

ORDINANCE NO. 09-04-21

AN ORDINANCE TO AMEND AND CLARIFY CERTAIN SECTIONS OF ORDINANCE NO. 05-08-56. ADOPTED AUGUST 29, 2005, AN ORDINANCE TO PROVIDE FOR NOISE CONTROL IN THE UNINCORPORATED AREAS OF BERKELEY COUNTY; AND TO PROVIDE FOR PENALTIES THEREOF.

Sec. 38-1. Noise.

- (a) **Definitions.** As used in this section, the following terms have the indicated meaning:
- (1) Decibel (dB) is a unit of level which denotes the ratio between two (2) quantities which are proportional to power; the number of decibels corresponding to the ratio of two (2) amounts of power is ten (10) times the logarithm to the base ten (10) of this ratio.
 - (2) Excessive noise means any noise prohibited by subsection (b) of this section.
 - (3) Impulsive Sound is a sound of short duration, usually less than one second, with an abrupt onset and rapid decay. By way of example "impulsive sound" shall include, but not be limited to, explosions, musical base drum beats, or the discharge of firearms.
 - (4) Residential areas means areas of the county containing single-family and multifamily dwellings, including houses, apartments, condominium projects, mobile homes, and mobile home parks.
 - (5) Sound Level (Noise Level) in decibels (dB) is the sound measured with the "A" weighting and slow responses by a sound level meter; except for impulsive or rapidly varying sounds, the fast response shall be used. Traffic, aircraft, and other background sounds shall be considered in taking noise measurements, when such background sound interferes with the primary noise being measured.
 - (6) Sound Level Meter is an instrument including a microphone, an amplifier, an output meter, and "A" frequency weighting network for the measurement of sound levels that conforms to American National Standards Institute (ANSI) Standard S 1.4-1971 "Specifications for Sound Level Meters", or the latest revision.

(7) Supplementary Definitions of Technical Terms. Definitions of technical terms not defined herein shall be obtained from American Standard Acoustical Terminology S 1-1-1971 or the most recent revision thereof.

(b) **Prohibited acts.** It shall be unlawful for any person, business, partnership, or corporation to willfully create excessive noise within any unincorporated area of the county as provided for in this section.

(1) Continuous sound levels from a facility or property shall not exceed the maximum limits established in Table I, as measured from the nearest property line at the specified locations:

Table 1

TABLE INSET:

<u>Location Receiving the Noise</u>	<u>Hours of the Day</u>	<u>Maximum Sound Level in A-Weighted Decibels</u>
In a residential area	6:00 a.m. to 10:00 p.m.	70 dBA
	10:00 p.m. to 6:00 a.m.	65 dBA
In a non-residential area	6:00 a.m. to 10:00 p.m.	75 dBA
	10:00 p.m. to 6:00 a.m.	69 dBA

(2) For any source of non-impulsive sound that is of a short duration, and is non-repetitive, the maximum sound level limits set forth in Table 1 shall be increased by 10 dBA from 6:00 a.m. to 10:00 p.m.

(3) For any source of impulsive sound, the maximum sound level limits in Table 1 shall be increased by 10 dBA from 6:00 a.m. to 10:00 p.m.

(4) For any source of impulsive sound, the maximum sound level limits in Table 1 shall be decreased by 10 dBA from 10:00 p.m. to 6:00 a.m.

(c) **Exemptions.** The following are exempt from action pursuant to this section:

(1) Noises arising from normal farm activities, including the use of agricultural equipment.

(2) Noises from construction or demolition activities occurring between 6:00 a.m. and 10:00 p.m. Construction activity means any site preparation, assembly, erection, repair, alteration, or similar activity and any associated equipment testing.

- (3) Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.
 - (4) Noises resulting from emergency work.
 - (5) Noises resulting devices used solely for the purpose of warning, protecting, or alerting the public, of the existence of an emergency situation.
 - (6) Noises generated by any aircraft or generated in connection with the operation of any airport.
 - (7) Public Utilities regulated pursuant to Title 58 of the South Carolina Code of Laws
 - (8) No prohibition contained in this section shall apply to any permitted public performance, gathering, or parade, or to any public performance, gathering, or activity conducted, sponsored, or cosponsored by Berkeley County.
- (d) **Specific prohibitions.** The following acts are specifically prohibited, as further illustrations, or in addition to the general prohibitions contained in subsection (b), and not, in any form or interpretation, in lieu of the general prohibitions contained above:
- (1) Horns/ signaling devices. The sounding of any horn or signaling device on any motor vehicle or any street or public place in the unincorporated area of this county continuously and/or incessantly, except as a danger warning.
 - (2) Radios, televisions, musical instruments, and similar devices.
 - a. The operating or playing of any radio, musical instrument, and devices commonly known as boom boxes or similar device which produces or reproduces sound on the public rights-of way, other than as specified in subsection (2)b., below, in such a manner as to be plainly audible to any person other than the operator of the device.
 - b. The operating or playing of any radio/boom box, television, phonograph, musical instrument or similar device which produces or reproduces sound in a motor vehicle or public area or area with public access or in public use, in a manner as to be plainly audible at a distance of 100 feet or inside any residence other than the source of the sound.

- (3) Emergency signaling devices. Subject to the exemptions of subsection (c), herein,
 - a. Except in case of an emergency, the intentional sounding of any alarm between the hours of 10:00 p.m. and 6:00 a.m.
 - b. The testing of any alarm for a period in excess of 60 seconds at any time.
 - c. The testing of a complete emergency signaling system, including the signaling device and the personnel response to the signaling device, more than once in each calendar month, and the sounding of the emergency signaling system for a period in excess of 15 minutes.

- (e) **Variance Conditions.** Any person or business that owns or operates any stationary noise source may apply to the County for a variance from one or more of the provisions of this ordinance.
 - (1) Applications for a permit of variance shall supply information including, but not limited to:
 - (a) The nature and location of the noise source for which such application is made;
 - (b) The reason for which the permit of variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of variance is not granted;
 - (c) The level of noise that will occur during the period of the variance;
 - (d) The section or sections of this ordinance for which the permit of variance shall apply;
 - (e) A description of interim noise control measures to be taken for the applicant to minimize noise and the impacts occurring therefrom; and
 - (f) A specific schedule of the noise control measures that shall be taken to bring the source into compliance with this ordinance within a reasonable time.
 - (2) Failure to supply the information required by the County shall be cause for rejection of the application.
 - (3) A copy of the permit of variance must be kept on file by the County Planning and Zoning Department for public inspection.

- (4) The County may charge the applicant a fee of \$25.00 to cover expenses resulting from the processing of the permit of variance application.
 - (5) The County may, at its discretion, limit the duration of the permit of variance, which shall be no longer than 1 year. Any person holding a permit of variance and requesting an extension of time shall apply for a new permit of variance under the provisions of this section.
 - (6) No variance shall be approved unless the applicant presents adequate proof that:
 - (a) Noise levels occurring during the period of the variance will not constitute a danger to public health; and
 - (b) Compliance with the ordinance would impose an unreasonable hardship on the applicant without equal or greater benefits to the public.
 - (7) In making the determination of granting a variance, the County shall consider:
 - (a) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;
 - (b) The social and economic value of the activity for which the variance is sought; and
 - (c) The ability of the applicant to apply the best practical noise control measures.
 - (8) The permit of variance may be revoked by the County if the terms of the permit of variance are violated.
 - (9) A variance may be revoked by the County if there is:
 - (a) Violation of one or more conditions of the variance;
 - (b) Material misrepresentation of fact in the variance application; or
 - (c) Material change in any of the circumstances relied on by the County in granting the variance.
- (f) **Violations.** Any person who violates these provisions shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than \$100.00 nor

more than \$500.00 or be imprisoned for a period not exceeding 30 days, or both. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.

- (g) **Enforcement.** The Berkeley County Sheriff s Office and Berkeley County Code Enforcement Officers, in cooperation with county government, shall enforce the provisions of this article.
- (h) **Severability.** Should any section, paragraph, or provision of this ordinance be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.
- (i) **Conflicting Ordinances.** All ordinance or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect.
- (j) **Effective Date.** This ordinance shall take effect on the date of its adoption.

ADOPTED this 27th day of April, 2009.

S/Daniel W. Davis, Chairman
Berkeley County Council

ATTEST:

S/Barbara B. Austin, CCC
Clerk to County Council

Approved as to Form:

S/Nicole Scott Ewing, Esq.
County Attorney

First Reading: February 23, 2009
Second Reading March 23, 2009
Public Hearing April 27, 2009

Third Reading April 27, 2009