

**ORDINANCE 2023-03**

**A RESOLUTION/ORDINANCE TO REVOKE, AMEND AND RE-ADOPT CHAPTER  
265, §§265-1 THROUGH 265-9, NOISE**

**RECITAL**

The Mayor and Council have determined that it is in the best interests of the citizenry of the Town of Smithsburg to repeal current *Chapter 265*, and amend and re-enact *Chapter 265, Sections 265-1 through 265-9, Noise of the Town of Smithsburg Code of Ordinances* in accordance with attached **Exhibit "A"** which is incorporated herein by reference.

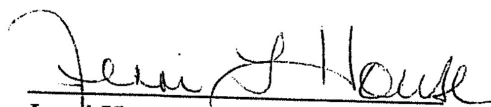
**RESOLUTION**

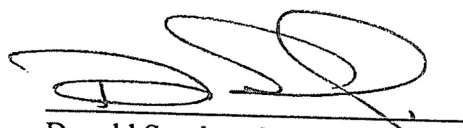
**NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** as follows:

1. The **RECITAL** is made a part hereof and incorporated herein by reference.
2. *Chapter 265, Noise of the Town of Smithsburg Code of Ordinances* as it currently exists be and is hereby repealed.
3. *Chapter 265, Sections 265-1 through 265-9, Noise of the Town of Smithsburg Code of Ordinances* be and is hereby **amended, modified, and re-adopted** as set forth in **Exhibit 'A'** which is attached hereto and incorporated herein by reference.
4. Violations of this Ordinance, in addition to other penalties provided in *The Code of Ordinances*, may be enforced as municipal infractions.

**ATTEST:**

**MAYOR AND COUNCIL OF  
SMITHSBURG**

  
Jenni House, Clerk-Treasurer

  
Donald Souders, Mayor

Date of Introduction: March 21, 2023

Date of Passage: April 4, 2023

Effective Date: April 24, 2023



## EXHIBIT "A"

# Chapter 265 Noise

**[HISTORY: Adopted by the Mayor and Council of the Town of Smithsburg 2-3-2004 as Ch. 11, Title 6, of the 2004 Code. Amendments noted where applicable; Amended April, 4, 2023]**

### GENERAL REFERENCES

Nuisances — See Ch. 271

### § 265-1 Declaration of findings and policy.

It is the intent of the Mayor and Town Council to ensure its citizens an environment free from such excessive noise as may jeopardize their health, welfare, and safety or degrade their quality of life. It is therefore the policy of the Town and the purpose of this chapter to prevent such excessive noise.

### § 265-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### **BIOACOUSTIC BIRD DISPERSAL SYSTEMS**

Electronic devices or recordings utilizing bioacoustics to disperse birds and combat the nuisance and health hazard caused by uncontrolled roosting in urban environments.

#### **CONSTRUCTION ACTIVITIES**

Any work on the construction site for the purpose of erection, demolition, alteration or repair of buildings, structures, or utilities associated with permits issued by the Town of Smithsburg, or for site preparation and infrastructure installation related to such work which has been permitted by the Town of Smithsburg.

#### **dB(A)**

The abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave-band or one-third-octave-band data.

#### **EMERGENCY**

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

#### **EMERGENCY VEHICLE**

A motor vehicle belonging to a fire department or fire company, an ambulance, or a motor vehicle belonging to a federal, state, county, or municipal law enforcement agency, provided such vehicles are in use as emergency vehicles by one authorized to use such

vehicles for that purpose.

**EMERGENCY WORK**

Any work for the purpose of preventing or alleviating the physical trauma damage threatened or caused by an emergency.

**EXCESSIVE NOISE**

The presence of noise of sufficient loudness, character, and/or duration which disturbs the peace and is, or may be predicted with reasonable certainty to be, injurious to health or which unreasonably interferes with the proper enjoyment of one's place of residence, work or entertainment.

**DAYTIME ON HOLIDAYS**

9:00 a.m. to 11:00 p.m.; holiday evening begins the night before and normal evening hours begin at the end of the day on the holiday.

**DAYTIME ON WEEKDAYS**

7:00 a.m. to 10:00 p.m.; weekday evening begins on Sunday.

**DAYTIME ON WEEKENDS**

9:00 a.m. to 11:00 p.m.; weekend evening begins on Friday.

**NOISE SOURCE**

The location or person generating the noise which is affecting other persons.

**PERSON**

An individual or group of individuals, corporation, partnership, association, or any other entity.

**PLAINLY AUDIBLE**

Any sound that can be clearly heard or understood by a person using his or her own normal hearing faculties at a distance of 100 feet or more from its source or through partitions common to attached dwelling units or between units within a single building.

**PUBLIC RIGHT-OF-WAY**

Any street, avenue, boulevard, highway, sidewalk, alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

**PUBLIC SPACE**

Any real property or structures thereon owned by a governmental entity and normally accessible to the public, including but not limited to parks and other public recreational areas.

**RECEIVING AREA**

The area occupied by persons which is affected by noise generated in another area or property.

**§ 265-3 Specific prohibitions.**

- A. The following are prohibited at any time in the Town:
- (1) Sounding of horns or other auditory sounding devices on or in any motor vehicle on any public right-of-way or public property in the Town, except as a warning of danger, as governed by the Maryland State Transportation Code.
  - (2) Security alarms which fail to cease emitting an audible sound within 15 minutes of activation or which activate more than once in an eight-hour period following the first activation incident.

**§ 265-4 Noise exceeding measurable standards.**

- A. Except as otherwise specified in this chapter, a person must not cause or permit excessive noise that exceeds the following at distances specified in the subsections below:

**Maximum Allowable Noise Levels (dBA) for Receiving Areas**

	<b>Daytime</b>	<b>Nighttime</b>
Residential area	65 dBA	55 dBA
Commercial area	67 dBA	62 dBA
Industrial area	75 dBA	75 dBA

- B. When the noise source is located on private property, the noise is measured at or outside the property boundary of the noise source or at any point within any other property affected by the noise.
- C. When the noise source is located in a public right-of-way or other public space, the noise is measured at least 100 feet from the noise source.
- D. When the noise source is located within a structure containing more than one dwelling unit, the noise is measured from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. The noise shall be measured at a point at least four feet from the wall, ceiling or floor nearest the noise source, with the doors to the receiving area closed and windows in the normal position for the season.

**§ 265-5 Exemptions.**

- A. Activities undertaken by municipal, county, state, or federal governmental agencies or their contractors to promote or protect the public health, safety or general welfare. This includes noise generated at public-serving utility plants and facilities.
- B. Emergency work permitted by the Town of Smithsburg.



- C. Radios, sirens, horns, and bells on emergency vehicles.
- D. Lawful discharge of firearms.
- E. Bio-acoustic bird dispersal systems.
- F. Trains and aircraft.
- G. The striking of clocks and church bells.
- H. Air-conditioning or heat pump equipment used to cool or heat buildings.
- I. Activities on or in municipal, county, state, or federal properties and facilities, including school athletic facilities, municipal stadiums, and parks, and subject to the rules and regulations for use of those facilities.
- J. Noise caused by construction activities during normal daytime hours and starting at 7:00 a.m. on Saturdays, and, during the summer, starting at 6:00 a.m. on weekdays and Saturdays.
- K. Noise created by lawn and yard care equipment during daytime hours.
- L. Activities which have gained a variance from the Town of Smithsburg under § 265-6 of this chapter.
- M. Parades, fireworks, displays, festivals, and other special events, subject to the terms of approval or permits by the Town of Smithsburg and approval of the Mayor and Town Council.
- N. Noises caused by or from motor vehicles operating on a roadway, when regulated by state law. This does not include noise caused by stereos, radios, or other similar devices located within or on motor vehicles.

**§ 265-6 Variances.**

- A. Any person desiring relief from the provisions of this chapter shall apply for a variance to cause or create noise which would otherwise be in violation of this chapter, at least 30 days prior to the date for which the relief is requested. Application shall be made in writing to the Town Clerk's office. The applicant must demonstrate the following in the application:
  - (1) The activity, operation or noise source cannot be done in a manner that would comply with the provisions of this chapter; or
  - (2) The provisions of the chapter would cause undue hardship for the applicant or the applicant's client; or
  - (3) The failure to grant a variance would unreasonably burden the exercise of the applicant's constitutional right of free speech or other constitutional right; and

- (4) No reasonable alternative is available to the applicant.
- B. In determining whether to grant or deny the application for the variance, the Mayor and Town Council shall consider the hardship to the applicant, the community, or other persons of not granting the variance against the adverse impact on the health and welfare of persons affected, the adverse effect on the property affected or any other adverse impact.
- C. Any variance granted pursuant to this chapter shall contain all conditions upon which the variance has been granted, including but not limited to the effective date, time of day, location and equipment limitations. Any variance granted pursuant to this section may be renewed upon application to the Town Clerk's office and approval of the Mayor and Town Council upon a showing that the reasons for which the variance was granted still exist or may be reevaluated periodically by the Town to determine whether the activity under the variance is still deemed appropriate for an exception from the provisions of this chapter.

**§ 265-7 Determination of violation.**

Police officers, or other duly appointed and authorized Town officials, shall be responsible for enforcement of the provisions of this chapter and for determining if a sound is excessive noise which violates the provision of this chapter. A sound is in violation of this chapter if it is determined to be excessive noise that is plainly audible to a person using his or her own normal hearing faculties across distances and/or at times specified in this chapter, unless otherwise exempted from the provisions of this chapter, and reaches or exceeds sound levels outlined in § 265-4. The equipment and techniques employed in the measurement of noise levels may be those recommended by the Maryland State Department of the Environment, which may, but need not, refer to currently accepted standards or recognized organizations, including, but not limited to, the American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), Society of Automotive Engineers (SAE), and the United States Environmental Protection Agency (EPA).

**§ 265-8 Violations and penalties.**

Any violation of the provisions of this chapter shall be deemed a municipal infraction and upon conviction as a result of the issuance of a Municipal Infraction Citation shall be punishable by a fine of up to \$500 for the first offense and up to \$1,000 for additional offenses within a twelve-month period. The person who is issued a Citation hereunder may elect not to stand trial by paying a pre-set fine in the amount of \$100 for the first violation and \$250 for additional cited offenses within a twelve-month period. Each violation of any section of this Chapter shall be considered a separate and distinct violation, punishable as prescribed herein. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

**§ 265-9 Severability.**

Should any section, subsection, sentence, clause or phrase of this chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the chapter in its entirety or of any part thereof other than that portion declared to be invalid.