

AN ORDINANCE OF THE COUNCIL OF THE TOWN OF ABINGDON, VIRGINIA TO REPEAL AND REENACT, IN ITS ENTIRETY, CHAPTER 30, ARTICLE II, NOISE ORDINANCE, OF THE CODE OF ORDINANCES OF THE TOWN OF ABINGDON, VIRGINIA, TO FURTHER PROMOTE THE PUBLIC POLICY OF THE TOWN BY ENHANCING THE ENFORCEABILITY OF THE TOWN'S ORDINANCES, TO REDUCE AND ELIMINATE, WHERE POSSIBLE, EXCESSIVE NOISE AND RELATED ADVERSE CONDITIONS IN THE COMMUNITY

WHEREAS, §15.2-2200 of the Code of Virginia, 1950, as amended, established that the governing body of any town may enact and enforce ordinances for the general purpose of promoting the health, safety and welfare of its general public; and

WHEREAS, the Town's Noise Ordinance, No. 6-2002, was adopted on November 4, 2002 and became effective on December 4, 2002, and upon due consideration with regard to recent decisions by the Virginia Supreme Court affecting such ordinances throughout the Commonwealth of Virginia, the Council of the Town of Abingdon, Virginia has found it in the best interest of the public welfare to repeal and reenact the body of its ordinance in its entirety to comply with said recent case law; and repealed and replaced effective August 1, 2010 and August 1, 2019;

NOW, THEREFORE, upon recommendation of the Council of the Town of Abingdon, Virginia, after notice pursuant to §15.2-2204 of the Code of Virginia 1950, as amended, and public hearing on May 6, 2019, as required by law and dispensed with second reading by the affirmative vote of four of the members;

1. That this ordinance shall become effective on June 7, 2019; and
2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or the Code of the Town of Abingdon, Virginia; and
3. That Chapter 30, Article II, Noise Ordinance of the Code of Ordinances of the Town of Abingdon, Virginia is repealed in its entirety, reenacted and replaced effective June 7, 2019, as set forth below:

ARTICLE II. NOISE

Sec. 30-30. Generally.

In order to promote the public policy of the town in providing an environment for its citizens that is free from noise at levels which can jeopardize their health or welfare or which degrades the quality of life, the creation and continuation of any noise at such loud and disturbing levels, as specified within this article, in the town limits are hereby prohibited.

Sec. 30-31. Definitions.

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

Device means any mechanism which is intended to, or which actually produces excessive *noise* when operated or handled.

Emergency work is work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed 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.

Excessive noise means any sound which reaches a level that annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on human beings. Specific examples of prohibited excessive *noise* are set forth in [section 30-32](#) of this chapter.

Motor vehicle means any vehicle which is self-propelled or designated for self-propulsion, but not limited to, passenger car, trucks, truck-trailer, semi-trailer, recreational vehicles, motorboats and racing vehicles; and any motorcycle (including but not limited to motor scooters and mini-bikes) as defined in the Code of Virginia, § 46.2-100.

Persons mean any individual, corporation, cooperative, company, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successor, representative, agent or agency thereof. This term shall not include the federal, state, county, town, city or local government, or any agency or institution 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 right-of-way means any street, avenue, boulevard, highway, alley or public space, which is owned or controlled by a public governmental entity.

Quiet zone means whenever the protection of the public health, safety and welfare so require, after a duly advertised public hearing, the town council may designate any geographical area of the town as a "quiet zone". Such designation shall include a description of the subject area, the reasons for its designation as a quiet zone and shall prescribe the level of *noise* which shall be permitted in such a quiet zone.

Residential refers to single-unit, two-unit and multiunit dwellings, and residential areas of planned residential zoning district classifications, as set out in the Zoning Ordinance, Appendix B, the Code of Ordinances of the Town of Abingdon, Virginia, as amended.

Residential area means any street, highway or alley in the town where 60 percent of the improved property is occupied by dwellings not used for business purposes.

Sound means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at a finite to distance point. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

Stationary noise source means any equipment or facility, fixed or movable that is capable of emitting sound beyond the property boundary of the property on which it is used.

Zoning district classification refers to the scheme of land use classification.

Sec. 30-32. Specific prohibitions.

A. The following acts are declared to be noise disturbances in violation of this article and are prohibited within the town 24 hours a day, subject to the exemptions provided in §30-33:

- (1) No motor vehicle shall be loaded with materials likely to create excessive noises by materials striking together without using every reasonable effort to prevent or eliminate the noise.
- (2) It shall be unlawful for any person in operating a motor vehicle within the town on public or private property to create in the operation thereof any excessive noise. In operating such vehicle, the following acts are deemed to be in violation of this section, but such enumeration shall not be exclusive:
 - a. To make, continue to make, or cause to be made, through use of a motor vehicle, an excessive noise disturbance within the town;
 - b. The use of a vehicle so out of repair as to cause excessive noise such as grating, grinding, rattling or any/all such excessive noises;
 - c. The practice of unnecessarily racing or accelerating the motor of a vehicle while stationary or moving, thereby causing excessive noise from such motor;
 - d. The practice of unnecessarily retarding the spark to the motor of a vehicle and thereby causing excessive noise, or back-fire from the motor;
 - e. In starting the vehicle from a stationary position, the practice of gaining speed unnecessarily quickly and thereby causing excessive noise from the motor and/or the screeching of tires;
 - f. The practice of coming to an unreasonably quick stop with a vehicle and thereby causing excessive noise through unnecessary grinding of brakes and/or the screeching of tires;

- g. The operating of vehicles off-road creating excessive noise plainly audible across property boundaries; and
- h. The sounding of any horn, whistle or signaling device on any motor vehicle, except as a danger warning;
- i. Operating or permitting another to operate any radio receiving set, sound-amplifying equipment or other device for the production of sound in or on motor vehicles within the town in such a manner to create excessive noise which is plainly audible fifty (50) feet from such motor vehicle;
- j. The operation of a motor vehicle or motorcycle within the town with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust in good working order, as provided by Code of Virginia, §§ 46.2-1047 and 46.2-1049.

- (3) To create noise in excess of that prescribed within an area designated as a "quiet zone" provided that conspicuous signs are displayed in adjacent or contiguous streets indicating that the area is a "quiet zone".

B. The following acts are prohibited in the town between the hours of 11:00 p.m. and 7:00 a.m.:

- (1) Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device for the production of sound in such a manner as to be plainly audible across a residential real property boundary or through partitions common to two (2) residences within one (1) building; or
- (2) The operation of any equipment or other noise making device 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) The operation of any device emitting noise in such a manner that it is plainly audible at a distance of fifty (50) feet from its source.
- (4) It shall be unlawful for any person engaged in construction work in the town to excavate, demolish or engage in alteration or repair of any building or improvement between the aforementioned hours, 11:00 p.m. – 7:00 a.m. except in the case of emergency and 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:
 - a. Nature of the emergency;
 - b. Proposed extended hours of operation;
 - c. Duration of period of requested extended hours;
 - d. Character of the area surrounding the construction site; and
 - e. Number of residential units which would be impacted.
- (5) Owning, keeping, possessing or harboring any animal which frequently or habitually howls, barks, meows, squawks, or makes such other noise that is plainly audible at a

distance of fifty (50) feet from its source or through partitions common to two residences within one building.

- (6) Excessive noise created by yelling, shouting, hooting, whistling, singing or any other means of creating such on the public street which is plainly audible at a distance of fifty (50) feet from its source.

Sec. 30-33. Exemptions.

A. The following activities are exempt from the provisions of this article:

- (1) The use of intercoms or paging systems by businesses located in commercial areas, provided that the sound system is used for paging purposes only.
- (2) Sound amplifying equipment used at public parks or recreation fields, provided the operation has been approved by the park or field management.
- (3) Clock chimes and bells and music played for a call to worship between the hours of 9:00 a.m. and 9:00 p.m.
- (4) Motor vehicles driven in wedding processions are exempted from the provisions of section 30-32(a)(1) only.
- (5) Motor vehicles driven in duly authorized parades.
- (6) The provisions of this article shall not apply to the emission of sound in the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.
- (7) The use of a loudspeaker, on a motor vehicle for making auction sales on streets or highways directly in front of property being sold and entirely outside of the business districts of the town, provided said use is for the sale of such property only.
- (8) The use of a loudspeaker for making auction sales on the property being sold provided such use is for the sale of said property only.

Sec. 30-34. Issuance of permits.

- A. The Town Manager in his discretion, except as restricted below, shall be authorized to grant or issue permits to persons allowing said persons to deviate from the prohibitions of this article, provided however, that the issuance of said permit is for an otherwise lawful purpose.
- B. Any permit issued by the Town Manager for the use of sound-amplifying equipment shall be subject to the following:
 - (1) The only sound permitted is music and human speech.

- (2) The person granted the permit may only operate during the hours specified by the Town Manager in the permit.
- (3) Human speech and music amplified shall not be lewd, indecent, slanderous or inciting to riot or other unlawful conduct.
- (4) Must operate within any restrictions of the Town Manager as noted on the written permit.

Sec. 30-35. Enforcement and penalties.

- A. The criminal provisions of this article shall be enforced by the town police department, who may administer measurement procedures, issue orders and regulations with regard to such enforcement. 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 imposing 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 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.
- B. Instead of the criminal enforcement of this chapter the town may bring a suit for injunction, abatement, penalty or other appropriate civil or criminal remedies that may be available to it. Each separate finding of violation of this ordinance shall impose a civil penalty liability of two hundred and fifty dollars (\$250.00) for the first offense and five hundred dollars (\$500.00) for subsequent offenses.
- C. Citizens of the town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in Code of Virginia, 1950, as amended §48-1 et seq., or any other legal civil or criminal remedies that may be available to them.

Secs. 30-36--30-50. Reserved.

NOW, THEREFORE, BE IT ORDAINED, upon recommendation of the Council of the Town of Abingdon, Virginia, after notice and public hearing as required by law, that Chapter 30, Article II, Noise Ordinance of the Town of Abingdon, Virginia is repealed, reenacted and adopted as set forth herein and replaced, effective June 7, 2019.

ARTICLE II. - NOISE

Sec. 30-30. - Generally.

In order to promote the public policy of the town in providing an environment for its citizens that is free from noise at levels which can jeopardize their health or welfare or which degrades the quality of life, the creation and continuation of any noise at such loud and disturbing levels, as specified within this article, in the town limits are hereby prohibited.

Sec. 30-31. - Definitions.

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

Device means any mechanism which is intended to, or which actually produces excessive noise when operated or handled.

Discernible shall mean that the sound is sufficiently distinct such that its source can be clearly identified.

Emergency work is work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed 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.

Excessive noise means any sound which reaches a level that annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on human beings. Specific examples of prohibited excessive noise are set forth in section 30-32 of this chapter.

Instrument shall mean any musical instrument, radio, phonograph, compact disc player, amplifier or any other device, which produces, reproduces or amplifies sound.

Mixed use area means the parcel on which one (1) or more residential dwellings and at least one (1) other non-residential use are located and any contiguous rights-of-ways, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.

Motor vehicle means any vehicle which is self-propelled or designated for self-propulsion, but not limited to, passenger car, trucks, truck-trailer, semi-trailer, recreational vehicles, motorboats and racing vehicles; and any motorcycle (including but not limited to motor scooters and mini-bikes) as defined in the Code of Virginia, § 46.2-100.

Noise shall mean the intensity, frequency, duration or character of sounds from a single source or multiple sources that may degrade the public health, safety or welfare.

Persons mean any individual, corporation, cooperative, company, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successor, representative, agent or agency thereof. This term shall not include the federal, state, county, town, city or local government, or any agency or institution 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 right-of-way means any street, avenue, boulevard, highway, alley or public space, which is owned or controlled by a public governmental entity.

Quiet zone means whenever the protection of the public health, safety and welfare so require, after a duly advertised public hearing, the town council may designate any geographical area of the town as a "quiet zone". Such designation shall include a description of the subject area, the reasons for its designation as a quiet zone and shall prescribe the level of noise which shall be permitted in such a quiet zone.

Residential refers to single-unit, two-unit and multiunit dwellings, and residential areas of planned residential zoning district classifications, as set out in the Zoning Ordinance, Appendix B, the Code of Ordinances of the Town of Abingdon, Virginia, as amended.

Residential area means any street, highway or alley in the town where 60 percent of the improved property is occupied by dwellings not used for business purposes.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, banquet halls, bars, lounges, taverns, coffee shops, nightclubs, cafeterias, cafes and similar dining facilities (including associated commercial kitchens).

Sound means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at a finite to distance point. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space. *Stationary noise source* means any equipment or facility, fixed or movable that is capable of emitting sound beyond the property boundary of the property on which it is used.

Zoning district classification refers to the scheme of land use classification.

Sec. 30-32. - Specific prohibitions.

- (a) The following acts are declared to be noise disturbances in violation of this article and are prohibited within the town 24 hours a day, subject to the exemptions provided in section 30-33:
- (1) No motor vehicle shall be loaded with materials likely to create excessive noises by materials striking together without using every reasonable effort to prevent or eliminate the noise.
 - (2) It shall be unlawful for any person in operating a motor vehicle within the town on public or private property to create in the operation thereof any excessive noise. In operating such vehicle, the following acts are deemed to be in violation of this section, but such enumeration shall not be exclusive:

- a. To make, continue to make, or cause to be made, through use of a motor vehicle, an excessive noise disturbance within the town;
 - b. The use of a vehicle so out of repair as to cause excessive noise such as grating, grinding, rattling or any/all such excessive noises;
 - c. The practice of unnecessarily racing or accelerating the motor of a vehicle while standing or moving, thereby causing excessive noise from such motor;
 - d. The practice of unnecessarily retarding the spark to the motor of a vehicle and thereby causing excessive noise, or back-fire from the motor;
 - e. In starting the vehicle from a standing position, the practice of gaining speed unnecessarily quickly and thereby causing excessive noise from the motor and/or the screening of tires;
 - f. The practice of coming to an unreasonably quick stop with a vehicle and thereby causing excessive noise through unnecessary grinding of brakes and/or the screening of tires;
 - g. The operating of vehicles off- road creating excessive noise plainly audible across property boundaries; and
 - h. The sounding of any horn, whistle or signaling device on any motor vehicle, except as a danger warning;
 - i. Operating or permitting another to operate any radio receiving set, sound-amplifying equipment or other device for the production of sound in or on motor vehicles within the town in such a manner to create excessive noise which is plainly audible 50 feet from such motor vehicle;
 - j. The operation of a motor vehicle or motorcycle within the town with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust in good working order, as provided by Code of Virginia, §§ 46.2-1047 and 46.2-1049.
- (3) To create noise in excess of that prescribed within an area designated as a "quiet zone" provided that conspicuous signs are displayed in adjacent or contiguous streets indicating that the area is a "quiet zone".
- (b) The following acts are prohibited in the town between the hours of 11:00 p.m. and 7:00 a.m.:
- (1) Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device for the production of sound in such a manner as to be plainly audible and discernible across a residential real property boundary or through partitions common to two residences within one building; or
 - (2) The operation of any equipment or other noise making device in such a manner as to be plainly audible at a distance of 50 feet or more from the building in which it is located; or
 - (3) The operation of any device emitting noise in such a manner that it is plainly audible at a distance of 50 feet from its source.

- (4) It shall be unlawful for any person engaged in construction work in the town to excavate, demolish or engage in alteration or repair of any building or improvement between the aforementioned hours, 11:00 p.m.—7:00 a.m. except in the case of emergency and 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:
 - a. Nature of the emergency;
 - b. Proposed extended hours of operation;
 - c. Duration of period of requested extended hours;
 - d. Character of the area surrounding the construction site; and
 - e. Number of residential units which would be impacted.
- (5) Owning, keeping possessing or harboring any animal which frequently or habitually howls, barks, meows, squawks, or makes such other noise that is plainly audible at a distance of 50 feet from its source or through partitions common to two residences within one building.
- (6) Excessive noise created by yelling, shouting, hooting, whistling, singing or any other means of creating such on the public street which is plainly audible at a distance of 50 feet from its source.

Sec. 30-33. - Exemptions.

- (a) The following activities are exempt from the provisions of this article:
 - (1) The use of intercoms or paging systems by businesses located in commercial areas, provided that the sound system is used for paging purposes only.
 - (2) Sound amplifying equipment used at public parks or recreation fields, provided the operation has been approved by the park or field management.
 - (3) Clock chimes, bells and music played for a call to worship between the hours of 9:00 a.m. and 9:00 p.m.
 - (4) Motor vehicles driven in wedding processions are exempted from the provisions of section 30-32(a)(1) only.
 - (5) Motor vehicles driven in duly authorized parades.
 - (6) The provisions of this article shall not apply to the emission of sound in the purpose of alerting persons to the existence of an emergency, nor the emission of sound in the performance of emergency work.
 - (7) The use of a loudspeaker, on a motor vehicle for making auction sales on streets or highways directly in front of property being sold and entirely outside of the business districts of the town, provided said use is for the sale of such property only.
 - (8) The use of a loudspeaker for making auction sales on the property being sold provided such use is for the sale of said property only.
 - (9) Commercial establishments located in areas zoned for mixed use as defined herein between the hours of 7:00 a.m. and 12:00 a.m.

Sec. 30-34. - Issuance of permits.

- (a) The town manager in his discretion, except as restricted below, shall be authorized to grant or issue permits to persons allowing said persons to deviate from the prohibitions of this article, provided however, that the issuance of said permit is for an otherwise lawful purpose.
- (b) Any permit issued by the town manager for the use of sound-amplifying equipment shall be subject to the following:
 - (1) The only sound permitted is music and human speech.
 - (2) The person granted the permit may only operate during the hours specified by the town manager in the permit.
 - (3) Human speech and music amplified shall not be lewd, indecent, slanderous or inciting to riot or other unlawful conduct.
 - (4) Must operate within any restrictions as noted on the permit by the town manager.

Sec. 30-35. - Enforcement and penalties.

- (a) The criminal provisions of this article shall be enforced by the town police department, who may administer measurement procedures, issue orders and regulations with regard to such enforcement. 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 imposing a fine of not less than \$300.00 for the first offense, \$500.00 for the second offense within a 12-month period, and \$1,000.00 for any subsequent offense within the same 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.
- (b) Instead of the criminal enforcement of this chapter the town may bring a suit for injunction, abatement, penalty or other appropriate civil or criminal remedies that may be available to it. Each separate finding of violation of this ordinance shall impose a civil penalty liability of \$250.00 for the first offense and \$500.00 for subsequent offenses.
- (c) Citizens of the town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in Code of Virginia, 1950, as amended § 48-1 et seq., or any other legal civil or criminal remedies that may be available to them.

CERTIFICATE

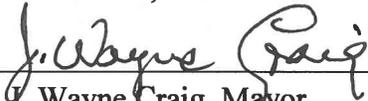
Pursuant to Section 2-100 of the Code of the Town of Abingdon, I hereby certify that I have reviewed the foregoing proposed ordinance to enact the Ordinance of the Town of Abingdon to reflect the foregoing establishment and find it to be in correct form this 6th day of May, 2019.



Cameron Bell

Town Attorney for the Town of Abingdon, Virginia

This ordinance was adopted on May 6, 2019 after second reading was dispensed with by the affirmative vote of four of the members to take effect on June 7, 2019.

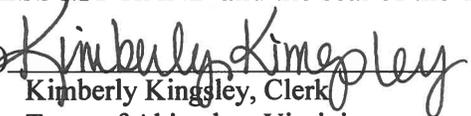


 J. Wayne Craig, Mayor
 Town of Abingdon

The undersigned clerk of the Town of Abingdon, Virginia (the “Town”), hereby certifies that the foregoing constitutes a true and correct copy of an ordinance duly adopted at a meeting of the Council held on May 6, 2019. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing ordinance, a quorum was present. I further certify that the minutes of such meeting reflect the attendance of the members and the voting on the foregoing ordinance was as follows:

MEMBERS	ATENDANCE	VOTE
Wayne Craig, Mayor	Yes	Aye
Cindy Patterson, Vice Mayor	Yes	Aye
Al Bradley	Yes	Aye
Donna Quetsch	Yes	Aye
Derek Webb	Yes	Aye

WITNESS MY HAND and the seal of the Town of Abingdon as of May 6, 2019.

(SEAL) 
 Kimberly Kingsley, Clerk
 Town of Abingdon, Virginia