

## NOISE

**Chapter 63.1****NOISE**

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**[HISTORY: Chapter 63 was adopted by the Council of the Town of Middleburg on 7-12-84. It was repealed in its entirety on 3-26-09; and, Chapter 63.1 was adopted in its stead.]**

**Section 63.1-1 Declaration of policy**

At certain levels, noise can be detrimental to the health, welfare, safety and quality of life of inhabitants of the town, and in the public interest noise should be restricted. Mass outdoor social gatherings, using amplified sound, in this town, unless subjected to coordination and planning efforts with the town, create noise disturbances and related adverse effects for the citizens of this town. It is, therefore, the policy of the town to reduce, and eliminate where possible, noise disturbances and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful and annoying noises from all sources subject to its police power.

**Section 63.1-2 Definitions**

The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

*Chief of Police* means the chief of police, or their respective designees.

*Motor vehicle* means a vehicle defined as a motor vehicle by § 46.2-100, Code of Virginia (1950), as amended.

*Noise disturbance* means any sound which by its character, intensity and duration:

- (1) Endangers or injures health or safety of persons within the town, or
- (2) Annoys or disturbs reasonable persons of normal sensitivities within the town.

*Owner* means the person owning, controlling, or possessing land, premises, or personality.

*Person* means any individual, partnership, corporation, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, city, or local government, or any agency or institution thereof.

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*Public property* means any real property owned or controlled by the town or any other governmental entity or institution.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk or alley.

*Real property boundary* means the property line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person.

*Residential* has reference 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, as amended.

*Sound* means an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium, and which propagates at a finite speed. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Sponsor* means a person or persons who organizes, supports, specifically benefits from, or is in charge of a mass outdoor social gathering.

### **Section 63.1-3          Noise disturbance--Prohibited generally**

Any person violating any of the provisions of this chapter shall be deemed guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars (\$300.00) for the first offense, five hundred dollars (\$500.00) for the second offense within a twelve (12) month period, and one thousand dollars (\$1,000.00) for any subsequent offense within the same twelve (12) month period. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

### **Section 63.1-4          Noise Disturbance--Specific prohibitions**

Subject to the exceptions provided in section 63.1-5, any of the following acts, or the causing or permitting thereof, among others, is declared to be a noise disturbance constituting a Class 2 misdemeanor and a public nuisance, but such enumeration shall not be deemed to be exclusive:

(a) *Radios, television sets, musical instruments and similar devices.* Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device between the hours of 10:00 p.m. and 7:00 a.m.:

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- (1) In such a manner as to permit sound to be clearly audible across a residential real property boundary or through partitions common to two (2) dwelling units within a building; or.
  - (2) In such a manner as to be plainly audible at a distance of fifty (50) feet from the building in which it is located; or
  - (3) When the sound is plainly audible at a distance of fifty (50) feet from its source or otherwise creates a noise disturbance.
- (b) *Horns, whistles, etc.* 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 as a warning of danger between the hours of 11 p.m. and 7:a.m. daily.
- (c) *Yelling, shouting, etc.* Yelling, shouting, and other loud vocalizations between the hours of 10:00 p.m. and 7:00 a.m. in such a manner that is determined to be a nuisance and as to permit sound to be heard across a residential real property boundary, public right-of-way or through partitions common to two (2) dwelling units within a building.
- (d) *Vehicles.* Operation of a motor vehicle or operation of a motorcycle within the town in a manner that creates a noise disturbance. Operation of sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of fifty (50) feet from the vehicle.
- (e) *Defective vehicles.* Operation of a motor vehicle or motorcycle so out of repair as to create a noise disturbance.
- (f) *Construction.* The erection, including excavation, demolition, alteration, or repair of any building or improvement or the use of earth moving equipment, pipe laying equipment, rock blasting operations, rock breaking equipment such as “hoe rams” or other similar equipment between the hours of 7:00 p.m. and 7:00 a.m, except in the case of emergency upon notice to and approval by the Chief of Police. In considering the granting, conditioning, or denial of the approval, the chief of police shall be guided by the following standards: (i) nature of the emergency; (ii) proposed extended hours of operation; (iii) duration of period of requested extended hours; (iv) character of the area surrounding the construction site; and (v) number of residential units which would be impacted by the extended hours of construction.
- (g) *Animals.* The owning, keeping, or possessing of any animal or animals which frequently or habitually howl, bark, meow, squawk in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building which creates noise disturbance. This subsection shall not apply to any bona fide agricultural activity.
- (h) *Large party public nuisance.* A gathering of ten (10) or more people where the gathering is not contained within a structure, but spills outdoors into balconies, yards,

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common areas, parking lots, or other outdoor spaces, which creates noise disturbance between the hours of 10:00 p.m. and 7:00 a.m.

(i) *Commercial vehicle and trash collection vehicle operation.* The operation of a commercial vehicle or trash collection vehicle, other than those that are specifically contracted with the Town of Middleburg, within one hundred (100) yards of a residence, between the hours of 10:00 p.m. and 7:00 a.m., in such a manner as to create a noise disturbance.

**Section 63.1-5 Noise Disturbance--Exceptions**

Sections 63.1-3 and 63.1-4 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) Public speaking and public assembly activities conducted on any public right-of-way or public property.
- (3) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- (4) Parades, fireworks displays, school-related activities, and other such public special events or public activities.
- (5) Activities on or in municipal, county, state, United States, or school athletic facilities, or on or in publicly owned property and facilities.
- (6) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm.
- (7) Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.
- (8) The striking of clocks.
- (9) Military activities of the Commonwealth of Virginia or of the United States of America.
- (10) Household tools and lawnmowers, except those that create a noise disturbance, between 10:00 p.m. and 7:00 a.m.
- (11) Agricultural activities.
- (12) Lawful discharge of firearms.
- (13) The pickup and/or collection of garbage, trash or recycling materials by specifically designated and contracted companies working for the Town of Middleburg.
- (14) Any designated person or company specifically contracted or engaged in work on behalf of the Town of Middleburg.
- (15) Events sponsored by the Town of Middleburg.

**Section 63.1-6 Other enforcement**

(a) Instead of the criminal enforcement of this chapter, the town may bring a suit for injunction, abatement, or other appropriate civil relief to remedy, correct, or abate a noise disturbance.