

Noise Control Regulations  
Transylvania County, North Carolina

ARTICLE I

SHORT TITLE

This Ordinance shall be known and cited as the Noise Control Ordinance of Transylvania County, North Carolina

ARTICLE II

AUTHORITY

This Ordinance is adopted under the authority and provisions of the General Statutes of the State of North Carolina Article 6, Chapters 153A-121 and 153A-133.

ARTICLE III

PURPOSE

The purpose of this Ordinance is to establish an effective means of regulating and controlling loud and offensive disturbing sound and noise within Transylvania County to ~~residents and visitors; and 2) protect the interest of local businesses while providing reasonable regulations.~~ promote the health, safety and general welfare for its citizens. ~~residents and visitors; and 2) protect the interest of local businesses while providing reasonable regulations.~~

ARTICLE IV

JURISDICTION AND ADMINISTRATION~~JURISDICTION~~

This Ordinance shall apply to all areas of Transylvania County located outside the boundaries of any incorporated city or town. ~~(amended 11-12-2013)~~ Transylvania County Noise Ordinance is on file at the Transylvania County Clerk to the County Commissioners. NCGS § 153A-48 requires the ordinance to be kept on file with the clerk to the board. The Transylvania County Sheriff, or their appointee, shall be known as the Enforcement Officer.

## ARTICLE V

### DEFINITIONS ~~NOISE REGULATIONS~~

SECTION 1: For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

- 1.1 Ambient noise level – an A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this Ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated.
- 1.2 Decibel – a unit used to measure the intensity of a sound by comparing it with a given level on a logarithmic scale.
- 1.3 Decibel Meter – an instrument used to measure the noise or sound pressure level to determine whether the noise level exceeds the established level.
- 1.4 “Disturbing -” a noise that annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable person of ordinary sensibilities.
- 1.5 Noise – any sound or combination of sounds, which, because of its volume or quality, tends to disturb reasonable persons of ordinary sensitivity or to interfere with normal human activity.
- 1.6 “Unreasonably loud” noise which is incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.

## ARTICLE VI

### NOISE REGULATIONS

SECTION 2: Noise Regulations - It shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud and/or disturbing noise in the County. It shall be unlawful to create, make, permit, continue, or cause to be made noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any person or that is above the sound decibel limits set forth herein.

- 1.1 ~~In determining whether a noise is unreasonably loud and/or disturbing, the following definitions shall apply:~~
  - A. ~~“Unreasonably loud” noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and~~

good order.

B. —“Disturbing”: noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area, neighborhood, or vicinity.

~~1.2~~ 2.1 In determining whether a noise is unreasonably loud and/or disturbing, the following factors incident to such noise are to be considered based on the totality of circumstances surrounding a particular determination:

- A. Time of day;
- B. Proximity to residential structures;
- C. Whether the noise is recurrent, intermittent, or constant;
- D. Volume and intensity;
- E. ~~Whether the noise is enhanced in volume or range by any type of electronic or mechanical means;~~
- F. ~~Whether the noise is related to the normal operation of a business or other labor activity.~~
- G. ~~Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.~~

2.2 To determine if the noise is in violation of this Ordinance, the Enforcement Officer will use a decibel meter to measure the offending noise level in the following manner:

2.2.1 Sound measurements shall be made using a calibrated decibel meter in accordance with the manufacturers’ recommended procedure.

2.2.2 Sound measurements shall be taken at the complainant’s curtilage closest to the source of the offending noise, which shall be at the same location where the ambient noise level is recorded, if it’s recorded.

2.2.3 Sound measurements shall be taken using an A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes.

2.2.4 The offending noise level will be considered a violation if any one of the following occurs:

- 1) The offending noise level measurement exceeds the ambient noise level by 15 decibels or more between the hours of 9 p.m. and 6 a.m.; or
- 2) The offending noise level measurement exceeds the total noise level of 65 decibels between the hours of 9 p.m. and 6 a.m.; or
- 3) The offending noise level measurement exceeds the ambient noise level by 20 decibels between the hours of 6 a.m. and 9 p.m.; or
- 4) The offending noise level measurement exceeds the total noise level of over 75 decibels between the hours of 6:00 a.m. and 9:00 p.m.

2.2.5 If, due to the nature of the offending noise level, no determination of an ambient

noise level is practical, then a violation shall have occurred if the offending noise level exceeds:  
65 decibels between the hours of 9:00 p.m. and 6:00 a.m.; or  
75 decibels between the hours of 6:00 a.m. and 9:00 p.m.

SECTION 32: Exempted Noises – The maximum noise limitation standards defined in the preceding portions of this ordinance shall not apply to the following sources of noise:

- 2.1 3.1 Sound emanating from regularly scheduled outdoor athletic events or musical performances.
- 2.2
- 2.3 3.2 Equipment being used for Construction operations during daytime hours provided all equipment is operating in accordance with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise reducing equipment in use and in properly operating condition.
- 2.4 ~~Construction operations from 6:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends for which building applicable permits have been issued, or construction operations not requiring permits due to ownership of the project by an agency of government; provided all equipment is operating in accordance with the manufacturer's specifications and with all standard equipment manufacturer's mufflers and noise reducing equipment in use and in properly operating condition.~~
- 2.5 3.3 Noises of safety signals, warning devices, emergency pressure valves, factory steam whistles and all mechanical and electronic bells or chimes, or similar devices which operate during daytime hours for a duration of no longer than five minutes in any given period.
- 2.6 3.4 Noises resulting from any authorized emergency vehicle.
- 2.7 3.5 All noises coming from the normal operations of aircraft (not including small model aircraft).
- 2.8 3.6 Noise from lawful fireworks and noisemakers on holidays.
- 2.9 3.7 Noise from lawnmowers, weed trimmers, edging machines, or other similar small- engine yard maintenance equipment, properly equipped according to manufacturer's specifications, and used between 6:00 a.m. to 9:00 p.m.
- 2.10 ~~Musical accompaniment at military ceremonies that is taped outdoor music, or music played with instrument not electrically amplified.~~
- 2.11 3.8 Farming operations as defined by NC G.S. 106-581.1 shall be exempt from the operation of this ordinance.

3.9 Use of firearms for recreational or law enforcement training purposes and noise associated with lawful taking of any wildlife resources.

3.10 – In any proceeding pursuant to this Ordinance, if an exemption may be applied, the person who would benefit from the application of the exemption shall have the burden of persuasion that the exemption applies and that the terms of the exemption have been met.

SECTION 43: Noises Prohibited - ~~The following noises are prohibited.~~ In addition to any other violation of this Ordinance, the following list of prohibited noises are specifically declared to be unreasonably loud, distributing and annoying, the creation or emission of which shall be unlawful. The following noises shall not be deemed to be exclusive and other sources of unreasonably loud and disturbing noise are subject to the provisions of this Ordinance.

~~3.1~~ 4.1 Dogs or any other constrained animals that, by frequent, recurrent or habitually constant howling, yelping, barking, baying or otherwise cause unreasonably loud or disturbing noises, ~~and produce seriously annoying disturbance to any person or to the neighborhood between the hours of 9:00 pm to 6:00 am. provided the animals are not associated with farming operations as defined by NC G.S. 106-581.1.~~

~~3.2~~ 4.3 The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a warning or danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time.

~~3.3~~ 4.4 The playing of any sound magnifying device, radio, television, or amplifier system or other musical instrument or musical player in a manner and with such volume as to disturb the quiet, comfort, or repose of any person or persons in any dwelling or other type of residence.

~~3.4~~ 4.5 Operation or permitting the operation of any automobile, motorcycle, dirt bike, go- cart, recreational vehicle, remote control vehicle, that by frequent, recurrent or habitually constant operation causes unreasonably loud or disturbing noises. This includes but is not limited to vehicles which engage in jackrabbit starts, spinning tires, racing engines, or constitute an overloaded or out of repair vehicle, and results in creating unreasonably loud and disturbing noises so as to disturb the comfort and repose of any person of normal sensibilities in the vicinity.

~~3.4~~ Operating or permitting the operation of any automobile, motorcycle, dirt bike, go- cart, recreational vehicle, remote control vehicle, or other vehicle that engages in jackrabbit starts, spinning tires, racing engines, or other operations including without limitation operating an overloaded or out of repair vehicle which creates unreasonably loud or disturbing noise so as to disturb the comfort and repose of any person of normal sensibilities in the vicinity.

~~DELETED THE KNOWINGLY PERMITTING LANGUAGE....~~

## ARTICLE VI

### NOISE COMPLAINT PROCEDURE

In the event any person has reasonable grounds for believing that any provision of this Ordinance is being violated, he may make a report thereof to the Transylvania County Sheriff's ~~Office~~ Department, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made and may obtain criminal process for violation thereof, may issue a citation for a civil penalty, and/or may obtain other enforcement measures as allowed in this Ordinance. Criminal process for violation of this Ordinance may only be obtained by personnel from the Transylvania County Sheriff's ~~Office~~ Department.

### PRESUMPTION IN PROSECUTION OF NOISE ORDINANCE VIOLATIONS

~~The complaints of two or more persons, at least one of whom resides in a different home from the other complaining person or persons, when combined with the observations of an Enforcement Officer investigating the complaint, shall be prima facie evidence that such sound is unreasonably loud, disturbing and annoying. Noise level measurements shall not be required for the establishment of a prima facie case.~~

## ~~ARTICLE VII~~ARTICLE VII

### VIOLATIONS, PENALTIES, & ENFORCEMENT

This Ordinance may be enforced in accordance with any and all of the provisions of N.C.G. S. § 153A-123 and of any other applicable enforcement provision as may be set forth within the Transylvania County Ordinances or as may be provided for by applicable law.

#### SECTION 5: Penalties –

A. 5.1 Criminal penalties: Any Deputy Sheriff of Transylvania County, having first investigated this matter, pursuant to Article VI above, may obtain criminal process for violation of this Ordinance. A violation of any Ordinance provision shall constitute a Class 3 misdemeanor and may be punished by fine in the discretion of the Court, up to a maximum of \$500 per offense.

(+) 5.1.1 Warning: Upon the violation of a particular provision of this Ordinance, an individual may be issued a warning. Such warning shall identify the particular practice which is in violation of the Ordinance and shall state the time, date and place of the violation. Such warning shall further state that if the individual commits further violations following the date of the warning, Transylvania County, by and through an enforcement agent, may cause a warrant to be issued for the individual's arrest.

2-5.1.2 Arrest or Citation: Upon the violation of a particular provision of this Ordinance, a

law enforcement officer having jurisdiction may charge the offender with a misdemeanor committed in the officer's presence, by arrest or citation, as set forth in Chapter 15A of the North Carolina General Statutes.

3 5.1.3 Warrant: Upon the violation of a particular provision of this Ordinance, Transylvania County, by and through an enforcement agent, may request from a magistrate that a warrant be issued for the arrest of the individual.

B 5.2 Civil Penalties: Any individual who is found in violation of this Ordinance may be subject to a civil penalty. The amount of such civil penalty shall be assessed as described below. Each day the violation continues shall be considered a separate offense and therefore such continuing violation may be subject to multiple civil penalties as described below:

(1) 5.2.1 Compliance Order:

A 5.2.1.1 Upon making a determination that a person is in violation of this Ordinance, Transylvania County **or an Enforcement Officer** may issue a compliance order to the person in violation of this Ordinance. The compliance order shall notify the violator of the violation in writing. Such order shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. Such notification shall further identify the action which is necessary to comply with this Ordinance. Such order shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 15 days, Transylvania County may grant an extension of time commensurate with the magnitude of the violation. The compliance order shall further state that failure to comply with the terms of the compliance order will subject the violator to a civil penalty and shall further state the amount of said civil penalty.

B Failure to comply with the terms of a compliance order issued by Transylvania County within the time stated in the order shall subject the violator to a civil penalty of \$500.00. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to additional \$500.00 civil penalties for each separate offense.

C Appeal of civil penalties: Any person issued a civil penalty under the provisions of this section may appeal by filing an appeal in writing with the Transylvania County Sheriff within ten (10) calendar days after the civil penalty is issued. The written appeal shall state all reasons that the civil penalty was wrongly applied and shall include all supporting documentation that the appellant contends supports the appeal. If a person files a written appeal within the time provided in this section, the penalty being appealed shall be stayed pending the decision of the Sheriff or arbitrator. Unless the Sheriff, or the delegate of the Sheriff, decides to allow the requested relief based on the appeal request, the Sheriff shall send each appeal request to arbitration. The Sheriff shall select an arbitrator other than an employee of Transylvania County. The arbitration shall be conducted, to the extent practicable, in accordance with the Supreme Court Rules for Court-Ordered Arbitration in North Carolina. The arbitrator shall be paid a fee equal to the maximum fee specified in such Rules. The arbitrator shall issue a written

determination, within a reasonable time, stating whether the disputed civil penalty will be approved without change or modified or reversed.

~~D.~~ All decisions of the Sheriff and arbitrator shall be served on the petitioner.

(2) 5.2.2 Civil Action: When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted by the County against an individual for the collection of all accrued penalties if not paid within thirty (30) days of assessment.

€ SECTION-6: Equitable Remedies: This Ordinance may be enforced by the County through equitable remedies, and any unlawful condition existing in violation of this Ordinance may be enforced by injunction or order of abatement in accordance with N.C.G.S. § 153A-123.

(4) 6.1 Injunction: Where necessary to effectuate compliance with this Ordinance, Transylvania County may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this Ordinance. Such action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions above, and may be brought against any person or entity causing a violation of this Ordinance or against an owner of a premises upon which a violation of this Ordinance occurred.

2.6.2 Order of Abatement: Where necessary to abate a condition existing upon land in violation of this Ordinance or a use made of land in violation of this Ordinance, Transylvania County may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this Ordinance. Such action may be enjoined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this Ordinance.

~~3.~~ 6.3 Other Equitable Remedies: This Ordinance may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

~~4.~~ 6.4 To the extent allowable by law, reasonable attorney's fees may be sought by the County or its authorized agent in any action to enforce the provisions of this Ordinance.

## ARTICLE IXVIII

### LEGAL STATUS PROVISIONS

A. Effective Date of Ordinance:

This Ordinance shall take effect immediately upon its adoption by the Transylvania County Board of Commissioners, and shall amend and supersede the previously existing Noise Control Regulations Ordinance existing prior to this Ordinance's adoption.

B. Severability:

If any provision or provisions of this Ordinance shall be deemed by a Court of law having



Jurisdiction over such matters to be unenforceable, invalid, or unconstitutional for any reason, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof that is not specifically declared to be unenforceable, invalid, or unconstitutional.

C. Conflict of Laws or Ordinance Provisions:

Whenever the regulations of this Ordinance conflict with each other, or with the requirements of another statute, the more restrictive standard shall govern.

This Ordinance shall be in full force and effect from and after its adoption. Adopted

~~this 14<sup>th</sup> day of July, 2008.~~

Amended 11/12/2013 and 2020

, Chairman Board of County  
Commissioners

ATTEST:

Trisha D. McLeod Clerk to the  
Board