

*An Ordinance of the Council for the Town of Abingdon, Virginia
to amend Chapter 30 – Environment
Article II. – Noise, Sections 30-30 through 30-36*

WHEREAS, pursuant to Virginia Code § 15.2-980, et seq., localities may regulate noise;

and

WHEREAS, Town Council wishes to amend its existing noise ordinance;

NOW, THEREFORE BE IT ORDAINED by the council of the Town of Abingdon that:

1. 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

2. The Town of Abingdon's current Code, Chapter 30 – Environment, Article II. – Noise, Sections 30-30 through 30-36 that is proposed for amendment currently states:

§ 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.

§ 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

Any mechanism which is intended to, or which actually produces excessive noise when operated or handled.

DISCERNIBLE

The sound is sufficiently distinct such that its source can be clearly identified.

EMERGENCY WORK

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

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

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

MIXED USE AREA

The parcel on which one or more residential dwellings and at least one 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

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

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

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

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

Any street, avenue, boulevard, highway, alley or public space, which is owned or controlled by a public governmental entity.

QUIET ZONE

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

Any street, highway or alley in the Town where 60% of the improved property is occupied by dwellings not used for business purposes.

RESTAURANT

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

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

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

STATIONARY NOISE SOURCE

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.

§ 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.

§ 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.

§ 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.

§ 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 for the first offense, \$500 for the second offense within a twelve-month period, and \$1,000 for any subsequent offense within the same twelve-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 for the first offense and \$500 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.

BE IT FURTHER ORDAINED, that Code, Chapter 30 – Environment, Article II. – Noise, Sections 30-30 through 30-36 be amended as follows:

§ 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.

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Any mechanism which is intended to, or which actually produces excessive noise when operated or handled.

DISCERNIBLE

The sound is sufficiently distinct such that its source can be clearly identified.

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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

Any sound that is either loud, boisterous, unpleasant, unreasonable or that causes a disturbance of the public peace. ~~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

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

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PUBLIC RIGHT-OF-WAY

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(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.

k. Any owner or person in control of any animal that allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound:

(1) Between 10 p.m. and 7 a.m. that is plainly audible in any other person's residential dwelling with doors and windows closed and the source of sound generation shall be discernible regardless of whether such doors or windows are closed; or

(2) Between 7 a.m. and 10 p.m. when the animal sound is plainly audible and discernible across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than five consecutive or non-consecutive minutes in any ten-minute period of time. Animal sounds that can be heard for less than five consecutive or non-consecutive minutes in any ten-minute period shall not be subject to this Chapter.

The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat; when the animal is a police dog that is engaged in the performance of its duties at the time of making the sound; or when part of a bona fide agricultural operation. This provision shall apply to all animal sounds emanating from the same property. Notwithstanding the provisions of this paragraph, animals located in a dog park shall be subject to the provisions of Par. (l) below.

(l) The use of dog parks between dusk and 7 a.m. Sunday through Thursday, or between dusk and 8 a.m. on Friday, Saturday and the day before a Federal holiday.

(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) (5) 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.

§ 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.

§ 30-34 Issuance of permits.

(a) The Town of Abingdon may issue an operational or temporary use permit. This permit will be issued on a temporary basis. Permits for special events or exhibitions such as (but not limited to) music, speeches, or general entertainment as a part and in recognition of the community celebration of national, state or city events, concerts, festivals, parades, athletic and recreational events, to permit reasonable and limited exceptions to the provisions of this section. Any special event or exhibition permit issued shall contain specific provisions as to the activities that will be conducted and dates and times during which the provisions of this section are to be suspended. Specific sources of any noise shall be identified, and special conditions may be established in the permit which will minimize the noise impact of the special event or

(b) 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.

(c) 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.

§ 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.

(b) In the enforcement of standards established in this section, an enforcement officer may be required to exercise judgment in determining if a particular noise is sufficiently loud or otherwise so offensive that it would unreasonably disturb a person of ordinary sensibilities in the vicinity. When making the de-terminations, the enforcement officer shall consider the following factors:

- 1. The volume of the noise;*
- 2. The intensity of the noise;*
- 3. Whether the nature of the noise is usual or unusual;*
- 4. Whether the origin of the noise is natural or unnatural;*
- 5. The type and intensity of background noise, if any;*
- 6. The proximity of the noise to residential sleeping facilities;*
- 7. The nature of zoning of the area(s) in which the noise is heard;*
- 8. The time of day or night the noise occurs;*
- 9. The duration of the noise; and*
- 10. Whether the noise is recurrent, intermittent, or constant.*

(c) 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 for the first offense, \$500 for the second offense within a twelve-month period, and \$1,000 for any subsequent offense within the same twelve-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 for the first offense and \$500 for subsequent offenses.

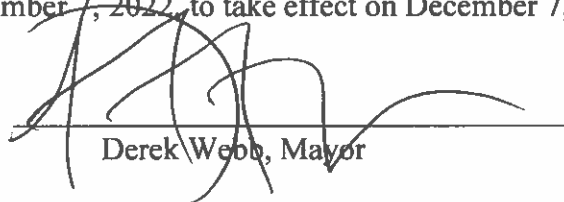
(c) Citizens of the Town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in Code of Virginia, 1950, as amended § 48-1 et seq., or any other legal civil or criminal remedies that may be available to them.

CERTIFICATE

Pursuant to Section 2-100 of the Code of the Town of Abingdon, Virginia, I hereby certify that I have reviewed the foregoing proposed ordinance to Code, Chapter 30 – Environment, Article II. – Noise, Sections 30-30 through 30-36, and find it to be in correct form, as set forth above, this 7th day of November, 2022.

Cameron Bell, Counsel

This ordinance was adopted on November 7, 2022, to take effect on December 7, 2022.



Derek Webb, Mayor

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 November 7, 2022. I hereby 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 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	ATTENDANCE	VOTE
Derek Webb, Mayor	Yes	Aye
Donna Quetsch, Vice Mayor	Yes	Aye
Amanda Pillion	Yes	Aye
Dwayne Anderson	Yes	Aye
Mike Owens	Yes	Aye

WITNESS MY HAND and the seal of the Town of Abingdon as of November 7, 2022.

(SEAL)



Kimberly Kingsley, Clerk