

## **ORDINANCE**

### **AN ORDINANCE AMENDING CHAPTER 90: HEALTH AND SAFETY OF THE TOWN CODE AMENDING SECTION (E) REGARDING NOISE OVER RESIDENTIAL LINES EFFECTIVE JUNE 1, 2019**

**BE IT ORDAINED**, by the Council of the Town of Mt. Crawford, Virginia:

That pursuant to § 15.2-1115 of the Virginia Code, Section 90-14 NOISE is amended, Section E.

§ 90-14. Noise.

(a) Title. This section shall be known and may be cited as the “Mount Crawford Noise Ordinance.”

(b) Findings. The Council finds and declares that excessive Noise is a serious hazard to the public health, welfare, peace and safety and the quality of life, particularly when it intrudes into the residential lives of Town citizens.

(c) Definitions. The following terms, when used in this section, shall have the meanings ascribed to them in this paragraph (c), except where context clearly indicates a different meaning:

- “Across a Residential Property Line” means (i) from one parcel of real estate in a Residential Area onto another parcel of real estate, of different ownership, in a Residential Area or (ii) from any point in a Residential Area, through the walls or closed windows of a Dwelling Unit, and into the interior thereof.
- “Dwelling Unit” means any structure which is used—or proposed to be used—for residential purposes, except Hotels, Boarding Houses, Lodging Houses, tourist cabins, automobile trailers, mobile homes, and nursing homes.
- “Motor Vehicle” carries the meaning set forth in § 46.2-100 of the Code of Virginia.
- “Noise” means sound of any kind.
- “Officer” means any employee or agent designated by the Town of Mount Crawford and/or the Bridgewater Police Department to enforce the provisions of this section.
- “Plainly Audible” means any Noise that can be detected by a person using his or her unaided hearing faculties. Specific words or phrases need not be discernable. The detection of bass reverberations is sufficient to constitute Plainly Audible Noise.
- “Residential Area” means property zoned for residential purposes as designated by the Town’s Zoning Code, irrespective of any overlays or special-use permits which may apply.

- “Sporadic Noise” means Noise which is both (i) less than five seconds in duration and (ii) not produced more than three times in any two-hour period.

- “Superintendent” means the anyone designated by the Town Council for said purposes including, but not limited to, the Town Clerk/Treasurer.

(d) Temporary permits.

(1) Requirements and Procedures. The Superintendent is authorized to issue a temporary permit to allow Noise which would otherwise be prohibited by this section, when such Noise is produced by a temporary use or activity. He may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this paragraph (d) shall contain all conditions upon which the permit has been granted, including the period of time for which it has been granted.

(2) Violation of Temporary Permit. Failure to comply with any condition of a temporary permit issued pursuant to this subsection shall constitute a violation and shall result in enforcement procedures and penalties as set forth in paragraph (h) below.

(3) Revocation of Temporary Permit. Any temporary permit may be immediately revoked if the Superintendent finds (i) that an emergency condition exists involving serious danger to the public health, safety, or welfare, (ii) if the permit holder failed to disclose or misrepresented material information in the permit application or in the permit application process, or (iii) that there was a failure to comply with any condition of that particular temporary permit.

(e) Residential Areas. In Residential Areas, no person shall cause (or permit to be caused) any of the following Noise:

- Between the hours of 9:30 p.m. and 7:30 a.m., any Noise which is Plainly Audible from a point (i) greater than 100 feet from the source of the Noise and (ii) Across a Residential Property Line;
- Between the hours of 10:00 p.m. and 6:30 a.m., any Noise which is Plainly Audible Across a Residential Property Line.

(f) Without limiting the prohibitions in paragraph (e), the following Noise is prohibited in all areas:

- Amplified Noise for Advertising. Any amplified Noise, Plainly Audible on a public street, produced for the purpose of advertising any building, structure or vehicle.
- Defects in Motor Vehicles. The use of any Motor Vehicle so out of repair, so loaded, so equipped, or in such a manner as to create Noise Plainly Audible at a distance of 125 feet from its source.

- Construction and Landscaping Activities. The outdoor operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m.

- Amplified Noise at Night. Any amplified Noise Plainly Audible at a distance of 50 feet from its source between the hours of 12:00 a.m. and 7:00 a.m.

(g) For the purpose of property owners, including both individuals and organizations, who rent, lease or otherwise allow their property to be used by other parties, liability for any violation under this Noise Ordinance may be assessed against the property owner of the property where the noise violation occurred.

(h) Exceptions. No provisions of this article shall apply to:

(1) the emission of sound for the purpose of alerting persons to the existence of an emergency;

(2) the emission of sound in the performance of emergency work;

(3) activities sponsored by the Town, state or federal governments;

(4) activities authorized by a permit issued by the Superintendent;

(5) activities for which the regulation of noise has been preempted by state or federal law;

(6) Noise created by wild animals, though Noise created by a pet is the responsibility of the pet's custodian;

(7) Sporadic Noise.

(i) Procedures.

(1) Oral Warnings. If an Officer observes a violation of this section without a complaint having been made, the Officer may first issue one oral courtesy warning per day and inform the violator that the violator will be subject to penalties if the violation continues.

(2) Written Warnings. Before issuing a Notice of Violation, an Officer shall first issue a written warning to immediately cease the Noise, unless a written warning has been issued within 180 days preceding the date of violation. The written warning shall be substantially in the same form as the notice of violation. Failure to correct the violation within 15 minutes of the issuance of a written or oral warning may result in the issuance of a Notice of Violation pursuant to this section.

(3) Notice of Violation. If an Officer determines that a violation of this chapter has occurred—and if any written warning required by paragraph (h)(2) has been issued—the Officer may issue a notice of the violation to any or all persons committing, permitting, assisting in such violation.

(4) Voluntary Payment. The Notice shall provide that the person charged with a violation may elect Legislative Intent. The violation of this ordinance occurs where the noise is created, not where its effects are felt. Thus, paragraph (e) does not regulate noise which emanates in non-residential areas, even if such noise might be heard in residential areas. There are certain risks inherent in living near commercial or industrial areas which cannot reasonably be eliminated by regulation. Legislative Intent. One written warning is mandatory, but if the warning is not heeded, it can be followed up with a Notice of Violation in 15 minutes. To make an appearance in person, or in writing by mail, to the Town Treasurer, pay the civil penalty established for the violation, and abate any continuing violation, all within 14 days from the date of the Notice.

(5) Non-Payment; General District Court. If a person charged with a violation does not satisfy the Notice of Violation as provided in paragraph (h)(4), the violation shall be tried in general district court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law.

(6) Civil Penalties. In any disposition of a Notice of Violation under paragraphs (h)(4) or (h)(5), Any person who commits, permits, assists in or attempts any violation of this section, whether by act or omission, shall be liable for a civil penalty. All payments of these civil penalties are to be paid to the Town Treasurer. The penalties are as follows:

- First violation. The first violation of this section shall be punished by a civil penalty in the amount of \$50.00.
- Second violation. The second violation of this section by the same person, on the same property, or from the same set of operative facts, within 180 days of the first violation of this section shall be punished by a civil penalty in the amount of \$100.00.
- Third violation. The third violation of this section by the same person, on the same property, or from the same set of operative facts within 180 days of the second violation of this section shall be punished by a civil penalty in the amount of \$500.00.

(7) Criminal Penalties. The fourth (or subsequent) violation of this section by the same person, on the same property, or from the same set of operative facts, within 180 days of the third (or previous) violation of this section shall constitute a Class 2 misdemeanor.

(8) Equitable Relief. Nothing in this section shall limit the Town's rights to seek injunctive relief with respect to a public nuisance or a landowner's right to seek such relief with respect to a private nuisance.

APPROVED AND ADOPTED this 11<sup>th</sup> day of March, 2019.

Agnes L. Cook  
Mayor, Town Council,  
Mt. Crawford, Virginia