

**Please publish Class 1 Legal: Fayette Tribune, Thursday, October 4th, 2018
Montgomery Herald, Wednesday, October 3rd, 2018**

**NOTICE OF PROPOSED ADOPTION OF AN ORDINANCE TO ABATE EXCESSIVE
RESIDENTIAL NOISE WHERE SUCH NOISE IS DEEMED A PUBLIC NUISANCE**

**PLEASE TAKE NOTICE THAT AT ITS REGULAR SESSION ON
OCTOBER 12, 2018, THE FAYETTE COUNTY COMMISSION WILL
INTRODUCE FOR CONSIDERATION THE ADOPTION FOR AN
ORDINANCE TO ABATE EXCESSIVE RESIDENTIAL NOISE WHERE
SUCH NOISE IS DEEMED A PUBLIC NUISANCE.**

PLEASE TAKE FURTHER NOTICE that the Fayette County Commission has scheduled two separate hearing to receive public comment on the proposed ordinance. The public hearings to receive public comment on the proposed ordinance have been scheduled to commence at 10:00 a.m. on Friday, October 12, 2018 and Friday, October 19, 2018 at 10:30 a.m. Both public hearings will take place at the County Commission, Fayette County Courthouse, Fayette County, WV. The public may view and obtain copies of the proposed ordinance at the office of the Fayette County Commission, Fayette County Courthouse, Fayetteville, WV and by calling 304 574-4290.

AN ORDINANCE TO ABATE EXCESSIVE RESIDENTIAL NOISE
WHERE SUCH NOISE IS DEEMED A PUBLIC NUISANCE

WHEREAS, the County Commission of Fayette County, West Virginia has received public comment and expert opinion testimony that certain levels of noise may constitute a threat to the public health and safety of the community; and

WHEREAS, in some circumstances such levels of noise may also constitute a public nuisance; and

WHEREAS, Chapter 7, Article 1, Section three-k-k of the West Virginia Code of 1931, (W.Va. Code § 7-1-3kk) as amended, authorizes county commission to enact ordinances and issue orders for the elimination of hazards to public health and safety of the community and to abate or cause to be abated anything which the county commission determines to be a public nuisance, and further authorizes that such ordinances may provide for misdemeanor penalty for violation thereof.

BE IT THEREFORE ENACTED AS FOLLOWS:

Section 1. Excessive Noise Levels

The County Commission of Fayette County, West Virginia does hereby declare noise levels in excess of 65 decibel (dB), which levels are either intermittent or continuous for a duration of at least thirty minutes, to be a hazard to public health and safety in Fayette County, West Virginia, exclusive of any municipality therein, and where such noise levels rise to the level of a public nuisance, the same are subject to abatement by the procedure set forth herein.

Section 2. Definitions.

For purposes of this ordinance only the following terms are defined:

- (a) "Complaint" shall mean a written statement of the essential facts constituting the offense charged. It shall be made upon the oath of a law enforcement officer before a magistrate. The complaint shall set forth the facts of the allegations on excessive noise; name the complainant or complainants with complete address and telephone number; name the alleged perpetrator or perpetrators of the excessive noise and his, her or its complete address and telephone number; set forth the names, addresses and telephone numbers of all persons who are impacted by the alleged excessive noise and the approximate area of impact of the excessive noise.
- (b) "Excessive Noise" shall mean:
 1. **Radios, television sets, musical instruments, phonographs, compact disc players, and similar devices.** It shall be unlawful to operator permit the use of any radios, television sets, musical instruments, phonographs, compact disc players, and similar devices as to be plainly audible through the walls of apartment units within the range of the same building, from another property line, or from the street between the hours of 11:00 p.m. to 6:00 a.m.
 2. **Parties and other social events.** It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce noise in a manner such that the noise is plainly audible through the walls of apartment units within the range of the same building, from another property line, or from the street between the hours of 11:00 p.m. to 6:00 a.m. A person shall be deemed to be in charge of a party or social event when that event occurs on a private property and the person is present at that event and resides on the premises involved or is a person who lives in or on the premise involved or is a person who lives in or on the premises involved and has authorized the use of the premises for such event. For parties or other social events on public property with no permit, or on private property with no owner or resident present and no clearly identified person in charge, all attendees shall be issued a violation.

3. **Domestic use of power tools and equipment.** It shall be unlawful to operate or permit the use of non-commercial or non-industrial power tools and landscaping and yard maintenance equipment that produces a plainly audible sound level through the walls of apartment units within the range of the same building from another property line, or the street between the hours of 11:00 p.m. or 6:00 a.m.
4. **All-terrain vehicles, motorcycles, snowmobiles, scooters and other motorized vehicles.** It shall be unlawful to operate or permit the use of all-terrain vehicles (ATVs), motorcycles, snowmobiles, scooters or other motorized vehicles that produce a plainly audible sound level from the property line of the complainant or the street at any time, day or night.
5. **Domestic animals.** Any person keeping or harboring domestic animals that create unreasonable loud and disturbing noise of such character, intensity and duration as to disturb the peace, quiet and good order of the neighborhood or such resident or business neighbors as may be in close proximity shall be held responsible for violations of this ordinance,. It shall be unlawful for said person to permit domestic animals to produce audible sound above the allowed level between the hours of 11:00 p.m. to 6:00 p.m.

Any person who shall allow such animal to habitually remain be lodge or fed within or on any property, dwelling, building, yard or enclosure, which he/she occupies or owns, shall be considered as harboring such animal.

- (c) "Public Nuisance" shall mean excessive noise that affects no fewer than two households that live within a residential area of Fayette County.
- (d) "Residential Area" shall mean any subdivision, development or other similar area used primarily for residential purpose located in Fayette County but which is not within the boundaries of any municipality therein.
- (e) "Household" shall mean any apartment, townhouse, unit, or freestanding home which serves as a residence of persons who live in that same dwelling, sharing its furnishings, facilities, accommodations, and expenses. A building with multiple apartments, townhouses or units may, accordingly, contain multiple households.

Section 3. Procedures

- (a) Any persons complaining of excessive noise that rises to the level of a public nuisances as defined herein, may contact local law enforcement officers who may then investigate the complainant's report and if appropriate, such officers may file a complaint with the Fayette County Magistrate Court. If it appears from the complaint that there is probably cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue to any officer authorized by law to execute it. The summons shall issue in the same form as a warrant, except that it shall summon he defendant to appear before a magistrate at a state time and place. An authorized person shall cause a copy of the complaint and summons to be served upon the alleged perpetrator or upon each of the alleged perpetrators.
- (b) The Clerk of the Fayette County Magistrate Court shall notify the assigned Fayette County Magistrate when any complaint has been filed and when service thereof has been made. The assigned Magistrate shall schedule a hearing on the complaint or perpetrators of the hearing date and time.
- (c) Upon request by the defendant, a hearing on the complaint shall be heard by the assigned Fayette County magistrate according to the West Virginia Rules of Criminal Procedure for Magistrate Courts.

Section 4. Nuisance Abatement and Penalties

- (a) The Fayette County Magistrate, having found that a perpetrator or perpetrators during any twelve month period has caused or have allowed the production of excessive noise which constitutes a public nuisance may order the perpetrator or perpetrators to abate the public nuisance and may order the perpetrator or perpetrators to pay a civil penalty not less than \$50 nor more than \$300.
- (b) A second or subsequently knowing and willful violation of this ordinance during a twelve month period shall subject the perpetrator or perpetrators to pay a civil penalty bot less than \$150 nor more than \$500.
- (c) Repeated similar violations of this ordinance which occur on separate, subsequent days shall be separate offenses under this ordinance.
- (d) Fayette County Magistrate Court shall pay any and all civil penalties collected under this ordinance to Fayette County Commission.

Section 5. Exempted Activities

- (a) All activities within the bounds of any municipalities are exempt from application of this ordinance.
- (b) The following activities are also exempted from application of this ordinance:
 - 1. Emergency or public safety vehicles;
 - 2. Emergency repair activity directed at vital services;
 - 3. Any public or private emergency or alarm device;
 - 4. Sounds emanating from any place of worship;
 - 5. Licensed motor vehicles on any roads, highways, or private roadways;
 - 6. Airports;
 - 7. Railroads;
 - 8. Non-Motorized Sporting events;
 - 9. Authorized public activities for which a permit has been granted by an appropriate agency of the federal, state, or local government;
 - 10. Authorized construction activities or demolition activities;
 - 11. Farm equipment, farm activities, and farm animal husbandry;
 - 12. Legal use of firearms including hunting and shooting activities; and
 - 13. Activities by the federal, state, or local government;
 - 14. Fairs, Festivals, and Carnivals.
- (c) Hardship Waiver. The County Commission may grant a waiver from the provisions hereof Upon application by a citizen for a waiver of the applicability of this ordinance for a limited period of time but only after a public hearing. Fayette County Magistrates are not authorized to grant such a hardship waiver.

Section 6. Severability

The several sections and subsections of this ordinance are severable, and if any section or subsection hereof shall be held unconstitutional, all the remaining section or subsections shall remain valid.

Section 7. Purpose

It is the purpose of this ordinance to promote the public health and safety of the community and as such it should be liberally construed to five effect to the purposes hereof.

Section 8. Appeals

Appeals to the Circuit Court shall be made pursuant to West Virginia Rule of criminal Procedure for Magistrate Courts 20.1.

Section 9. Civil Cause of Action not Precluded.

Nothing contained in this ordinance shall be construed to limit or preclude the right of any individual or entity from pursuing any civil cause of action otherwise authorized by law for either injury or damage arising from any noise which created either a public or private nuisance under law.

This ordinance shall be effective _____, 2018.

Done this ____ day of _____, 2018, at Fayetteville, Fayette County, West Virginia.

Matthew D. Wender, President

Denise A. Scalph, Commissioner

John G. Brenemen, Commissioner

§7-1-3kk. Authority to provide for the elimination of hazards to public health and safety; penalty.

In addition to all other powers and duties now conferred by law upon county commissions, commissions are hereby authorized to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance. The ordinances may provide for a misdemeanor penalty for its violation. The ordinances may further be applicable to the county in its entirety or to any portion of the county as considered appropriate by the county commission.

§8-11-4. Ordinance procedures.

(a) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, it shall not be necessary, except where otherwise provided in this code, for the governing body of any municipality to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, and any and all ordinances of every municipality shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of this code, in which event such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted.

(b) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection (b). Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising of revenue for the municipality, which notice shall also state where, within the municipality, the code or codes will be available for public inspection.

(c) By a charter framed and adopted, revision of a charter as a whole, or a charter amendment or amendments, as the case may be, subsequent to the effective date of this section, a city may require any or all ordinances to be published in a newspaper prior to the adoption thereof, may expressly adopt the provisions of this section, may specify other additional requirements for the enactment of ordinances, or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed in this section, but a city shall not, except in an emergency as specified in subsection (d) of this section or except as otherwise provided in this code, have the power and authority to lessen or reduce the requirements of this section.

(d) The governing body of a municipality may enact an ordinance without complying with the rules prescribed in this section only (1) in the case of a pressing public emergency making procedure in accordance with the provisions of this section dangerous to the public health, safety or morals, and by affirmative vote of two thirds of the members elected to the governing body, or (2) when otherwise provided in this code. The nature of any such emergency shall be set out in full in the ordinance.