

## **INDUSTRIAL NOISE CONTROL ORDINANCE**

**Be it enacted and ordained by the County Commission of Summers County, West Virginia, to provide as follows:**

### **Short Title**

"Industrial Noise Control Ordinance of Summers County, West Virginia."

### **Findings**

The Summers County Commission hereby finds and declares that at certain levels noise from ongoing commercial industrial activity can be detrimental to the public's health, safety, welfare and quality of life and, therefore, it is in the public's interest that noise be restricted.

For these reasons, there is hereby established in Summers County, West Virginia, this "Industrial Noise Control Ordinance of Summers County" for the purpose of promoting the public's health, safety and welfare, and to foster the comfort of the public pursuant to the Commission's duties as set forth by Chapter 7 of the West Virginia Code. Any noise disturbance under this section is a nuisance, and all powers of the County regarding the abatement of nuisances shall apply to noise disturbances.

### **Definitions**

"Commercial enterprise" means an enterprise engaged in commerce with financial, commercial and industrial aspects. "Commercial enterprise" does not include residential or small farm activities.

"Continuous noise" means a noise whose intensity remains essentially constant during the period of observation.

"Decibel-A-weighted (dBA)" means the sound level, in decibels, measured with a sound-level meter using the A-weighting network or scale.

"Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

"Noise" means the intensity, frequency, duration or character of sounds from a single source or multiple sources.

"Stationary source" means any equipment or activity capable of generating noise, operating or occurring on any parcel of property

### **Enforcement**

The administration and enforcement of this chapter shall be the duty of law enforcement officials or any other official designated by the county (herein after "Enforcement Official") who is hereby authorized to take such actions, including the promulgation of rules and regulations necessary to enforce the provisions of this

chapter.

### **Maximum Noise**

- A. Any noise measurements made to determine compliance with this section shall be taken from the property line of the property containing the commercial enterprise or stationary source or from any location near the property that receives the noise.
- B. Any commercial enterprise which produces continuous noise which exceeds ninety (90) dBA, shall be permitted only during the daytime hours between 8 am and 5 pm. This section shall not apply to emergency repairs to public utilities and infrastructure performed by the public utilities themselves or by local, state or federal governments or their contractors. For the purposes of this subsection, "public utility" shall have the meaning set forth in § 24-1-2 of the Code of West Virginia.
- C. All feasible procedures and measures customarily used in the industry shall be undertaken by those responsible for operating or creating any source of sound, in order to minimize noise generated by construction activities.

### **Exemptions**

- A. The following activities or sources of noise shall be exempt from the prohibitions set forth in this section:
  - 1. Transient noises, such as made by passing motor vehicles or trains;
  - 2. Athletic contests and other activities officially sponsored, authorized or otherwise sanctioned by the County, or by private or non-profit groups including festival and firework noise;
  - 3. Shooting ranges within the County provided they are in compliance with existing state and local laws;
  - 4. Church bells or carillons;
  - 5. Activities for which the regulation of noise has been preempted by West Virginia or Federal law;
  - 6. Audible signal devices which are employed as warning or alarm signals in case of fire, emergency, collision, theft or burglary, or imminent danger, and the testing of such signals, and or noise that is emitted in conjunction with a duly-authorized parade;
  - 7. Electricity-generating systems used to provide emergency backup electric power.

### **PROHIBITED ACTS**

- A. It shall be unlawful for any entity to make or continue, or cause to be made or continued, any noise disturbance described above.
- B. It shall be unlawful for any operator to run the propulsion engine of a commercial motor vehicle, or vehicle used in the transport of industrial or commercial materials, for more than ten (10) minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons, except when the propulsion engine provides auxiliary service such as heating or air conditioning.
- C. It shall be unlawful for the holder of any exception issued pursuant to this section to exceed or otherwise violate the terms of that exemption.

### **NOISE-SUPPRESSION DEVICES**

- A. No person or entity shall cause, suffer, allow or permit the removal, disconnection or disabling of any noise-suppression system or device which has been installed on any noise source:
  - 1. in accordance with federal, state or local laws or regulations, or
  - 2. as a requirement for obtaining a permit to construct, modify, install or operate such noise source.
- B. No noise source shall be operated with its noise-suppression system or device removed or otherwise rendered inoperable.

### **INSPECTIONS**

- A. The Enforcement Official is hereby authorized and directed to make or cause to be made inspections:
  - (1) in response to complaints regarding violations of this chapter so long as the Enforcement Official has reason to believe that a violation of this chapter has been or is being committed, or
  - (2) as part of a systemic noise disturbance survey program.

### **CRIMINAL PENALTIES**

- A. Any violation of this section may be charged as a misdemeanor, and any violator may, upon conviction, be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500). Each calendar day of violation shall constitute a separate offense.
- B. If the agent investigating a potential violation of this chapter is a duly-qualified law enforcement officer and he or she has probable cause to do so, he or she may issue a summons to, or arrest without a warrant, any persons who, in the presence of the officer, violates any provision of this chapter.

- C. The imposition of a criminal penalty for any violation of this chapter shall not excuse the violation or permit it to continue.
- D. Nothing in this section shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding thereof.

### **CIVIL PENALTIES; APPEALS THEREFROM**

- A. Any person or entity who commits, permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil violation and may, upon the issuance of a citation by the law enforcement official be punished by a civil fine of not more than two hundred fifty dollars (\$250) for the first violation, and not more than five hundred dollars (\$500) for a second or subsequent violation. Each calendar day of violation shall constitute a separate offense.
- B. The issuance of a citation for a civil violation of this section may occur only after a notice of violation has been issued that sets forth the alleged violation or violations and advises the owner, occupant, operator, or agent that such violation or violations must be corrected. Such notice of violation shall:
  - 1. be in writing;
  - 2. describe the alleged violation or violations;
  - 3. name, by street address or identifying information, the premises where the violation or violations are alleged to exist;
  - 4. state a deadline by which the violation or violations must be corrected; and
  - 5. be delivered to the owner, occupant, operator or party responsible for the noise, or upon the agent of any of the foregoing, by:
    - a. hand delivery to any such person or entity;
    - b. mailing to such person or entity by U.S. certified mail; or
    - c. posting at the premises named in the notice.
- C. The imposition of a civil penalty for any violation of this section shall not excuse the violation or permit it to continue.
- D. Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefore.
- E. If a person or entity who was issued a civil citation pursuant to this section does not abate the violation, then a summons shall be issued by the Enforcement Officer and the civil violation shall be tried in the Circuit Court of Summers County. Any party desiring to appeal that Court's decision on a civil violation of this section may appeal as provided at law for civil actions.

- F. During the pendency of any appeal, the civil citation issued by the Court shall remain in full force and effect.

### **EXEMPTIONS ISSUED BY A COUNTY AGENT**

- A. Any entity responsible for any noise from a commercial enterprise or stationary source may apply to the County for an exemption or partial exemption from the provisions of this section. The application shall be accompanied by such information and data as the County may require. The Enforcement Official may grant such exemption or partial exemption if he or she finds that:
1. The potential danger to the community of prohibiting the noise is outweighed by the benefit to the public interest during the period of exemption, or
  2. Compliance with the provisions of this chapter from which exemption is sought would produce serious hardship without equal or greater benefits to the public.
- B. No exemption or partial exemption issued pursuant to this section shall be granted for a period of longer than one (1) year; but any such exemption or partial exemption may be renewed for a period of up to one (1) additional year at a time if, after being duly considered at a hearing held by the County Commission, the Enforcement Official finds that renewal is justified pursuant to the factors set forth above.
- C. Nothing in this section, and no exemption, partial exemption or renewal granted shall be construed to prevent or limit the application of the emergency provision of this section.

### **EXEMPTION FOR COUNTY ACTIVITIES**

The provisions of this chapter shall not apply to operations at County facilities or engaged in by County employees or County contractors, or to County residential refuse collection programs if such programs are operated by the County or by an entity under contract with the County.

### **SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of the chapter in its entirety or of any part thereof other than that part declared to be invalid.

### **CONFLICT OF ORDINANCE**

In any case where a provision of this chapter is found to be in conflict with any other provision of the Summers County Code existing on the effective date of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the public shall prevail.

First reading: January 4, 2016

Second reading: February 10, 2016

Third reading: March 9, 2016

Entered and Adopted this the 9<sup>th</sup> day of March, 2016

  
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Jack David Woodrum, President and Commissioner

  
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Bill Lightner, Commissioner

  
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Tony Williams, Commissioner