

GARRARD CO.

NOISE CONTROL ORDINANCE

O-07-08-31-1

ARTICLE I. The following ordinance shall be titled :

Noise Control Ordinance of Garrard County.

ARTICLE II. DECLARATION OF FINDINGS AND POLICY:

SCOPE 2.1 Declaration of Findings and Policy

WHEREAS excessive sound constitutes a menace to the public health and welfare and the quality of life; and,

WHEREAS a substantial body of science and technology exists by which excessive sound may be substantially abated; and,

WHEREAS Kentucky Revised Statutes 224.710-224.800 establishes the right of the people to an environment free from excessive and unnecessary sound; and

WHEREAS excessive and unnecessary sound that may jeopardize human health or welfare or may substantially degrade the quality of life.

WHEREAS it is the desire of the Garrard County Fiscal Court to eliminate non-commercial excessive and unnecessary sound; and it being within the purview of this governing bodies police powers to do so.

NOW, THEREFORE, it is the policy of the County of Garrard to prevent, prohibit and provide for the abatement of excessive and unnecessary noise which may injure the health or welfare of its citizens or degrade the quality of life.

2.2 Scope

This ordinance shall apply to the control of all sound originating within the limits of this jurisdiction.

ARTICLE III DEFINITIONS AND STANDARDS

3.1 Terminology Standards

All terminology used in this ordinance not defined below shall be in conformance with applicable American National Standards Institute Publications, Including but not limited to S1. 1-1960, R 1971, or those from its successor publications or bodies. For the purpose of this ordinance, certain words and phrases used herein are defined as follows:

3.2.1. Agricultural Property

A parcel of real property of not less than 10 contiguous acres in size which is undeveloped for any use other than agricultural purposes.

3.2.11 Farm

A tract of land devoted to agricultural purposes.

3.2.12 Farm Livestock

Animals on a farm kept or raised for use and profit.

3.2.2 Commercial Area

A parcel of real property on which a commercial business is located.

3.2.3 Commerical Business

Any business paying occupational license fee taxes.

3.2.4 Construction

Any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities, or similar property.

3.2.5 Continuous Sound

Any sound which exists, essentially without interruption, for a period of 10 minutes or more.

3.2.6 Decibel (dB)

A unit for describing the loudness of sound, Zero decibels is the threshold of human hearing.

Ten decibels is ten times as loud as zero, twenty decibels is one hundred times as loud as zero, and 130 decibels is the threshold of pain. Example - Normal voice conversation occurs at 60 dB.

3.2.61 Decibel levels:

Rock Concerts -140 dB; Car/ Motorcycle - 120 dB; Woodworking machinery- 100 dB; Lawn Mower - 90 dB. Traffic Noise - 80 dB. Whisper - 20 dB. These decibal levels may be used as a reference in judging various noise levels.

3.2.6 Demolition

Any dismantling, intentional destruction or removal of structures, utilities public or private right-of-way surfaces, or similar property.

3.2.8 Device

Any mechanism which is intended to produce, or which actually produces, noise when operated or handled.

3.2.9 Dirt Bike

A lightweight motorcycle designed for use on rough surfaces, such as dirt roads or trails.

3.2.9 Domestic Animal

Any animal except a human being converted to domestic habitat.

3.2.10 Emergency

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demand immediate action.

3.2.11 Emergency Vehicle

An emergency vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

3.2.12 Emergency Work

Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

3.2.12 Four Wheeler

A four wheel vehicle which is usually mechanically propelled and designed for use on rough surfaces such as dirt roads and trails.

3.2.13 Designated Enforcement Officer

The Officers of Law Enforcement within whose jurisdiction enforcement of this Ordinance is required.

3.2.14 Impulsive Sound

Sound of short duration, usually less than one second, with an abrupt onset and rapid decay.

3.2.15 Industrial Area

A parcel of real property on which industrial activity occurs.

3.2.16 Intrusive Noise

That noise which intrudes over and above the existing ambient noise at a given location. For the purpose of this ordinance an intrusive sound is any sound which is disruptive or distracting to daily activities such as but not limited to sleeping, dining, reading, studying, or vocal conversations. The relative intrusiveness of a sound depends upon its amplitude, duration, and time of occurrence,

3.2.17 Licensed

The possession of a formal license or a permit issued by the appropriate jurisdictional authority; or, where no permits or licenses are issued, the sanctioning of the activity by the jurisdiction as noted in public record.

3.2.18 Mobile Noise Source

Any noise source other than a stationary noise source.

3.2.19 Motorcycle

Any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, excluding tractors, and vehicles on which the operator and passengers ride in an enclosed cab.

3.2.20 Motor Vehicle

Motor vehicle means a four or more wheeled vehicle, or machine, propelled or drawn by mechanical power and used on the public roads and highways in the transportation of passengers or property; or any combination thereof, which is required to be licensed, but does not include any vehicle, locomotive or car operated exclusively on rail car rails.

3.2.21 Muffler or Sound Dissipative Device

A device consisting of a series of chambers or baffle plates, or other mechanical design, for the purpose of receiving exhaust gas from an internal combustion engine, and effective in reducing noise.

3.2.22 Noise

Any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

3.2.23 Noise Disturbance

Any sound which, as judged by the enforcement Officer, is an intrusive sound that: (a) endangers or injures the safety or health of human beings, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates any factors set forth in this ordinance. The sound of a chainsaw is 110 dB. Regular exposure to 110 dB for more than one minute risks permanent hearing loss.

3.2.24 Noise Sensitive Zone

Areas within 100 yards of a nursing home, Day Care or Senior citizen facility, public libraries and schools.

3.2.24 Off Road Vehicle

Off Road Vehicle means any self-propelled or mechanically powered vehicle not used primarily

for transporting persons or property upon public roads.

3.2.24 Percentile Sound Duration Level

Tenth Percentile Level — the duration of sound level that is exceeded 10 percent of the time in any measurement period (Such as the level that is exceeded for 1 minute in a 10 minute period) and is denoted L10. Ninetieth Percentile duration Level—the duration sound pressure level that is exceeded 90 percent of the time in any measurement period (such as the level that is exceeded for 9 minutes in a 10 minute period) and is denoted L90.

3.2.26 Person

Any individual, association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of the United States, a State or any political subdivision of a State.

3.2.27 Plainly Audible Noise

Any noise for which the information content of that noise is unambiguously transferred to the listener, such as but not limited to understanding of spoken speech, comprehension of whether a voice is raised or normal, or comprehension of musical rhythms.

3.2.28 Provocation

Justification for action; As pertaining to the barking of dog(s) Section 5.2.4; shall mean the precieved threat of a person or animal trespassing on dog owner's property or reaction to sudden sounds which may alarm the dog or be painful to the dogs sense of hearing.

3.2.29 Public Right-of-Way

Any street, avenue, boulevard, highway, sidewalk, alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

3.2.30 Public Space

Any real property or structures thereon normally accessible to the public.

3.2.31 Pure Tone

Any sound which can be judged as audible as a single pitch or a set of single pitches by the Enforcement Officer. For the purposes of this ordinance, a pure tone shall be any sound that remains at a constant level similar to the hum from a refrigerator which is approximately 40 dB.

3.2.32 Real Property Line

An imaginary line along the surface, and its vertical plane extension, which separates the real property owned, rented, or leased by one person from that owned, rented or leased by another person, excluding intra-building real property division.

3.2.33 Repetitive Impulsive Noise

Any noise which is composed of impulsive noises that are repeated at sufficiently slow rates similar to a Jack Hammer or Ram Hoe.

3.2.34 Residential Area

Any residential zone or area where housing density exceeds one house per five acres.

3.2.35 Residential Dwelling (Residence)

Any house or structure used for a home or residence.

3.2.36 Sound

The manifestation in air of a longitudinal wave created by a pressure fluctuation, which evokes an auditory sensation within the human ear. The threshold of normal hearing is 0 dB.

3.2.37 Sound Amplifying Equipment

Any device for the amplification of the human voice, music or any other sound, excluding standard automobile radios when used and heard only by the occupants of the vehicle in which the radio is installed, and as used in this chapter; warning devices on authorized emergency vehicles, or horns or other warning devices on any vehicle used only for traffic safety purposes.

3.2.38 Sound Truck

Any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound amplifying equipment.

3.2.39 Stationary Noise Source

A stationary device which creates sounds while fixed or motionless, including but not limited to, residential, industrial, and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.

3.2.40 Steady Noise

A sound pressure level which remains essentially constant during the period of observation, i.e., does not vary in intensity or volume.

3.2.41 Weekday

Any day Monday through Friday which is not a legal holiday.

ARTICLE IV. POWERS AND DUTIES OF THE ENFORCEMENT OFFICER

4.1 Agency(Lead Agency/Official)

The enforcement of noise control established by this ordinance shall be administered by The Kentucky State Police; the Garrard County Sheriff Department; The Lancaster Police Department; or any duly elected constitutional peace officer of Garrard County. Nothing herein shall be construed as to prevent a private citizen from initiating a complaint at the County Attorney's Office for an alleged violation of this ordinance.

4.1.2 Enforcement Officer (EO)

The Officers of the Agency within whose jurisdiction enforcement of this Ordinance is required.

4.2 Powers of the Designated Enforcement Officer/Peace Officer

In order to implement and enforce this ordinance and for the general purpose of noise abatement and control, the Designated Enforcement Officer/ Peace Officer shall have in addition to any other authority vested in it the power to:

4.2.1 Inspections

Upon presentation of proper credentials, enter and/or inspect any private property, place, report or records at any time when granted permission by the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction

upon showing of probable cause to believe that a violation of this ordinance may exist.

4.2.2 Public and Private Projects

Require usage of adequate measures to avoid violation of any provision of this ordinance.

4.3 Duties of Designated Enforcement Officer/ Peace Officer

In order to effectively implement and enforce this ordinance, the Designated Enforcement Officer/ Peace Officer shall:

4.3.1 Investigate and Pursue Violations

Under procedures set forth in section 4.2.1, Article VIII, and other provisions of this ordinance investigate and pursue possible violations of this ordinance.

4.3.2 Abatement Order /Uniform Citations

If the Designated Enforcement Officer and / or Peace Officer finds a violation has occurred, a warning, an abatement order or uniform citation shall be issued as provided under Article VIII of this ordinance.

ARTICLE V. PROHIBITED ACTS

5.1 General Prohibitions

In addition to the specific prohibitions outlined in section 5.2 of this ordinance, it shall be unlawful for any person to make, continue, or cause to be made any unreasonably loud noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order. Included shall be any disturbing noise which is perceived by the Designated Enforcement Officer and / or Peace Officer or any person of ordinary sensibilities as interrupting the normal peace and calm of the area. Nothing in this ordinance shall prohibit any of these activities for emergency purposes.

5.2 Specific Prohibitions

The following acts or the causing or permitting thereof, are declared to be in violation of this ordinance:

5.2.1 Radios, Television Sets, Musical Instruments, and Similar Devices

Operating, playing or permitting the operation or playing of any radio, television, phonograph,

drum, musical instrument, or similar device which produces or reproduces sound:

- (a) Between the hours of 11 p.m. and 8 a.m. the following day in such a manner as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of Article VIII or Section 6.2.14, except for activities for which a variance has been issued by (appropriate authority).
- (b) In such a manner as to exceed the levels set forth for public space in Article VIII, measured at a distance of at least 100 feet (30 meters) from such device operating on a public right-of-way or public space.

5.2.2 Loudspeakers

Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device between the hours of 11 p.m. and 6 a.m. the following day, such that the sound there from creates a noise disturbance across a residential real property line except for any noncommercial public speaking, public assembly or other activity for which a variance has been issued by the Garrard County Sheriff Department; The Lancaster Police Department shall be a violation of this ordinance. The Garrard County Fair, Public School sporting events, the Tobacco Festival and any other similar music activity shall be exempt from this ordinance.

5.2.4 Animals

Any person owning, possessing or harboring any domestic animal or bird which without provocation makes an intrusive sound by howling, barking, whining, meows, squawks, or other means which exceeds a sound duration level of L50 over a 15 minute time span, or which creates a noise disturbance that can be heard within 10 feet of the walls of an adjacent residential dwelling shall be in violation of this ordinance.. This provision shall not apply to farm livestock, public animal shelters or animals used during licensed game-hunting activities on property where such activities are authorized.

5.2.5 Loading and Unloading

Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 11 p.m. and 6 a.m. the following day in such a manner as to cause a noise disturbance that exceeds a sound duration level of L50

for a 15 minute time span or one that can heard within 10 feet of the walls of an adjacent residential

dwelling shall be a violation of this ordinance.

5.2.7 Vehicle, Motorboat or Aircraft Repairs and Testing

(a) Repairing, rebuilding, modifying, or testing any motorcycle or other motor vehicle, motorboat, or aircraft between the hours of 11 p.m. and 6 a.m. the following day in such a manner as to cause a noise disturbance that exceeds a sound duration level of L50 for a 15 minute time span or one that can heard within 10 feet of the walls of an adjacent residential dwelling shall be a violation of this ordinance.

(b) Nothing in this Section shall be construed to prohibit, restrict, penalize, enjoin or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to applicable Federal laws or regulations.

5.2.8 Horns and Signaling Devices

Sounding of any horn or signaling device on any truck, automobile, motorcycle, emergency vehicle or other vehicle on any street or public place within the county or any city therein except as a danger warning signal as provided in the Kentucky Revised Statutes, or the sounding of any such signaling device for an unnecessary and unreasonable period of time shall be a violation of this ordinance.

5.2.9 Explosives, Firearms, and Similar Devices

- (a) Using or firing explosives, firearms, or similar devices between the hours of 11 p.m. and 6 a.m. the following day which creates a noise disturbance across a real property line, public space or public right-of-way, without first obtaining a variance issued by the Garrard County Sheriff Department or The Lancaster Police Department shall be a violation of this ordinance. Such a variance need not be obtained for licensed game-hunting activities on property where such activities are authorized.
- (b) Discharging of fireworks by private individuals between the hours of 11pm and 6am except on National Holidays and any public sponsored displays.

5.2.10 Emergency Signaling Devices

- (a) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing shall be a violation of this ordinance.
- (b) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within 20 minutes of activation.

5.2.11 Operation of off road vehicle, dirt bike or four wheeler

Repairing, operating, or testing any motorcycle, off road vehicle, dirt bike, or four wheeler in such a manner as to cause a noise disturbance between the hours of 11 p.m and 6 a.m. the following day in such a manner as to cause a noise disturbance that exceeds a sound duration level of L50 for a 15 minute time span or one that can heard within 10 feet of the walls of an adjacent residential dwelling for a 15 minute time span shall be a violation of this ordinance.

5.2.12 Noise Sensitive Zones

Creating or causing the creation of any noise disturbance within or adjacent to any noise sensitive zone, containing a nursing home, school, court or other designated area, so as to interfere with the functions of such activity or annoy the patients in the activity shall be a violation of this ordinance.

ARTICLE VI. VARIANCES

6.1 Special Variances

The administrative officer of the Enforcement Agency within whose jurisdiction enforcement of this Ordinance is required is authorized to grant variances for exception from any provision of this ordinance, subject to limitations as to area, noise levels, time limits, and other terms and conditions as the administrative officer determines are appropriate to protect the public health, safety, and welfare from the noise emanating there from. This Section shall in no way affect the duty to obtain any permit or license required by law for such activities.

- (a) Any person seeking a variance pursuant to this section shall file an application with the administrative officer. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with

this ordinance would constitute an unreasonable hardship on the applicant, on the community, or on other persons. A separate application shall be filed for each noise source; provided, however, that several mobile sources under common ownership, or several fixed sources on a single property may be combined into one application. Notice of an application for a variance shall be published in the local paper with the greatest circulation for one week prior to the variance being issued. Any individual who claims to be adversely affected by allowance of the variance may file a statement with the administrative officer containing any information to support his claim. If at any time the administrative officer finds that a sufficient controversy exists regarding an application, a public hearing will be held.

(b) In determining whether to grant or deny the application, the administrative officer shall balance the hardship on the applicant, the community, and other persons of not granting the variance against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Applicants for variances and person contesting variances may be required to submit such information as the administrative officer may reasonably require. In granting or denying an application, the administrative officer shall keep on public file a copy of the decision and the reasons for denying or granting the variance.

- (c) (Variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this ordinance for which the variance was granted.
- (d) A variance will not exceed 365 days from the date on which it was granted. Application for extension of time limits specified in variances or for modification of other substantial conditions shall be treated like applications for initial variances under subsection (b).
- (e) The administrative officer will issue guidelines pursuant to Section 4.3.1 approved by the (appropriate authority), defining the procedures to be followed in applying for a variance and the criteria to be considered in deciding whether to grant a variance.

6.2 Variances for Time to Comply

Within 90 days following the effective date of this ordinance, the owner of any commercial or industrial source of sound may apply to the administrative officer for a variance in time to comply with the provisions of this ordinance. The administrative officer shall have the authority,

consistent with this section, to grant a variance (not to exceed 365 days from the effective date of this ordinance). The same procedures and consideration by the administrative officer as followed under Section 9.1 shall likewise apply.

6.4 Farm Equipment Exemption

KRS 224.780 states: Nothing in KRS 224.710 to 224.800 shall apply to farm tractors or other farm machinery, equipment, or vehicles primarily designed or used for off public highway use. This section shall be construed to exclude from the provisions of KRS 224.710 to 224.800 only such vehicles not required to be licensed for use on public highways.

6.5 Farm Exemption

Noise disturbance created by farm livestock, the operation of farm machinery or noise caused by other activities relating to an agricultural operation shall be exempt from this ordinance.

ARTICLE VII. PERMIT

Applications for a permit for relief from the noise restrictions in these ordinances on the basis of undue hardship may be made to the administrative officer of the Enforcement Agency within whose jurisdiction enforcement of this Ordinance is required. Any permit granted by the administrative officer or its authorized representative shall contain all conditions upon which said permit has been granted, including but not limited to the effective dates, any time of day, location, sound pressure level, or equipment limitation. The relief requested may be granted upon good and sufficient evidence demonstrating that:

- (a) additional time is necessary for the applicant to alter or modify this activity or operation to comply with this ordinance; or (b) the activity, operation, or noise source will be of temporary duration and cannot be done in a manner that would comply with this ordinance; and
- (c) no reasonable alternative is available to the applicant.

The administrative officer may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon a community or the surrounding neighborhood.

ARTICLE VIII. ENFORCEMENT

8.1 Violation Assessment

In addition to standards set forth in this ordinance the determination of whether a noise is

unreasonably loud or disturbing shall be based on the following factors incident to such noise:

1) Time of day; 2) proximity of residential structures; 3) whether the noise is recurrent, intermittent, or constant; 4) the volume of intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; 5) the character of the area; 6) whether the noise is related to the normal operation of a business or other labor activity; 7) whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

8.2 Abatement Orders

- (a) Except as provided in subsection (b), in lieu of issuing a uniform citation as provided for in Section 8.3, the designated enforcement officer responsible for enforcement of any provision of this ordinance may issue a warning or an order requiring abatement of a sound source alleged to be in violation, within a reasonable time period and according to guidelines which the designated enforcement officer may prescribe.
- (b) A warning or an abatement order shall not be issued when the designated enforcement officer has reason to believe that there will not be compliance with an abatement order.

8.3 Notice of Violation

Except where a person is acting in good faith to comply with an abatement order issued pursuant to subsection 8.2 2(a), violation of any provision of this ordinance shall be cause for a uniform citation to be issued by the designated enforcement officer or other responsible enforcement official according to procedures which the designated enforcement officer may prescribe.

8.4 Other Remedies

No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this ordinance or from other law.

8.5 Citizen Suits

Provisions of this ordinance does not prevent any person from commencing an action on his own behalf against any person who is alleged to be in violation of any provision of this ordinance.

8.6 Penalties

- (a) Any person who violates any provisions of this ordinance shall be fined for each offense a sum of not less than \$100 and not more than \$250 dollars for each offense.
- (b) Any person shown willfully or knowingly violating any provision of this ordinance shall be fined for each offense a sum of not less than \$250 dollars and not more than \$500 dollars with possible jail time.
- (c) Each day of violation of any provision of this ordinance shall constitute a separate offense.

8.7 Severability

If any provision of this ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

8.8 Effective Date

This law shall take effect on _____ 2007.