

Sponsor(s) :Councilman Brown
Drafted by :Director Allen
First Reading :November 12,2001
Committee Referral :Planning 11/12/01
Reported Out of Com. :
Second Reading : 1-14-02
Public Hearing :February 11,2002
Third Reading :February 11,2202
Effective Date :

I, Carol Chrisley, Clerk to Council, certify
That this Ordinance was advertised for
Public Hearing on date recorded.

ORDINANCE NO. 02-02

COUNCIL FORM OF GOVERNMENT FOR ABBEVILLE COUNTY

(An Ordinance to allow the County of Abbeville to establish and enforce noise regulations.)

WHEREAS: Abbeville County is vested with the authority and power as set forth in Title 4, South Carolina Code of Laws, 1976, as amended, to establish and enact ordinances for the well being, health, safety and protection of its citizens; and

WHEREAS: The County Council of Abbeville County finds that any noise of such character, intensity or duration which substantially interferes with the comfortable enjoyment of persons or ordinary sensibilities occupying, owning or controlling nearby properties or persons making use of public properties for their intended purposes, is hereby declared to be unlawful, to be a nuisance and is prohibited.

Specific Loud Noises as Common Nuisances:

Nuisance noises shall include, but not limited to, the use of operation of the following instruments, devices, vehicles or pieces of equipment when operated in the manner prohibited by the terms of this Ordinance:

- A) Radios, phonographs, similar devices. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to unreasonably disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is reasonably necessary for convenient hearing for the person who is in the room, vehicle or chamber in which this machine or device is operated and who is voluntary listener thereto. Also in such a manner as to be plainly audible at a distance of 100 feet from a building, structure, any type of residence or vehicle in which it is located shall be prima facie evidence of a violation of this ordinance.
- B) Mechanical devices operating by compressed air, such as pneumatic drills and jackhammers.
- C) Horns, sirens and signal devices using loud, brash or harassing noises, whether on vehicles or otherwise;
- D) Motor vehicle exhausts without mufflers or with inefficient or ineffective mufflers.

- E) The human voice when used to yell, shout, scream or the like (this has been further defined) at any time or place so as to unreasonably annoy or disturb the quiet, comfort or response of persons in the vicinity.

Continuous or Repeated Noises

Regardless of the level of sound, the following shall be deemed a nuisance and shall be prohibited under this Ordinance.

- A) To keep any animal, including a bird, causing a frequent or long, continued noise, such as barking, howling or screeching, disturbing the comfort and repose of any person of ordinary sensibilities in the immediate vicinity;
- B) To install or operate a burglar alarm system, which uses an audible warning or bell without a functioning device that will shut off the warning bell within twenty (20) minutes after application of the system when persons who are disturbed by its activation cannot readily silence the alarm manually. Each activation of such an alarm that continues beyond twenty (20) minutes shall be deemed a separate offense.

Exemptions

The following noises shall be exempt from prohibitions of this Ordinance, even when a nuisance is caused:

- A) The sound produced by construction machinery, heavy duty equipment used for construction, excavations or repairs of streets by or on behalf of the county or state at night when the public welfare and convenience renders it impossible to perform this work during the day.
- B) The sound produced by horns, sirens and alarms used with authorized emergency vehicles or otherwise as safety devices to alert persons to danger or attempted crime; however, this exemption shall not apply to improperly operating burglar alarms as identified in the above section B.
- C) The sound produced by emergency repair measures necessary to restore public utilities or to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.
- D) The sound produced by bells or chimes or other carillon instruments when used to signify the passage of an hour, half hour or quarter hour components or to commemorate a wedding, funeral or similar event, including five (5) continuous minutes in a duration in any one (1) hour period.
- E) Agricultural vehicle, tractor or other vehicle exempted from registration and licensing requirements under state law; or motor vehicle transporting poultry or livestock.
- F) The sound emanating from a ballpark, playing field, stadium or comparable outdoor facility designed and intended for recreational or sports activity when used during a time for organized exhibition or particular sports or recreational activities sponsored by government, church or charitable organization.
- G) The sound produced by the following, provided there is compliance with any Federal Regulations applicable to the noise:
 - 1) Aircraft in flight or in operation at an airport;
 - 2) Railroad equipment in operation on railroad rights-of way; or

- 3) Motor vehicles, otherwise in lawful operating condition, on all public streets and highways.
- H) This Ordinance shall not apply to any noise emanating from an agricultural operation. For the purposes of this Ordinance, "agricultural operation" shall mean the production/raising for sale or personal use of crops or animals or fowl.
- I) This Ordinance shall not apply to any noise emanating from any animal or gun used in the sport of hunting, target practice or clay pigeons.
- J) This Ordinance shall not apply to any noise emanating from an industrial or commercial facility operation. For the purpose of this Ordinance, "industrial facility" means any activity and its related premises, property, facilities or equipment involving the fabrication, manufacture or production of durable or non-durable goods. For the purpose of this Ordinance "Commercial facility" means any activity involving the normal use of any mechanical device operated by compressed air, such as tire repair, body shops, ect

Enforcement Factors:

In the enforcement of this section, an enforcement officer may be required to exercise judgment in determining if a particular noise is sufficiently loud or otherwise so offensive that it would substantially interfere with persons occupying nearby public or private property. When making such determinations, the enforcement officer may consider the following and other relevant factors:

- A) The volume of the noise;
- B) The intensity of the noise;
- C) Whether the nature of the noise is usual or unusual;
- D) Whether the origin of the noise is natural or unnatural;
- E) The type and intensity of ambient noise, if any; and
- F) The nature and zoning of the area in which the noise is heard.

Enforcement Procedures

- A) All law enforcement officers in the ordinary course of their duties shall have the authority to advise persons of the provisions of this section and request compliance without having received a complaint from any member of the public. However, no charge shall be made against any person unless a complaint is made to an officer or to another agent of the County and the person has first been provided an opportunity to abate the offending noise without penalty. If the violation continues or recurs within a twenty four(24) hr period, or if the same person has been provided an opportunity two(2) or more times within the thirty(30) days to abate a noise at the same location and the person continues to make the noise or continues to allow it to be made, then such person shall be guilty of a violation of this Ordinance.
- B) Evidence- The complaints of three(3) or more persons, or of one(1) or more persons, when combined with the complaint of the law enforcement officer, is prima facie evidence that sound regulated by this Ordinance has been produced.
- C) Violation- A violation of this article shall be considered a misdemeanor and subject to the jurisdiction of the magistrate's court.

Penalties:

- A) Penalties, General- Any person, firm, corporation or agent who shall violate the provisions of this Ordinance shall be guilty of a misdemeanor and shall be subject to a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars or imprisonment of not more than thirty (30) days. The County Attorney may also seek injunctive relief or any appropriate remedy available at law or in equity, in court of competent jurisdiction to assure compliance.
- B) Penalties, Forfeiture, Confiscation and Disposition of Sound Equipment in Motor Vehicles- In lieu of the penalties enumerated above, the penalty for the first violation of the excessive noise from sound amplifying devices in motor vehicles shall be a fine of not more than One Hundred (\$100.00) Dollars. For a second violation, the penalty shall not be more than Three Hundred (\$300.00) Dollars or thirty (30) days. For a third violation, the sound producing device shall be forfeited. In addition, the arresting officer or other law enforcement officer of the agency must confiscate the sound producing device at the time of the arrest for a third violation. The sheriff shall be authorized to promulgate regulations to effect the confiscation described herein. The sound-producing device shall be returned in the event a person is found "not guilty" violating the provisions of this Ordinance for a third violation.

WHEREAS: This Ordinance is declared to be remedial, and shall be constructed to secure the beneficial interests and purposes of public safety, health and general welfare. Neither the Sheriff's Office nor their employees shall be liable in tort for damages sustained as a result of sound produced in excess of the requirements of this article and shall not be held to deprive any county or state agency of any power or authority which it had on the effective date of this Ordinance or any remedy then existing for the enforcement of its orders, nor shall it deprive any individual, business or corporation of its legal rights as provided by law.

NOW, THEREFORE: Should any section or provision of this Ordinance or application of a provision of the Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part or application so declared to be unconstitutional or invalid;

NOW, THEREFORE, BE IT RESOLVED, the Abbeville County Council as the governing body of Abbeville County, South Carolina, does, by the adoption of this Ordinance, hereby implement the procedures described herein;

DONE AND PASSED this 11th day of February, 2002

ABBEVILLE COUNTY COUNCIL

By: *Larry Walker*
Larry Walker, Chairman

ATTEST:

Carol Chrisley
Carol Chrisley, Clerk to Council

By: *R. Eugene Pruitt, Jr.*
R. Eugene Pruitt, Jr., County Attorney

