

AN ORDINANCE TO AMEND AND REENACT THOSE PORTIONS OF THE TOWN CODE OF THE TOWN OF BROADWAY, VIRGINIA, REGARDING NOISE POLLUTION, AND AMENDING SECTION 130.02 OF SUCH CODE

BE IT ORDAINED by the Town Council of The Town of Broadway, Virginia, that Section 130.02 of the Broadway Town Code, be amended and reenacted as follows:

(1) *By amending Section 130.02 “Noise” to read as follows:*

§ 130.02 NOISE

(a) 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. It is 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.

(b) Definitions.

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

“Daytime hours” means 7:00 a.m. through 10:00 p.m. each day of the week.

“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 § 130.02(d).

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

“Motorcycle” means every motor vehicle designed to travel on not more than three wheels in contact with the ground, other than farm tractors and mopeds.

“Nighttime hours” means 10:00 p.m. through 7:00 a.m. each day of the week.

“Owner” means the person owning, controlling, or possessing land, premises, or personal property.

“Person” means any individual, partnership, corporation, limited liability company, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, Town, 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 facilities. When music is involved, the detection of rhythmic bass tones shall be considered plainly audible sound.

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

“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 Town’s Land Development Regulations then in effect.

“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.

“Town” means the Town of Broadway, Virginia.

“Town Manager” means the town manager or the chief of police, or their respective designees.

(c) Violations.

Any person violating any of the provisions of this section shall be guilty of a Class 4 misdemeanor and, upon due conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) for each offense. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

A person is violating the provisions of this section if such person is operating or controlling a source of excessive noise. If the person operating or controlling the source of excessive noise cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the source of excessive noise.

(d) Prohibited Conduct.

Subject to the exceptions provided in § 130.02(*) below, any of the following acts, or the causing or permitting thereof, is declared to be excessive noise, constituting a Class 4

misdemeanor under § 130.02(c) and a public nuisance:

- (1) Animals. The owning, keeping, or possessing of any animal or animals which frequently or habitually howl, bark, squawk or make such other noise in such a manner as to permit sound to be plainly audible within fifty (50) feet from the animal or through partitions common to two (2) dwellings units within a building. This section shall not apply to any bona fide agricultural activity.
- (2) Commercial vehicle and trash collection vehicle operation. The operation of a commercial vehicle or trash collection vehicle during nighttime hours in such a manner as to be plainly audible at any residence one hundred (100) or more feet away.
- (3) Construction. The erection, including excavation, demolition, alteration, or repair of any building or improvement during nighttime hours, except in the case of emergency under a permit granted by the town manager. In considering the granting, conditioning, or denial of the permit, the town manager 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) the number of residential units which would be impacted by the extended hours of construction.
- (4) Explosives, 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 plainly audible at a distance of fifty (50) feet from the source of the sound or through partitions common to two (2) dwelling units within a building, or on any public right-of-way or public property.
- (5) 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.
- (6) Loading and unloading. Operating, loading or unloading any vehicle, including but not limited to trucks, or the opening and destruction of bales, boxes, crates and containers outdoors within one hundred (100) or less feet of an occupied dwelling during nighttime hours.
- (7) 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 for any purpose during nighttime hours in such a manner as to permit sound to be plainly audible at fifty (50) feet from the source of the sound or in a manner that permits sound to be heard through partitions common to two (2) dwelling units within a building.
- (8) Pneumatic hammer, chainsaw, etc. The operation during nighttime hours of any chain saw, pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance whose use is attended by sounds that are plainly audible within fifty

(50) feet of the device or through partitions common to two (2) dwelling units within a building.

- (9) Radios, television sets, computers, musical instruments, and similar devices. Operating, playing or permitting the operation or playing of any radio, television, computer, record, tape or compact disc player, drum, music instrument, or similar device in such a manner as to permit sound to be plainly audible at fifty (50) feet from the building in which it is located or in a manner that permits sound to be heard through partitions common to two (2) dwelling units within a building.
- (10) Schools, public buildings, places of worship, hospitals, and clinics. The creation of any noise on the grounds of any school, court, public building, place of worship, hospital, or clinic in a manner that is plainly audible within such school, court, public building, place of worship, hospital, or clinic and interferes with the operation of the institution.
- (11) Vehicles.
 - (a) Operation of a motor vehicle or motorcycle within the Town while not equipped with a muffler that is compliant with Section 46.2-1047, Code of Virginia (1950), as amended.
 - (b) Operation of a motor vehicle or motorcycle within the Town equipped with an intake or exhaust system that permits the escape of noise in excess of that permitted by the standard factory equipment intake or exhaust system of motor vehicles or motorcycles of standard make.
 - (c) The spinning, squealing of tires or unnecessary revving of the motor of any motor vehicle or motorcycle when starting from a stopped position, when shifting gears, when moving, or when coming to a stop or slowing the speed of the motor vehicle.
 - (d) Operation of sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of seventy-five (75) feet or more from the vehicle.
- (12) Yelling, shouting, etc. Yelling, shouting, whistling, or singing during nighttime hours in such a manner as to permit sound to be plainly audible within fifty (50) feet of the source of the sound or through partitions common to two (2) dwelling units within a building.

(e) Exceptions.

This § 130.02 shall have no application to any sound generated by any of the following:

- (1) Activities on or in municipal, county, state, United States, or school athletic facilities,

or on or in publicly owned property and facilities.

- (2) Agricultural activities.
- (3) Fire alarms and burglar alarms, including false alarms occurring less than once per owner per sixty (60) days, 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.
- (4) Household tools and other lawn care equipment with manufacturer's recommended mufflers installed that are operated during daytime hours.
- (5) Lawful discharge of firearms.
- (6) Locomotives and other railroad equipment, and aircraft.
- (7) Military activities of the Commonwealth of Virginia or of the United States of America.
- (8) Noises resulting from events sanctioned by the town council taking place during daytime hours.
- (9) Parades, fireworks displays, and other such public special events or public activities that are otherwise lawful.
- (10) Public speaking and public assembly activities conducted on any public right-of-way or public property in accordance with applicable law.
- (11) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- (12) 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.
- (13) School band performances or practices, athletic contests or practices, and other school-related activities conducted on the grounds of public or private schools.
- (14) Sound which is necessary for the protection or preservation of property or the health, safety, life, or limb of any person.
- (15) The striking of clocks.
- (16) The use of a loudspeaker for making auction sales when used in the vicinity of the property being sold provided such use is limited strictly to the selling at auction of such property and occurs during daytime hours.

- (2) *Town Code § 130.02, as it exists on the date hereof, is hereby repealed, effective at 11:59 PM on the date hereof.*
- (3) *This Ordinance shall take effect on the day after the date of its enactment.*

Dated _____, 2010

APPROVED: _____
JOHN F. LONG, JR., MAYOR

CERTIFICATE OF VOTES

Record of the roll-call vote by the Town Council of the Town of Broadway, Virginia, on the Ordinance entitled **AN ORDINANCE TO AMEND AND REENACT THOSE PORTIONS OF THE TOWN CODE OF THE TOWN OF BROADWAY, VIRGINIA, REGARDING NOISE POLLUTION, AND AMENDING SECTION 130.02 OF SUCH CODE** adopted by the Town Council of the Town of Broadway, Virginia, by a roll-call vote at a regular meeting held on August 3, 2010. The recorded roll-call vote of the Town Council is as follows:

	AYE	NAY	ABSTAIN	ABSENT
John F. Long, Jr., Mayor				
Richard E. Fulk				
George T. Dowrey, III				
Betty F. Fitzwater				
Keith A. Clark				
Timothy S. Proctor				
Gene Nesselrodt				

[SEAL]

Dated: _____

Town Clerk, Town of Broadway, Virginia