - (2) At any time or place in such manner as to permit sound to be heard across a residential real property boundary; or
 - (3) At any time or place in such manner as to annoy or disturb the quiet, comfort, or repose of persons in any office or hotel or motel.

SECTION 6. EXCEPTIONS.

Prohibitions listed in Section 5. above, shall have no application to any sound generated by any of the following:

- (a) Sound which is necessary for the protection or preservation of property or the health, safety, life, or limb of any person.
- (b) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- (c) Parades, fireworks, school-related activities and other special events or activities.
- (d) Activities on or in county and school athletic facilities and on or in publicly owned property and facilities, provided that such activity has been authorized by the owner of such property or facilities or its agents.
- (e) Fire alarms and burglar alarms, prior to the giving of notice and reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.
- (f) Religious services, religious events, or religious activities, including, but not limited to, music, bells, chimes, and organs which are a part of such service, event or activity.
- (g) Locomotives and other railroad equipment and aircraft.
- (h) The striking of clocks.
- (i) Any other noise resulting from activities permitted by law or for which a license or permit has been granted by the County of Mercer or the State of West Virginia.

SECTION 7. ADDITIONAL REMEDY FOR NOISE VIOLATIONS.

As an additional remedy, making, permitting, or continuing any noise disturbance in violation of any provision hereof or which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

SECTION 8. PENALTIES

- (a) Any person who violates this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).
- (b) A person convicted of a second offense under this ordinance, and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).
- (c) A person convicted of a third or subsequent offense under this ordinance, and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or imprisoned in the county jail not more than ninety (90) days, or both fined and imprisoned.

SECTION 9. SEVERABILITY

Should any section, subsection or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ordinance as a whole or any part thereof other than the part so declared invalid or unconstitutional.

SECTION 10. EFFECTIVE DATE OF ORDINANCE

This ordinance shall be effective immediately upon passage.

ENACTED AND ORDAINED THIS 13th DAY OF Sept., 2005.

MERCER COUNTY COMMISSION

Signature- on File
Joe Coburn, President

ON FILE
Karen Disibbio, Commissioner

ON FILE
John Anderson, Commissioner

ATTEST:

ON File
Rudolph Jennings, Clerk