

<b>EXHIBIT A</b>
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**ARTICLE III. NOISE CONTROL****Sec. 12-81. Scope.**

This article shall apply to all sound, vibration, and noise originating within the Town of Bluffton. Nothing in this article shall be construed to limit or prevent the Town of Bluffton or any person from pursuing any other legal remedies for damages or the abatement of noises in the city.

**Sec. 12-82. Definitions.**

The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:

*A-weighted sound level:* A uniform noise measurement that simulates people's perception of loudness and annoyance. It is weighted to account for frequencies most audible to the human ear. The sound pressure level in decibels as measured on a sound level meter using the A-weighted network; sound levels are represented herein by the designation, "dB(A)."

*Amplified sound:* Any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.

*Construction:* Erection, repair, assembly, alternation, landscaping, or demolition of any building or building site.

*Daytime:* Unless otherwise described within this article, daytime shall be 7:00 a.m. through 7:00 p.m., Monday through Saturday and 12:00 p.m. (noon) through 7:00 p.m. on Sunday during standard time; and, 7:00 a.m. through 9:00 p.m., Monday through Saturday and 12:00 p.m. (noon) through 9:00 p.m. on Sunday during day light savings time.

*Decibel also dB:* Unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure (20 micronewtons per square meter).

*Impulsive sound:* Sound of short duration with an abrupt onset and rapid decay, characterized by sound meter reading changes at a rate greater than ten dBA within a five second interval.

*Lawful Noise Limitations:* Noise originating from Outdoor Entertainment, whether live or recorded, is permitted between the hours of 12:00 p.m. and 9:00 p.m. Sundays through Thursdays, and between 12:00 p.m. and 10:00 p.m. Fridays and Saturdays. During the hours of 12:00 p.m. to 9:00 p.m. the maximum permissible sound level is 50 decibels (dB(A)) measured at a distance of 250 feet from the sound source. During the hours from 9:00 p.m. to 10:00 p.m. the maximum permissible sound level is 45 decibels (dB(A)) measured at a distance of 250 feet from the sound source. Any noise which continues outside of the permitted time, or which exceeds the maximum decibel levels will be deemed a noise disturbance.

*Mobile sound vehicle:* Any motorized vehicle fitted with external loudspeakers or so designed or modified as to project electronically amplified sound outside of the passenger area of the vehicle.

*Motorized vehicles:*

- (1) *Generally.* Any vehicle as defined by the South Carolina Code of Laws, including, but not limited to:
  - a. Excursion passenger vehicles;
  - b. Common carriers of passengers;

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- c. Motorcycles and mopeds;
  - d. Truck tractors; and,
  - e. Farm tractors.
- (2) *Motorboat*. Any vessel which operates on water and which is propelled by a motor including but not limited to boats, barges, amphibious craft, water ski towing devices, and hovercraft.

*Noise*: Any sound or combination of sounds which, because of its volume or quality, tends to disturb persons of normal sensitivity or to interfere with normal human activity.

*Noise disturbance*: Any unreasonably loud or raucous sound or noise which is not outdoor entertainment or outdoor live entertainment and which:

- (1) Endangers or injures the health or safety of humans or animals;
- (2) Endangers or injures the personal or real property; or
- (3) Disturbs a person of normal sensitivity.

*Outdoor entertainment*: Any outdoor commercial or fundraising activity offered to, provided for, or attended by one or more persons including the playing of recorded music, radio, stereo, and/or television.

*Outdoor live entertainment*: Any activity for the benefit of one or more persons to be performed in outdoor areas by a person or persons using amplified sound to broadcast their voice, or the sound or noise resulting from the playing of musical instruments.

*Permits*:

- (1) A permit issued to a person that provides or intends to provide outdoor entertainment and/or outdoor live entertainment on a regular or routine basis or that is otherwise required by Town Ordinance to obtain a business license.
- (2) Special event permit: A permit issued by the Town Manager or his designee for any activity that takes place on a nonrecurring or infrequent basis and/or that may temporarily exceed the ~~sound levels provided for in Table A~~ Lawful Noise Limitations.

*Person*: Any individual, association, firm, partnership or corporation.

*Person responsible*: An owner, occupant, employee, agent, or any other person who is or who appears to be responsible for a premises, dwelling, or business, or a noise-producing machine or device.

*Sound*: Any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by persons of normal sensitivity.

*Sound level*: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, as specified by the American National Standards Institute (ANSI) standards for sound level meters. If the frequency weighting employed is not specified, the A-weighting shall apply.

*Sound level meter also decibel meter*: An instrument that includes a microphone, amplifier, RMS detector, integrator or time average, output meter and averaging network used to measure sound level. Such instrument shall be certified to meet or exceed the current standards of the American National Standards Institute.

## **Sec. 12-83. General prohibitions—Decibel and/or time limitations.**

- (a) Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the Town, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area. Any sound or noise associated with outdoor entertainment or outdoor live entertainment shall be deemed a noise disturbance when it exceeds the Lawful Noise Limitations ~~levels set forth on Table A attached hereto and incorporated herein~~. As provided for herein, all persons providing outdoor

entertainment or outdoor live entertainment must secure a permit from the Town. All Persons required to obtain a permit shall be subject solely to the measurement of noise levels provided ~~in Table A~~ by the Lawful Noise Limitations.

- (b) All persons required to secure a permit to provide outdoor entertainment and/or outdoor live entertainment shall be required to end the outdoor entertainment and/or outdoor live entertainment in accordance with the Lawful Noise Limitations by the time prescribed ~~in Table A~~.

#### **Sec. 12-84. Further prohibitions—Noise disturbance.**

Certain activities are recognized as tending to produce loud and raucous noises and may constitute a noise disturbance. Accordingly, it shall be unlawful for any person to, for any purpose so as to unreasonably disturb the peace, quiet, comfort, or repose of any person in his home or dwelling, or, in any public area or place of public accessibility, including, but not limited to, commercial establishments:

- (a) Use, operate or play any transistor or electronic device which produces, reproduces or amplifies sound; or,
- (b) Attempt to attract the attention of the public to any political or commercial activity by the use of a loudspeaker or other sound amplification device; or,
- (c) Engage in personal conduct of an excessively loud nature; or,
- (d) Sound any horn or signal device on any automobile, motorcycle, bus, or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended: the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for any unnecessary and unreasonable period of time; or,
- (e) Shout as a peddler, hawker and vendor; or,
- (f) Start a motor vehicle engine of any kind using excessive acceleration or creating loud noises, or at any time to commence or continue the movement of any such vehicle with the spinning of tires or any other excessive noise; or,
- (g) Keep any animal or bird which causes frequent or long continued noise, provided, however, that upon application to and approval by the Town Manager, or his designee, a written permit may be granted as provided for herein.
- (h) Any permitted outdoor entertainment, whether live or recorded, that exceeds six (6) hours of continuous play.

It is further recognized that certain uses, including churches, synagogues and other places of worship, hospitals, convalescent and nursing facilities, schools and courthouses are particularly sensitive to sound and noise. Noise-producing activities, including those specified above, may become noise disturbances when conducted in the immediate vicinity of those uses during their hours of operation.

#### **Sec. 12-85. Exceptions.**

The following are excepted from the application of this article:

- (a) Construction activity performed by or for an agency of government provided that all equipment is operated in accordance with manufacturer's specifications and is muffled as designed and manufactured;
- (b) Sound produced by church bells or chimes, whether produced by the striking of a church bell or chime, or a recording thereof;

- (c) Sound or noise emanating from duly permitted street fairs, festivals, or celebrations conducted by or with approval of the Town of Bluffton;
- (d) Sound or noise emanating from film and video production activities for which permits have been issued by the Town; provided all equipment, such as generators, are properly muffled as designed and manufactured;
- (e) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
- (f) Sound or noise from lawful fireworks;
- (g) Sound produced by persons and machinery engaged in landscape maintenance, cleanup or tree shaping or removal, during the daytime, said machinery shall be properly muffled as designed and manufactured;
- (h) Musical accompaniment to parades or military ceremonies;
- (i) Sound emanating from regularly scheduled events at Town and County parks and school athletic facilities;
- (j) Emergency vehicles in the course of performing their official duties;
- (k) Boats, ships, barges and other vessels engaged in licensed commercial activity;
- (l) Construction, construction preparation, and building activity between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday and 12:00 p.m. and 7:00 p.m., on Sunday and any such work certified by the Town Manager or his designee to be necessary to address an emergency situation;
- (m) Sounds produced by maintenance or repair activity within boat yards, during the daytime;
- (n) Sounds produced by the commercial sawing or grinding of tree trunks, branches, or other organic matter into mulch during the daytime on Monday through Friday; and sounds produced by the noncommercial sawing or grinding of tree trunks, branches or other organic matter into mulch during the daytime on Monday through Sunday; and
- (o) Sounds produced by golf course or tennis maintenance or watering equipment.
- (p) Sounds produced on the premises of a person that has secured a permit in accordance with the terms of this article; notwithstanding the exception granted herein, a sound or noise generated by activity resulting from the use of a permit or special event permit, shall be deemed a noise disturbance if, when measured as prescribed herein, it exceeds the Lawful Noise Limitations, levels set forth in Table A attached hereto and incorporated herein.
- (q) Bands playing at any scheduled football or other sporting activity or events or other activity held on lands belonging to the Beaufort County Board of Education provided that the activity or event in question is associated with the Beaufort County School System.
- (r) Regular or special indoor or outdoor events, including, but not limited to, weddings, corporate functions, member functions, charitable events, outdoor sporting events, club and/or hotel functions as part of an established property owners association and/or private club that is located on property that is subject to a development agreement.
- (s) Any individual or entity that obtained a special event permit from the Town. The Town may issue special event permits for events including, but not limited to, concerts, festivals, parades, and athletic events to permit reasonable and limited exceptions to the provisions of this section. Any special event permit issued shall contain specific provisions as to the activities which will be conducted and the dates and times during which the provisions of this section are to be suspended. Specific sources of the noise which may otherwise violate this section shall be identified, and special conditions may be established in the permit which will minimize the noise impact of the special event on the community.

## **Sec. 12-86. Determination of noise disturbance.**

In determining whether a noise or sound constitutes a noise disturbance violation under this section, the enforcement officer may consider, in addition to all other logically relevant factors, the following:

- (a) The volume of the noise;
- (b) Whether the nature of the noise is usual or unusual;
- (c) The intensity of the noise;
- (d) The general characteristics of the area where the noise is occurring;
- (e) The time of day or night at which the noise is occurring;
- (f) The reasonable expectation of quiet that could be expected by individuals on public or private property in the vicinity of where such noise is occurring;
- (g) In the case of motor vehicles, whether or not such vehicles are equipped with mufflers and/or such suppression devices which keep exhaust noises down to a level equal to or below that which the manufacturers of such vehicles provided as original equipment designed for acceptable street use;
- (h) The proximity of the noise to residential sleeping facilities, churches, synagogues and other places of worship, hospitals, convalescent and nursing facilities, schools and courthouses;
- (i) The duration of the noise; or
- (j) Whether the noise is recurrent, intermittent or constant.

## **Sec. 12-87. Measurement of sound level.**

In determining outdoor entertainment and outdoor live entertainment sound levels pursuant to this article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified herein; and all terminology not defined herein or in Section 2 shall be in conformance with the current American National Standards Institute (ANSI).

- (a) Sound level measurement shall be made with a sound level meter using the A-weighting scale.
- (b) Sound level meters shall be serviced, calibrated and operated as recommended by the manufacturer, and in accordance with regulations prescribed by the police department. Persons using the sound level meter shall be trained in sound level measurement and the operations of sound level measuring equipment.
- (c) Except as specified in (g) below, the sound measurement shall be averaged over a period of at least one minute for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than three decibels at any time during the measurement period.
- (d) During measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen should be used whenever practical.
- (e) Traffic noise and noise from other sources not connected with the sound being measured shall not be considered in taking measurements.
- (f) In the case of noise or sound that is impulsive, the measurement shall be taken over a period of time of at least one minute. Any such sound or noise that exceeds the prescribed level by 10dBA more than two times within a five second interval shall be deemed to exceed the prescribed sound levels.
- (g) In the case of outdoor entertainment or outdoor live entertainment, including live or recorded speech, music or other sound, whether or not a permit is required for the activity, sound level measurements shall be made as prescribed in this section. Notwithstanding the exception granted herein for a special event permit, the decibel level of such activity shall not exceed the levels allowed pursuant to this article.

~~when measured the distance prescribed in Table A from which the noise emanates~~ the Lawful Noise Limitations.

## **Sec. 12-88. Permits required.**

- (a) All persons providing or intending to provide outdoor entertainment and/or outdoor live entertainment on a regular or routine basis and who are otherwise required by Town Ordinance to obtain a business license, are required to state such on their business license application at the time that the business license is secured or renewed and are required to secure a permit at that time allowing them to have outdoor entertainment and/or outdoor live entertainment. Should a person provide or intend to provide outdoor entertainment and/or outdoor live entertainment prior to the expiration of their current business license, the person must secure a permit from the Town which shall remain in effect until such time as their business licenses is renewed and a new permit obtained. A reasonable fee, to be determined by Town Council, may be assessed for this permit and may be collected in conjunction with the issuance of a business license. At the time of the application for the business license, the Town shall, notwithstanding the zoning for the premises for which the permit is sought, provide a copy of ~~Table A~~ the Town's Lawful Noise Limitations to which the applicant shall be subject.
- (b) Special event permits are required for any activity that takes place on a non-recurring or infrequent basis and/or that may temporarily exceed the ~~requirements set out in Table A~~ the Lawful Noise Limitations of a level not to exceed seventy (70) decibels. Application for a permit shall be made to the Town Manager or designee not less than five days nor more than 90 days prior to the commencement of the activity. In no case shall more than six permits be issued for any person, entity, or establishment in a calendar year and each calendar day on which the activity is to occur shall constitute a separate permit. ~~No permit may be issued if the effect of the special permit would be to allow for the creation of a noise disturbance as part of the regular or usual activity on any premises.~~ A reasonable fee, to be determined by the Town Council, may be assessed for all special permits.
- (c) Without limiting the generality of the foregoing, special event permits are required for the following activities, in addition to any other permits required by law:
  - (1) *Outdoor entertainment, outdoor live entertainment, outdoor parties, special events:* For events not exempted by this article where equipment for amplifying live or prerecorded speech, music or other sound is to be used. This section is intended to apply to temporary events of an infrequent or non-recurring nature; it is not intended to apply to regular activities conducted at a fixed location.
  - (2) *Mobile sound vehicles:* Special event permits may not be obtained for vehicles using equipment designed or intended for personal entertainment.
- (d) Permits may not be denied or revoked except where the activity constitutes a bona fide threat to the health, safety or welfare of any person, or a bona fide threat of physical damage to real or personal property; and, in the case of a permit, for repeated convictions for violating the levels set forth ~~in Table A~~ by the Town's Lawful Noise Limitations.
- (e) Each applicant for a permit shall be a "person responsible" for the purposes of this article, and shall provide the name of at least one other person who may be contacted in the event or problems arising from the noise associated with the activity for which the permit is requested. Each applicant shall affirmatively indicate that he is familiar with the requirements of this article. Failure to complete the application properly or a record of previous violations by the applicant within the preceding 12 months may be a basis for denial of the permit.
- (f) Applicants for special event permits for activities in residential areas shall affirmatively indicate that the owners or occupants of all adjacent premises (including premises directly across the streets or other public ways) have received a copy of the completed application. Applicants for permits for activities on multifamily premises shall also affirmatively indicate that the owner or manager of the premises has received a copy of the application.

- (g) If a special event permit is denied, the reasons for denial shall be set forth in writing and furnished to the applicant. If an applicant who has been denied a special event permit under this section believes that the denial is in violation of applicable State or Federal law, he may submit a statement of the reasons he believes he is entitled to the special event permit to the Town Manager. If the Town Manager determines that the applicant has made a substantial showing of legal entitlement, an exceptional permit may be granted waiving requirements as to time, location and sound levels.
- (h) A violation of any of the provisions of this article may be cause for the immediate revocation of any previously issued permit.

### **Sec. 12-89. Penalties/owner and occupant responsibility.**

Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing decibel and/or time violation or the noise disturbance.

- (a) Penalties for violation of this article shall be as follows:
  - (1) Any person violating any of the provisions of this article shall, upon conviction thereof, be subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Any person who continues to violate the provisions of this article, after having been previously cited, may be subject to further citations, including the day upon which the original citation was issued.
  - (2) Upon conviction of being in violation of this article three times for the same offense within a 12-month period, which shall be deemed repeated convictions, when such sound is created by the same sound emitter, or person, the noise-creating equipment may be confiscated by the Court following such latest conviction until such time as the offender can satisfy the Court that he is prepared to and, in fact, will operate said equipment within the limits of this article. Further violation may result in the permanent confiscation by the Court upon such conviction.
  - (3) In addition to the penalties provided for in this article, the Town Manager or his designee may issue an administrative stop order to any person emitting sound, requiring the person to halt immediately any sound which exposes any other person to a noise disturbance or, if applicable, sound levels in excess of those set forth in Table A in accordance with the Lawful Noise Limitations.
  - (4) Nothing herein shall be construed to limit any private right of action.
- (b) An owner of any premises subject to this article who is not also an occupant of the premises shall be responsible for any actions by tenants, guests, or other licensees that constitute second or subsequent violations of this article; provided, that no absentee owner shall be liable unless notified of first or previous violations of the article, and further provided that such first or previous violations shall have occurred within the previous 12-month period. Notice of any first or previous violations pursuant to this paragraph shall be effected by registered or certified mail. No absentee owner may be subjected to criminal liability under this section; but, may be subject to the penalties and relief as provided for herein. This section shall in no way relieve any other person from responsibility for violations of this article.
- (c) The person responsible for any premises shall be jointly and severally responsible and liable for any violations of this article by tenants, guests, or licensees on the premises if the person responsible is actively or constructively present at the time of the violation.
- (d) Notwithstanding the foregoing, any person found attempting to alter or manipulate a sound level in an effort to void a violation of this article shall be deemed in violation of this article and subject to the penalties set forth herein above; and, the permit or special permit, as the case may be, shall be revoked until such time as the person can, in good faith, show that they can comply with the article.

## Sec. 12-90. Severability.

Should any section, paragraph, sentence, clause, or phrase of this article be declared unconstitutional by an Order of a Court of competent jurisdiction, such unconstitutionality shall not affect the remaining portions of this article since the same would not have been enacted without the incorporation in this article of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**Table A. Outdoor Entertainment and Outdoor Live Entertainment Noise and Time Limitations.**

Day of Week	Outdoor Entertainment Allowed	Outdoor Live Entertainment Allowed	Time Permitted (if allowed)	Maximum Decibel Level—dB(A)	Distance to Sound Source
Sunday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Monday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Tuesday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Wednesday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Thursday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Friday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet
Saturday	Yes	Yes	12:00p.m.—10:00p.m.	50	250 feet