

BROOKE COUNTY NOISE ORDINANCE

Ordinance No. ### shall prohibit unnecessary noise in the unincorporated portions of Brooke County, West Virginia.

WHEREAS, the making and creation of loud, unnecessary, or unusual noises, within the unincorporated portions of Brooke County, West Virginia, are conditions which have existed for some time and the extent and volume of such noises are increasing, all of which infringe upon the comfort, convenience, health, safety, welfare and prosperity of the residents.

WHEREAS, Chapter 7, West Virginia Code 1931, 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.

THEREFORE, it is hereby declared to be in the public interest that the following provisions be enacted for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, and peace and quiet of the inhabitants. Adherence to these guidelines also serves to assure property values in the community.

BE IT THEREFORE ENACTED AS FOLLOWS:

SECTION 1. EXCESSIVE NOISE LEVELS

It shall be unlawful for any person or persons to make, continue, or cause to be made or continued, any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

The County Commission of Brooke 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 Brooke 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 II. DEFINITIONS:

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

- (a) "Complaint" shall mean a written statement of 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(s) with complete address and telephone number; name the alleged perpetrator(s) of the excessive noise and his/her or its complete address and telephone number; and identify the name(s), address(es) and telephone

9/20/09

number(s) of all person(s) impacted by the alleged, excessive noise and the approximate area of impact of the excessive noise.

- (b) "Excessive Noise" shall mean the following acts are hereby declared to be loud, disturbing and unnecessary noises in violation of this ordinance, but this enumeration shall in no way be deemed to be exclusive:
- (i) **DEVICES FOR THE PRODUCTION OR REPRODUCTION OF SOUND:** Using, operating, or permitting to be played, used, or operated, any radio, musical instrument, phonograph, stereo, television, or other machine or device for the production or reproduction of sound, in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or in such a manner, at any time, with louder volume than it necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber, in which such machine or device is located and who are voluntary listeners. The operation of any radio, musical instrument, phonograph, stereo, television, or other machine or device for the production or reproduction of sound between the **hours of 12:00 midnight to 8:00 a.m.** in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located shall be prima facia evidence of a violation of this section.
 - (ii) **PARTIES, SOCIAL, RECREATIONAL EVENTS:** Yelling, shouting, hooting, whistling, or singing, between the hours of **12 midnight and 8:00 a.m.** or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, dwelling or residence, or of any persons in the vicinity
 - (iii) **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, landscaping, and yard maintenance equipment that produces an audible sound at or above the level of 65dB through the walls of apartment units within the range of the same building, from another property line, or the street between the **hours of 12:00 midnight to 8:00 a.m.**
 - (iv) **MOTORIZED VEHICLES:** The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle except through a muffler or other devise which will effectively prevent loud or explosive noises. The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in such manner as to create loud and unnecessary grating, grinding, rattling, or other noise. The sounding of any horn or device on any automobile, motorcycle, vehicle on any street or public place; except as a danger warning; the creation by means of any such signaling device of an unreasonably loud or harsh sound; and sounding of any such device for an unnecessary and unreasonable period of time. The squealing of any tire, or the signaling of any other noises, such as: the accelerating of an automobile, motorcycle, or other vehicle from a slow rate of speed or a stopped position except in an emergency situation.

- (v) **ANIMALS.** No person shall keep or harbor any animal that creates unreasonably loud and disturbing noises of such character, intensity and duration as to disturb the peace, quiet, and good order of the neighborhood. Any person who shall allow any animal habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring said animal, and is therefore responsible for that animal and assuring that noises are not of such volume as to create a nuisance.

SECTION III. PROCEDURE

- (a) Any person complaining of excessive noise as defined herein may contact local law enforcement officers who may then investigate the complaint and file a report.
- (b) If it appears from the complaint that there is probable cause to believe that an offense has been committed, a summons shall be issued to any officer authorized by law to execute it.
- (c) The summons shall be in the same form as a warrant, and shall be serving upon the alleged perpetrator(s).
- (d) The Clerk of the Brooke County Magistrate Court shall notify the assigned county magistrate when any complaint has been filed and when service thereof has been made.
- (e) The Magistrate shall schedule a hearing on the complaint and notify the complainant(s) and alleged perpetrator(s) of the hearing date and time.
- (f) Upon request by the defendant(s), a hearing on the complaint shall be heard by the Magistrate according to the West Virginia Rules of Criminal Procedures for Magistrate Courts.

SECTION IV. NOISE ABATEMENT AND PENALTIES

- (a) Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor;
- (b) The Brooke County Magistrate, having found that perpetrator(s), during any twelve month period, have caused or allowed the production of excessive noise, constituting a public nuisance, may order the perpetrator(s) to abate the noise and may order the perpetrator(s) to pay a penalty of not less than \$100.00 nor more than \$500.00.
- (c) A second or subsequent violation of this ordinance during a twelve month period shall subject the perpetrator(s) to a penalty not less than \$150 nor more than \$500.

- (d) Any further subsequent violations of this ordinance, which occur on separate or subsequent days, shall be considered separate offenses under this ordinance, and may incur additional penalties of \$250 per occurrence.

ADOPTED BY APPROVAL OF THE
BROOKE COUNTY COMMISSION
THIS 23rd DAY OF FEBRUARY, ~~2009~~ ²⁰¹⁰

Bernard J. Kazianko
COMMISSIONER

Anna Tian
COMMISSIONER

Marty Bantz
COMMISSIONER

(SEAL)

ATTEST: •

Sylvia Benzo
SYLVIA BENZO,
BROOKE COUNTY CLERK