

**BEFORE THE COUNTY COMMISSION OF BERKELEY COUNTY,
WEST VIRGINIA**

The members of the Berkeley County Commission hereby find that excessive noise which, in its decibel level or its frequency, or both, disturbs the peace and quietude of others located in residential housing, whether such housing is single or multiple family dwelling; dormitory domicile; motel, hotel or other such sleeping accommodations; and, hospitals or nursing care facilities is a public nuisance and, as such, is under the jurisdiction of this body. Accordingly, upon motion of William L. Stubblefield and second by Anthony J. Petrucci, the following Ordinance is amended and readopted, as indicated, pursuant to the provisions of § 7-1-3kk, *Code of West Virginia*, 1931, as amended.

NUISANCE: EXCESSIVE NOISE IN RESIDENTIAL AND SIMLAR SETTINGS

- (a) Any person who, from any source, disturbs the peace and quietude of others located in residential housing, whether such housing is single or multiple family dwelling; dormitory domicile; motel, hotel or other such sleeping accommodations; or, hospitals or nursing care facilities and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his or her lawful capacity, is guilty of causing and maintaining a nuisance, a misdemeanor and, upon conviction thereof, shall be fined not less than \$250.00 and not more than \$500.00 for a first offense and fined not less than \$500.00 and not more than \$1,000.00 for second and subsequent offenses.
- (b) In determining whether the peace and quietude of any residential setting has been disturbed by noise, the following standards shall be used:
 - 1. Between the hours of 7 o'clock a.m. and 10 o'clock p.m., the noise level received and measured by a law enforcement officer at the residential setting may not exceed 60 decibels (db)[A scale], except that noise that is produced for no more than a cumulative period of 5 minutes in any hour may exceed that level by 5 db [A scale]; noise that is produced for no more than a cumulative period of 1 minute in any hour may exceed the standard by 10 db [A scale].
 - 2. Between the hours of 10 o'clock p.m. and 7 o'clock a.m., the noise level received and measured by a law enforcement officer at the residential setting may not exceed 50 db [A scale].
 - 3. Residential setting is defined as any of the housing facilities set out in section (a) above and within the curtilage of such facilities, not to exceed a radius of 100 feet outside the facility, itself, or the fenced part of the property, whichever is less.

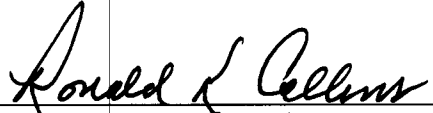
- (c) The provisions of subsection (a) and (b) of this Ordinance do not apply to:
- (1) Lawful hunting or target shooting, trap, skeet or shooting ranges as defined in § 61-6-23, *Code of West Virginia*, 1931, as amended;
 - (2) Bonafide agricultural or forestry activities;
 - (3) Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property;
 - (4) Sounds caused by regular vehicular traffic upon premises open to the public. The lack of a muffler system or a muffler which exaggerates sound shall not be considered to be regular traffic sound.
 - (5) Sounds regulated by federal and state law, including but not limited to sounds caused by railroads and aircraft;
 - (6) Lawn, garden or household equipment associated with the normal repair, upkeep or maintenance of property between the hours of seven 7 o'clock a.m. and 10 o'clock p.m.
 - (7) Construction projects for construction or excavation of public or private developments between the hours of 7 o'clock a.m. and 10 o'clock p.m.
 - (8) Organized Athletic or recognized festival or similar activity:
Sounds caused by organized athletic or other group activities, when those activities are conducted on property generally used for those purposes, including stadiums, parks, schools, churches, airports and athletic fields. These exceptions do not prohibit the county from declaring a specific event or activity in violation of this ordinance or other laws, rules and regulations and, in any case in which the athletic event or group activity extends in time beyond 10 o'clock p.m. and prior to 7 o'clock a.m. This exemption does include motorcycle, motocross, ATV, or other vehicle racing, running and/or practice events.
 - (9) Manufacturing or industrial activity, deriving from legitimate business concerns, between the hours of 7 o'clock a.m and 10 o'clock p.m.

Those who are offended by violations of this Ordinance may avail themselves of any legal remedy available to them notwithstanding the fact that the violators may have been charged and convicted of a misdemeanor pursuant to this ordinance.

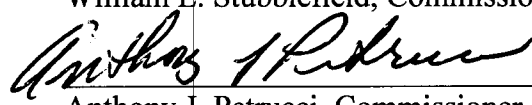
Adopted the 13th day of September, 2007.

Amended this the 30th day of April, 2009.

This amended Ordinance shall be effective on the 1st day of May, 2009.



Ronald K. Collins, President

William L. Stubblefield, Commissioner


Anthony J. Petrucci, Commissioner