

ORDINANCE NO. \_\_\_\_\_

NOISE

**Section A. Short Title.**

This ordinance shall be known as the “Noise Ordinance of the County of Pulaski, Virginia”.

**Section B. Declaration of policy.**

It is hereby declared to be the public policy of the County of Pulaski to promote an environment for its citizens free from excessive noise that jeopardizes their health or welfare or degrades the quality of life within Pulaski County.

**Section C. Definitions.**

The following words and phrases, when used in this ordinance shall have the meaning assigned to them in this section.

*Ambient noise level* shall mean the sound level at a given location that exists as a result of the combined contribution in that location of all sound sources, excluding the contribution of a source or sources under investigation for violation of this ordinance.

*Emergency* shall mean any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

*Emergency work* shall mean work made necessary to restore property, public or private, to a safe condition following a state of emergency or a local emergency as defined by the Commonwealth of Virginia Emergency Services and Disaster Law of 1973, Chapter 3.2 of title 44 of the Code of Virginia, 1950, as amended, or its successor, or work required to protect persons or property from immediate exposure to danger, including work performed by the Pulaski County Public Service Authority or 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.

*Motor vehicle* shall mean a self-propelled vehicle including passenger cars, trucks, truck-trailers, semi-trailers, recreational vehicle’s, campers, racing vehicles, and any motorcycles (including, but not limited to, motor scooters, mini-bikes, all-terrain vehicles and three-wheelers) as defined in Section 46.2-100 of the Code of Virginia, 1950, as amended.

*Noise disturbance* shall mean any sound which by reason of its volume, pitch, duration and/or repetition, and considering the location, time of day, and nature of the sound: (a) causes or tends to cause an adverse psychological or physiological effect on humans; or (b) endangers or injures real or personal property or the reasonable use or enjoyment thereof.

*Person* shall mean any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency or any legal successor, representative, agent or agency thereof.

*Plainly audible* shall mean of a character that (i) can be detected by a person using his or her unaided hearing faculties, (ii) is sufficiently distinct to enable the source to be clearly identified, and (iii) exceeds the ambient noise level. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

*Public property* shall mean any real property owned or controlled by the County of Pulaski or any other governmental entity.

#### **Section D. General prohibition.**

(a) It shall be a violation of this ordinance for any person, after having received verbal and/or written notice from any law enforcement officer of Pulaski County that such person is causing a noise disturbance or permitting a noise disturbance for which that person is responsible, to cause or permit such noise disturbance to continue unabated for a greater period than is reasonably required, following receipt of such notice, to cease causing the noise disturbance or to cause the noise disturbance to cease. To the extent that the noise disturbance shall continue unabated into one or more successive days, each additional day during which the noise disturbance continues shall be deemed a separate offense.

(b) In the event that a person shall have received two or more prior verbal or written notices concerning noise disturbances emanating from the same noise source or which were otherwise of a substantially similar character within a two-month period, then it shall be a violation of this ordinance for such person to cause or permit additional instances of noise disturbance of the same type or character as the previous disturbances, without the need for any additional verbal or written notice to be issued by law enforcement officers as to the subsequent noise disturbances.

(c) Any person who has been warned, cited or penalized for causing or permitting one or more instances of noise disturbance shall have the right to seek an Undue Hardship Waiver in accordance with Section H of this ordinance as to any future instances of what has previously been deemed a noise disturbance.

#### **Section E. Specific acts prohibited.**

(a) It shall be a violation of this ordinance for any person to cause or permit the following, irrespective of whether that person has received any prior notice that the person is causing or permitting a noise disturbance and irrespective of whether any of the following produces sound of a sufficient volume or character to qualify as a noise disturbance as defined under Section C:

- (1) Engaging in, or operating or causing to be operated any equipment used in the excavation, construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00

a.m. the following day; except, emergency repairs to public utilities or any emergency public works function, which may be done at any time.

- (2) Repairing, rebuilding or modifying any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. the following day in a manner so as to be plainly audible across property boundaries.
- (3) Sounding the horn or warning device of a vehicle, except when necessary as a warning during the operation of the vehicle between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (4) Operating or permitting the use or operation of any radio; musical instrument; television; computer; MP3 player; video player; record, compact disc, tape or cassette player; or any other device capable of producing, reproducing, and/or amplifying sound, between the hours of 10:00 p.m. and 7:00 a.m. the following day, at a volume sufficient to be plainly audible (i) across property boundaries or through partitions common to two (2) residences within a multi-family building or (ii) fifty (50) feet or more from such device.
- (5) Using or operating a loudspeaker or other sound amplification device in a fixed or movable position in the interior or exterior of any building, or mounted upon any motor vehicle, with the intent of providing service to an exterior area for the purpose of commercial advertising, giving instruction, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property, between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (6) Using or operating any motor vehicle not meeting the standards of Title 46.2 of the Code of Virginia as to mufflers and exhaust systems on any public street, road or walkway.
- (7) Using a radio, stereo, MP3 player, audio cassette or compact disc player, or other device for the production or reproduction of sound in a motor vehicle at a volume sufficient to be plainly audible at fifty (50) feet from such vehicle.
- (8) Failure to deactivate an alarm system plainly audible at fifty (50) feet from such alarm within a reasonable time.

(b) Notwithstanding the foregoing, the hours during which certain sounds are prohibited as aforesaid shall be reduced from the time period of 10:00 p.m. through 7:00 a.m. the following day to 12:00 a.m. through 7:00 a.m. the same day from 7:00 a.m. on each Friday through 7:00 a.m. on the following Sunday, as well as on or during the following dates: (i) Memorial Day and the preceding Saturday and Sunday; (ii) Fourth of July and the preceding day; (iii) Labor Day and the preceding Saturday and Sunday; (iv) New Year's Eve; and (v) the day of graduation at Pulaski County High School.

#### **Section F. Exceptions from this ordinance.**

Notwithstanding anything to the contrary herein, the provisions of this ordinance shall not apply to:

- (a) The emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work, including but not limited to sirens, loud speakers and emergency communications radios in public safety vehicles;
- (b) Music, bells, chimes or other sounds which are emanating from a church or other place of worship;
- (c) Sound generated at any time from school or county sponsored athletic or recreational events;
- (d) Sound generated by activities which are an official or an approved part of any county or state licensed or approved parade, festival, event or activity, provided such exception shall terminate at 10:00 p.m. unless the activities are occurring on one of the dates set forth in Subsection E(b) of this Ordinance;
- (e) Sounds generated in commercial and industrial zoning districts which are necessary and incidental to the uses permitted therein;
- (f) Sound generated from gardening, lawn care, tree maintenance or removal, and other landscaping activities, provided such exception shall terminate between 10:00 p.m. and 7:00 a.m. the following day;
- (g) Sound for which an Undue Hardship Waiver has been granted, in accordance with Section H of this ordinance;
- (h) Sounds generated from any agricultural activity or agribusiness;
- (i) Sounds generated from or incidental to emergency repairs to public utilities or any emergency public works function;
- (j) Sounds generated in the performance of any governmental function;
- (k) Activities for which the regulation of noise has been preempted by federal law;
- (l) Sound generated by any speedway located in Pulaski County, as a result of racing related activities, between 5:00 p.m. on Friday and 5:00 p.m. on the following Sunday;
- (m) Sound generated by an event occurring at the New River Valley Fairgrounds where that event is held annually at the Fairgrounds and has been held annually for five (5) or more years preceding enactment of this Ordinance; and

- (n) Sound generated by any activity at Randolph Park, provided the activity is County or School sponsored, or conducted by a party renting any portion of Randolph Park and provided this exemption shall not apply between the hours of 12:00 a.m. and 7:00 a.m. each day.

**Section G. Penalties and enforcement.**

(a) Each separate act on the part of a person violating this ordinance shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall constitute a separate offense.

(b) The County Administrator may issue or cause the issuance of civil summons assessing civil penalties for violations of this ordinance upon notification by Pulaski County law enforcement officers that a violation has occurred or is occurring, which shall not exceed \$250.00 for the first offense and \$500.00 for each subsequent offense committed within 12 months after a previous offense; provided, however, that civil penalties shall not be assessed in connection with business being performed on industrial property or the operation of railroads.

(c) The provisions of this ordinance may also be enforced by Pulaski County law enforcement officers through the issuance of criminal summonses; provided that a civil summons and a criminal summons shall not be issued for the same violation. Any person so found guilty of violating any provisions of this ordinance shall be convicted of a Class 3 misdemeanor.

(d) In addition to and not in lieu of the foregoing criminal penalties, the County of Pulaski may apply to the circuit court for an injunction against a continuing violation of any of the provisions of this ordinance and may further seek any other remedy or relief authorized by law.

(e) Citizens of Pulaski County believing that a noise disturbance constituting a public nuisance exists may file a complaint with the Pulaski County Sheriff's Department, as well as utilize the procedure set forth under §48-1, *et seq.* of the Code of Virginia (1950), as amended, or any other legal remedies that may be available to them.

**Section H. Undue Hardship Waiver.**

(a) Any person responsible for a noise source may apply to the Board of Supervisors for a waiver, or partial waiver, from the provisions of this ordinance. An application under this Section shall be in writing and shall be filed in the Office of the County Administrator. The Board of Supervisors may, after a public hearing, grant such waiver, or partial waiver, upon a finding that any of the following circumstances exists:

- (1) The noise does not endanger the public health, safety or welfare; or
- (2) Compliance with the provisions of this ordinance from which a waiver is sought would produce serious economic hardship without producing substantial benefit to the public.

(b) In determining whether to grant such waiver, the Board of Supervisors shall consider the time of day the sound will occur, the duration of the sound, whether the sound is intermittent or continuous, its extensiveness, the technical and economic feasibility of bringing the sound into conformance with this ordinance and such other matters as are reasonably related to the impact of the sound on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this ordinance.

(c) No waiver, or partial waiver, issued pursuant to this ordinance shall be granted for a period to exceed one year, but any such waiver, or partial waiver may be renewed for successive like periods if the Board of Supervisors shall find such renewal is justified after again applying the standards set forth in this ordinance. No renewal shall be granted except upon written application therefor.

### **Section I. Jurisdiction.**

The provisions of this ordinance shall apply in all parts of Pulaski County, Virginia, which are not within the jurisdictions of the incorporated municipalities.

### **Section J. Severability.**

If any portion or part of this ordinance or its subsections, paragraphs, sentences, clauses, or phrases shall be declared unconstitutional, invalid, or unenforceable by judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect the validity of the ordinance in its entirety or any of the remaining portions, parts, subsections, paragraphs, sentences, clauses, or phrases of the ordinance.