

Mr. Card offered the following Ordinance and moved on its final reading and adoption:

O-15-21

**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**AN ORDINANCE AMENDING SECTIONS 3-2.1, 3-2.2, 3-2.3, AND 3-2.4 OF THE
BOROUGH OF HIGHLANDS CODE, "NOISE"**

WHEREAS, the Borough of Highlands has adopted ordinances pursuant to its general police powers to control noise within the Borough; and

WHEREAS, the Chief of Police requested that the Borough amend Sections 3-2.1, 3-2.2, 3-2.3, and 3-2.4 of the Borough Code to provide clarification of prohibited noises;

WHEREAS, the governing body has determined that it would be appropriate, proper and in the best interests of the residents of the Borough of Highlands to amend Sections 3-2.1, 3-2.2, 3-2.3 and 3-2.4 of the Borough Code.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of Highlands as follows:

SECTION ONE: Sections 3-2.1, 3-2.2, 3-2.3 and 3-2.4 of the Revised General Ordinance of the Borough of Highlands shall be amended as follows (strikethroughs represent deleted material; underscore indicates new language):

3-2 NOISE.

3-2.1 Declaration of findings and definitions.

- a. Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life;
- b. A substantial body of science and technology exists by which excessive sound may be substantially abated;
- c. The people have a right to an environment free from excessive sound;
- d. It is the policy of the Borough to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life; and,
- e. This ordinance shall apply to the control of excessive sound originating from sources within the Borough.
- f. The following definitions shall apply to this Section:
 - i. "Daytime Hours" are defined as 7AM-9PM Sunday through Thursday and 7AM-10PM Friday, Saturday and Legal Holidays.

ii. "Plainly audible" shall mean any sound that can be detected by a person using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is live entertainment or a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic base component of the music is sufficient to verify plainly audible sound. The law enforcement officer need not determine the title, specific words or the artist performing the song.

iii. "Nighttime Hours" are defined as 9PM-7AM Sunday through Thursday and 10PM-7AM Friday, Saturday and Legal Holidays.

iv. "Speech interference" occurs when the noise from the noise-generating source under investigation results in the need for persons engaged in conversation with one another, at a distance of approximately 2 feet from one another, to ~~rise~~ raise their voice level to be fully heard by the other person when conversing at or within the property line of the complainant.

v. "Affected Person" is a person who makes a complaint and who lives or works at a property that is directly affected by the noise-generating property.

3-2.2 Prohibited Noise.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unreasonable sound or any sound which annoys or disturbs the peace, quiet or safety of others, as follows:

- a. During nighttime hours no person shall permit any noise to emanate from any source or instrument whether natural or artificial, or use equipment outside or inside a dwelling, structure or other establishment on a property in the Borough of Highlands such that the noise created thereby is plainly audible at a distance of one hundred (100) feet beyond the property line of the noise-generating property.
- b. During daytime hours no person shall permit any noise to emanate from any source or instrument whether natural or artificial, or use equipment outside or inside a dwelling, structure or other establishment on a property in the Borough of Highlands such that the noise created thereby is deemed to be unreasonable by the Borough Code Enforcement Officer or Borough Police Officer. In determining whether a noise is unreasonable, speech interference, as defined herein, must be evaluated and the following factors should be considered:
 1. Intensity of the noise
 2. Intensity of the background noise (i.e., ambient sound level when no or minimal noise is emanating from the source under investigation)
 3. Duration of the noise (i.e., period of time it is in operation)
 4. Frequency of the noise (i.e., how often it occurs per hour, per day, per week, etc.)

5. To what degree the noise is in the control of the owner or other responsible party (e.g., can the volume of an amplifier or similar device be lowered or is the noise level inherent to the activity)
 6. Proximity of the noise source to residential properties
 7. Time of the day the noise occurs
 8. Number and frequency of complaints concerning the noise-generating property
 9. Whether the noise is audible inside the complainant's residence or business
 10. Whether the noise interferes with sleep, conversation, or repose
- c. When an officer responds to a complaint from an affected person and can hear plainly audible music or other sound at a distance of one hundred (100) feet beyond the property line of the noise-generating property during nighttime hours (Section 3-2.2a), or any unreasonable sound, at or within a complainant's property line during daytime hours (Section 3-2.2b), there is a violation of this section and the violator is subject to the penalties of this chapter.

3-2.3 Partial Enumeration of Prohibited Noise.

The following activities, among others, are declared unreasonably loud, disturbing and unnecessary noise in violation of this chapter:

- a. The sounding of a horn or signaling device on an automobile, motorcycle or other motorized vehicle, except as a warning of danger, and then only for such period of time as is reasonably necessary for giving such warning;
- b. The use, operation or playing of any loudspeakers, amplifiers, instrument, or other machines or devices for the producing of sound which is cast upon a public street for the purpose of commercial advertising or attracting the attention of the public;
- c. The shouting of peddlers, hawkers and vendors which disturb the peace and quiet of the neighborhood;
- d. The keeping of any animal or bird which by causing frequent or long-continued noise, such as barking or jabbering (a frequency of five or more events during a ten minute period or a duration of greater than five minutes on a relatively continuous basis), shall disturb the peace, quiet and comfort of neighboring inhabitants.
- e. ~~Creating an audible noise, which results in a complaint, beyond the property line of a property under construction or renovation including activities, such as, erection, excavation, demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00~~

~~p.m. on Saturday and Sunday, except in the case of urgent matters and in the interest of public safety and health.~~

3-2.4 Exceptions.

The provisions of this chapter shall not apply to:

- a. Any public works projects for construction deemed to be in the public's welfare, safety and for the public good and only with prior approval from the Governing Body.
- b. Sounds created by any government agency by the use of public warning devices.
- c. Sound and vibration emitted for the purpose of alerting people in an emergency or in the performance of the response to an emergency.
- d. Sounds connected with any authorized carnival, fair, exhibition, parade or community celebration or from any municipally sponsored celebration, event, activity or individually sponsored event where a permit or other relevant permission has been obtained from the Governing Body.
- e. The playing by a band or orchestra in a hall or building or in the open air, where duly authorized by the Governing Body.
- f. Noise from an exterior burglar alarm of any building or motor vehicle provided such burglar alarm shall terminate its operation within five (5) minutes after it has been activated.
- g. Noise from construction or renovation activities, such as, erection, excavation, demolition, alteration or repair of any building between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. on Saturday and Sunday. At other times, any audible noise, which results in a complaint by an affected person, when evaluated at or within the property line of the complainant, is prohibited, except in the case of urgent matters (to the extent necessary to prevent further damage) and in the interest of public safety and health.
- h. Noise from domestic power tools, used for routine maintenance, such as, lawn mowers, leaf blowers and similar equipment when operated between the hours of 8:00 a.m. and 8:00 p.m. on weekdays and 9:00 a.m. and 8:00 p.m. on weekends and legal holidays, provided they are equipped with a muffler, if so equipped by the manufacturer, and are properly maintained so to not produce excessive noise.
- i. Noise from snow blowers, snow throwers, and snow plows when operated with a muffler, if so equipped by the manufacturer, for the purpose of snow removal.
- j. Outdoor music, either live or recorded, when operated during the months of May through October and between the hours of 11:00 a.m. and ~~8:00~~ 9:00 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday, or between the hours of 11:00 a.m. and 10:00 p.m. on Friday and Saturday when such outdoor music is operated in a reasonable manner and at a reasonable sound level. ~~Music which is plainly audible inside a complainant's property, with all windows and doors closed, or~~ Music, during these hours, which interferes with conversation (i.e., results in speech interference) at or within the property line of the complainant an affected person is considered to be unreasonably loud and in

violation of this section and the violator is subject to the penalties of this chapter. Establishments which operate with a liquor license and have been found to be responsible for unreasonable noise, as ~~defined~~ described herein, may be subject to additional sanctions from the Borough's Alcohol Beverage Control Board which may include restrictions to their liquor license to minimize the likelihood of subsequent violations of this chapter.

- k. Nothing herein contained shall be construed to apply to church bells or chimes, or to sounds typically generated by vehicles engaged in the residential sale of ice cream.
- l. Sounds emanating from any youth sporting event sponsored by an organized community organization, the Borough, or any school or school district.

SECTION THREE. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

SECTION FOUR. Repealer. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION FIVE. Effective. This Ordinance shall take effect after final passage and publication as provided by law.

Seconded by Ms. Ryan and adopted on the following roll call vote;

ROLL CALL:

AYE: Mr. Card, Mr. Redmond, Ms. Ryan, Mrs. Wells
NAYE: None
ABSTAIN: None
ABSENT: Mayor Nolan

DATE: September 2, 2015

Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of Ordinance O-15-21 adopted by the Governing Body of the Borough of Highlands on September 2, 2015.

Borough Clerk/Deputy Clerk