

Notice of Public Hearing

Take notice that the Sussex County Board of Supervisors, at its meeting on December 20, 2012, at 7:00 pm, in the General District Courtroom, Sussex Judicial Center, 15098 Courthouse Road, Sussex VA 23884, will consider for passage, an ordinance declaring certain loud noises to be unlawful. The proposed ordinance prohibits loud noises, as defined therein, during certain times of the day or at any time, depending on the nature of the noise; establishes exceptions to such prohibition; and prescribes that any person violating any of the provisions of the ordinance shall be deemed guilty of a civil violation and shall be subject to a fine not exceeding \$250.00 for the first offense and \$500.00 for each subsequent offense. Each day of violation of any provision of the ordinance shall be a separate offense. The full text of the proposed ordinance is available for public inspection in the Office of the County Administrator, 20135 Princeton Road, Sussex VA 23884, 8:30am to 5:00pm, Monday through Friday, (434) 246 1000.

Proposed Resolution SUSSEX COUNTY, VIRGINIA BOARD OF SUPERVISORS

WHEREAS, the Supreme Court of Virginia in *Tanner v. City of Virginia Beach (2009)* held that a subjective “reasonable person” standard is unconstitutionally vague, and therefore invalid and unenforceable as a standard for enforcing a local noise ordinance; and

WHEREAS, the ability of Sussex County citizens to peaceably enjoy their residences, schools, businesses and public places without the intrusion of loud, unnecessary noise is important to the overall quality of life in the county; and

WHEREAS, the Board of Supervisors directed the County Administrator to develop, in cooperation with the County Attorney, Sheriff, and Commonwealth Attorney, a noise ordinance that would be in the best interests of the citizens of Sussex County and would also comport with the requirements established by the Virginia Supreme Court; and

WHEREAS, the Board of Supervisors has held a public hearing to receive citizen input on this matter; and

WHEREAS, Senate Bill 246, sponsored by Senator John Watkins, grants localities civil penalty authority for noise ordinance violations and was enacted into law by the General Assembly on July 1, 2010.

NOW THEREFORE BE IT ORDAINED that the Sussex County Board of Supervisors hereby adopts a Sussex County Noise Ordinance in its entirety as follows:

Sussex County Noise Ordinance

Loud Noise Prohibited.

Section 1. Declaration of policy

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

Section 2. Definitions

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

“Plainly Audible” means any sound that can be heard clearly by a person using his or her unaided hearing faculties.

“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 zoning ordinance of Sussex County.

Section 3. Loud Noises Prohibited.

The following acts, or the causing or permitting thereof, are declared to be unlawful loud noises, but this enumeration shall not be deemed to be exclusive:

1. Noise generally.

The creation of any noise between the hours of 10:00 p.m. and 6:00 a.m. (a) in such a manner as to permit sound to be heard inside the confines of the dwelling unit, house or apartment of another person; or (b) in such a manner as to be plainly audible at a distance of 200 feet or more from its source.

2. Radios, television sets, musical instruments, and similar devices. The using, operating or permitting to be played, any radio, musical instrument, record, tape, compact disc player, loudspeaker or other machine or similar device for the producing or reproducing of sound between the hours of 10:00 p.m. and 6:00 a.m.

- a.** in such a manner as to permit sound to be heard inside the confines of the dwelling unit, house or apartment of another person; or
- b.** in such a manner as to be plainly audible at a distance of 50 (fifty) feet or more from its source.

3. ***Horns, whistles, etc..*** The 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 when necessary as a warning of danger.
4. ***Loudspeakers, public address systems and sound trucks.*** The using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom for any purpose between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to permit sound to be heard inside the confines of the dwelling unit, house or apartment of another person.
5. ***Explosive, fireworks and similar devices.*** Using or firing any fireworks without a fireworks permit, explosives or similar devices which create impulsive sound between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to permit sound to be heard inside the confines of the dwelling unit, house or apartment of another person.
6. ***Lawn Care Equipment.*** Creating noise in residential areas between 10:00 p.m. and 6:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal and other landscaping, lawn or timbering activities, except for certain commercial activities set out Section 4.
7. ***Large party gatherings.*** Allowing noise between the hours of 10:00 p.m. and 6:00 a.m. that is audible inside the confines of the dwelling unit, house or apartment of another person or at fifty (50) or more feet from the source when the noise is generated from a gathering of ten or more people.
8. ***Trash collection vehicles.*** The collection of trash or refuse in residential use districts between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to be plainly audible at any residence 100 (one hundred) or more yards away.
9. ***Vehicles.*** Operating or using a motor vehicle or motorcycle in such a manner that creates a mechanical or exhaust noise that is plainly audible at a distance of two hundred (200) feet or more from the vehicle. Operating sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of one hundred (100) feet from the vehicle.
10. ***Schools, public buildings, places of worship, and hospitals.*** Creating any noise on the grounds of any school, court, public building, place of worship or hospital in a manner that is plainly audible within such school, court, public building, place of worship or hospital and interferes with the operation of the institution.

Section 4. Exceptions.

The provisions of this ordinance shall have no application to any sound generated by any of the following:

1. Sound which is necessary for the protection or preservation of property or the health, safety, life or limb of any person.
2. Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
3. Parades, permitted fireworks displays, school related activities, and other such public special events or public activities.
4. (a) Hunting dogs. (b) Dogs responding to any person or animal on the property of the dog's owner or custodian, when such presence poses a real or perceived threat to the animal or to the occupants of the property.
5. Commercial forestry or timbering operation being conducted pursuant to a valid permit or license.
6. Commercial landscaping operations not being conducted in a residential subdivision.
7. Farming or agricultural operations.
8. Locomotives and other railroad equipment.
9. Aircraft.
10. The striking of clocks.
11. Church bells.
12. Noise generated in connection with business being performed on industrial property.

Section 5. Noises Authorized by Permit

The provisions of this ordinance shall not apply to any noise that is otherwise specifically authorized by a valid special exception, conditional use, or other permit approved by the county.

Section 6. Penalty for violation of Ordinance; civil penalties.

(1) Any person violating any of the provisions of this Ordinance shall be deemed guilty of a civil violation and shall be subject to a fine not exceeding \$250 for the first offense and \$500 for each subsequent offense. Each day of violation of any provision of this article shall be a separate offense.

(2) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that 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 noise source.

Section 7. Enforcement.

This ordinance shall be enforced by the Sussex County Sheriff's Office, who shall issue a written civil summons on a form approved by the court, to any person found to be in violation of the provisions contained herein.

Section 8. Private remedies not affected.

Nothing in this ordinance precludes a citizen from bringing a private nuisance claim or any other similar action in court against any individual related to noise.

Be it further Ordained that this ordinance, as approved by the Board of Supervisors upon due consideration and after all required public notice and hearing, shall take effect immediately this ___ day of _____, 2012.

Rufus E. Tyler, Sr., Chairman
Board of Supervisors
County of Sussex, Virginia

ATTEST:

Thomas E. Harris,
Clerk to the Board