

ORDINANCE NO. 2009-04

ORDINANCE REPEALING AND RECREATING SECTION 34-33 OF THE MUNICIPAL CODE EXCESSIVE AND UNNECESSARY NOISE PROHIBITED

The Town Board of the Town of Buchanan does hereby ordain as follows:

Section 34-33 of the Municipal Code is hereby repealed and recreated to read:

Section 34-33: Excessive and Unnecessary Noise Prohibited

- A. Definitions:
- 1) Noise: Shall mean any sound which is unnatural, annoying, prolonged or unusually loud in relationship to its time, place and use effect.
- B. Excessive and Unnecessary Noise Prohibited: Excessive and unnecessary noise as defined in this ordinance is hereby declared to be a public nuisance which is prohibited and may be subject to abatement procedures. Such abatement procedures may be in addition to administrative proceedings, fines and penalties.
- C. Location Applicability: This section shall be applicable to the following zoning districts: single family residential (RSF), two family residential (RTF), multi-family residential (RMF), local commercial (CL), planned commercial (CP) and general agriculture (AGD).
- D. Types of Excessive and Unnecessary Noises: The following acts are declared to be excessive and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive:
- 1) Radios, phonographs, amplifiers, instrument, similar devices: The using, operating or permitting to be played, used or operated any radio received set; musical instrument, phonograph, amplifier or other machine or device for the producing or reproducing of sound in a excessive and unnecessary manner. The operation of any set, instrument, phonograph, machine, amplifier or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner as to be plainly audible at the property line of the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
 - 2) Animals, birds: the keeping of any animal or bird which causes frequent or long continued unnecessary noise.
 - 3) Exhausts: The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, go-cart, four wheeler, motorcycle, motor vehicle, motor driven cycle, motor scooters, mopeds, motor boat and

similar vehicles and equipment except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

- 4) Specified power equipment: Power equipment such as lawn mowers, small lawn and garden tools, and riding tractors which is necessary for the maintenance of property which operate between the hours of 10:00 p.m. and 7:00 a.m. Noise production shall be minimized through proper equipment operation and maintenance. All snow removal equipment shall be fully exempt from this ordinance.
- 5) Construction or repair of buildings: The erection (including excavation), demolition, alteration or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, steam or electric hoist, or any other similar equipment attended by noise as defined in this section, other than between the hours of 7:00 a.m. and 10:00 p.m. on weekdays.
- 6) Construction sites, public utilities, public works: The development of construction sites and work related to public utilities or public works projects, other than between the hours of 7:00 a.m. and 10:00 p.m. from Monday through Saturday.
- 7) Use of Compression Brakes Prohibited: No person shall use motor vehicle brakes within the limits of the Town of Buchanan which are in any way activated or operated by the compression of the engine of such motor vehicle or any unit or part thereof. Brakes applied in an emergency situation requiring their use and there being no other way to stop shall be exempt from this section.

E. Variance Permits: Variance permits may be issued by the Town Board or the Administrator/Clerk to provide exemptions to this ordinance.

- 1) General: A variance permit may be issued upon request provided that the activity producing such noise is necessary to promote the public health and/or welfare and reasonable steps are taken to keep such noise at the lowest possible practical level.
- 2) Special Community Events: A temporary variance permit may be issued for special events, such as parades, 4th of July celebrations and similar community events, which are limited in duration and are generally acceptable to the people of the community; provided that precautions are taken to maintain the noises produced at the lowest practical level.

3) Procedure to Obtain a Variance Permit: Applications for temporary variance permits must be made in writing to the Town Administrator/Clerk and shall contain all of the following pertinent information:

- i. Dates requested;
- ii. Time and place of activity;
- iii. Equipment, operation, or activity involved;
- iv. Necessity for such permit;
- v. Steps to be taken to minimize noise; and,
- vi. Name of responsible person(s) who will be present at the site while the noise is produced and phone number for which they can be contacted.

A variance permit fee shall be submitted as noted in the Town Fees and Licenses Schedule. The Town Administrator/Clerk shall have the authority to grant a variance permit for all types of excessive and unnecessary noise as listed in Section D, except for noise as listed in D(1) and D(6) which shall require Town Board approval. The Administrator/Clerk and the Town Board shall reply in writing giving the variance, denying the variance, or setting forth conditions or limitations under which the variance will be granted.

F. Exemptions: The provisions of this ordinance shall not apply to:

- 1) Any vehicle or equipment of the Town or a Town contractor engaged in necessary public business (including, but not limited to, garbage trucks, snow plows) provided the provisions of section D(6) are followed if applicable.
- 2) Vehicle or equipment usage related to agriculture operations.
- 3) Fireworks, public assembly, parades or other activities as properly licensed by the Town. At time of license issuance the Town may place restrictions on such license regarding excessive or unnecessary noise.
- 4) Emergency Operations. Emergency short-term operations which are necessary to protect the health and welfare of the citizens; such as, emergency utility and street repair, fallen tree removal, and operations of a fire department, law enforcement, ambulance, or emergency medical services.
- 5) Noises Required by Law. The provisions of this ordinance shall not apply to any noise required specifically by law for the protection of safety of people or property.

- G. Enforcement: This ordinance shall be enforced by law enforcement of the Town of Buchanan.
- H. Violations: Any person, firm, company, business, corporation, or other entity in violation of this ordinance shall receive a warning for a first time violation. After a warning is issued the violation shall cease within one (1) hour or a second violation may be issued. A second violation shall be a forfeiture of not less than One Hundred Dollars (\$100.00) or no more than Five Hundred Dollars (\$500.00) plus the cost of prosecution. Penalties are doubled for third and subsequent offenses.
- I. Effective Date: This ordinance shall become effective upon adoption and publication or posting as provided by law.
- J. Severability: The sentences, clauses, and phrases in this ordinance are severable, and if any phrase, clause, or sentence of this ordinance shall be declared unconstitutional by any judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sentences, clauses, or phrases of this ordinance.

Adopted this 17th day of November, 2009.

TOWN OF BUCHANAN:

Mark McAndrews
Town Chairperson

ATTEST:

Angela Gorall
Town Administrator/Clerk