AN ORDINANCE AMENDING CHAPTER 17 "OFFENSES - MISCELLANEOUS" OF THE CHRISTIANSBURG TOWN CODE WITH REGARD TO NOISE PROVISIONS

WHEREAS, the Town Council for the Town of Christiansburg wants to update its noise ordinance in response to the Supreme Court of Virginia's ruling in Tanner v. City of Virginia Beach; and,

WHEREAS, members of the planning commission and police department for the Town of Christiansburg have offered their recommendations on revising Christiansburg's current noise ordinance; and,

WHEREAS, notice of the intention of the Town Council to pass said ordinance was published (xxxxxxx xx, 2010) in the New River Valley Current, a newspaper published in and having general circulation in the Town of Christiansburg; and,

WHEREAS, the Christiansburg Town Council has found that the public necessity, convenience, and general welfare deem it proper to do so,

NOW THEREFORE, BE IT ORDAINED by the Council of the Town of Christiansburg, Virginia that Chapter 17 "Offenses – Miscellaneous" be amended and reenacted by deleting Section 17-5(a)(18), the loud and unnecessary noise provision of "Disorderly conduct – Generally" and deleting Section 17-7 "Disorderly houses" of Article I "In General"; and, adding Article III "Regulation of Noise," Sections 17-80 through 17-88 as follows:

Article III. Regulation of Noise

Sec. 17-80. Short title and application of article generally.

This article shall be known and referred to as the "Noise Ordinance of the Town of Christiansburg, Virginia." It shall be applicable to the control of noises originating within the jurisdictional limits of the Town of Christiansburg.

Sec. 17-81. Declaration of policy.

At certain levels, noise can be detrimental to the health, welfare, safety, peace, and quality of life of the citizens of Town of Christiansburg, and in the public interest, noise should be controlled. Therefore, it is hereby declared to be the public policy of the Town of Christiansburg to promote an environment for its citizens that is free from excessive, unnecessary, harmful, or annoying noises, which jeopardize their health or welfare or degrades the quality of life within the Town of Christiansburg.

Sec. 17-82. Administration and enforcement.

This article shall be enforced and administered by the chief of police of the town, with the assistance of other town departments as required.

Sec. 17-83. Definitions.

For purposes of this article, the following words and phrases shall have the meaning assigned to them in this section.

Chief: the chief of police of the Town of Christiansburg, Virginia, or his/her duly appointed designees.

Dwelling unit: one or more rooms arranged, designed, or intended to be occupied as separate living quarters by one or more persons and including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Motor vehicle: every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Noise: any sound which (a) endangers or injures the safety or health of any person; (b) annoys or disturbs a reasonable person of normal sensitivities; or (c) endangers or injures personal or real property.

Owner: the person owning, controlling, or possessing land, premises, or personalty.

Person: any individual, partnership, corporation, firm, association, trust, estate, society, club, private institution, group of persons acting in concert, organization or agency, or any legal successor, representative, agent or agency of the foregoing. This term shall not include the federal, state, county, town, city or local government, or any agency or institution thereof.

Plainly audible: any sound that can be detected by a person using his or her unaided hearing faculties.

Property boundary: an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

Public property: any real property owned or controlled by the town or any other governmental entity.

Residential: reference to any area of the town, regardless of zoning district, where a person maintains a permanent or temporary place of abode.

Sound: an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium, and which propagates at finite speed. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound-amplifying equipment: any machine, device or equipment for the amplification of the human voice, music, or any other sound as defined herein. This term shall not include warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic-safety purposes.

Sec. 17-84. Loud noises prohibited.

It shall be unlawful for any person:

(1) To use, operate, or play a radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound-amplifying equipment, or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible (i) inside the confines of the dwelling unit, house, or apartment of another person or (ii) at a distance of 50 feet or more from the device, except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events.

(2) To allow noise between the hours of 10:00 p.m. and 7:00 a.m. that is plainly audible either inside the confines of the dwelling unit, house, or apartment of another person or at a distance of 50 feet or more.

(3) To allow any animal (except farm animals in agricultural districts) to create noise that it is plainly audible at least once a minute for ten consecutive minutes (i) inside the confines of the dwelling unit, house, or apartment of another or (ii) at a distance of 50 feet or more from the animal. This provision shall not apply if the noise is due to harassment of or injury to the animal, or due to a trespass upon the premises where the animal is located.

(4) To operate, install, have or permit on the inside or outside of any store, shop, business establishment, warehouse or commercial building, any loudspeaker, sound-amplifying equipment, or other sound-producing or reproducing device capable of emitting music, noise, sounds, tapes or voice in such manner that it is plainly audible on any public sidewalk or street unless it is used only intermittently for announcing or paging an individual or unless it signals the ringing of a telephone, danger from smoke, a fire or a burglary or the beginning or stopping of work or school, or unless it is operated in accordance with conditions of zoning.

(5) To play or permit the playing of any radio, stereo, tape player, compact disc player, loud speaker, sound-amplifying equipment or other electronic device or

mechanical equipment used for the amplification of sound, within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of 50 feet or more from the vehicle. This provision shall not apply to sirens, loud speakers, and emergency communications radios in public safety vehicles; nor shall this provision apply to motor vehicle alarms or other security devices.

(6) To create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with the loading and unloading of refuse, waste, or recycling.

(7) To create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or tree removal, and other landscaping, lawn or timbering activities.

(8) To operate or cause to be operated any equipment used on an active site in the construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00 a.m. The use of construction vehicles as transportation to and from an active construction site may be done at any time.

(9) To repair, rebuild, or modify any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at a distance of 50 feet or more from the source.

(10) To fail to deactivate an alarm system plainly audible at a distance of 50 feet or more from such alarm within 30 minutes of hearing the alarm or receiving notice of the alarm's activation.

Sec. 17-85. Exemptions from this article.

The following specific activities or sources of noise shall be exempt from the regulations set forth in this article:

(1) Sounds generated in business, industrial, and mixed-use zoning districts that are necessary and incidental to the uses permitted therein.

(2) Sounds generated from any agricultural activity or agribusiness.

(3) Activities or land use for which a permit has been issued or an exception has been granted by the Christiansburg Town Council.

(4) Activities for which the regulation of noise has been preempted by federal law.

(5) Sounds emitted in the performance of emergency work or for the purpose of alerting persons to the existence of an emergency.

(6) Sounds generated by the performance of any governmental function.

(7) Lawful activities on or in public and school athletic facilities and on or in publicly owned properties and facilities.

(8) Activities which are part of any town- or state-sponsored festival or activity.

(9) Military activities of the Commonwealth of Virginia or of the United States of America.

(10) Religious services, religious events, or religious activities or expressions—including, but not limited to, music, singing, bells, chimes and organs—that are a part of such service, event, activity or expression.

(11) Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.

(12) Sounds generated from or incidental to emergency repairs to public and private utilities.

(13) Sounds generated from or incidental to any emergency public works function.

(14) Sounds generated from construction and maintenance to public roads, highways, and bridges.

(15) Sounds generated from erosion and sediment mitigation.

(16) Sounds generated from airplanes and trains.

Sec. 17-86. Penalties.

(a) Any person violating any of the provisions of this article shall be subject to the following penalties.

(1) For the first offense, either imprisonment of not more than ten days or a fine of not less than $75.00.

(2) For the second offense within 12 months of a previous conviction, either imprisonment of not more than ten days or a fine between $250.00 and $750.00.

(3) For the third offense within 24 months of a previous conviction, either imprisonment of not more than ten days or a fine between $500.00 and $1,000.00.

(4) For the fourth or subsequent offense within 24 months of a previous conviction, the person shall be guilty of a Class 1 misdemeanor with a minimum fine of $1,000.

(b) Each separate act on the part of the person violating this article shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall constitute a separate offense.

(c) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that person cannot be determined, any owner, tenant, or resident physically present in or on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

(d) In addition to and not in lieu of the criminal penalties prescribed in this section, the Town of Christiansburg may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article, and the Town of Christiansburg may seek any other remedy or relief authorized by law.

Sec. 17-87. Undue hardship waiver.

(a) Any person responsible for a noise source may apply to the town manager or town designee for a waiver, or partial waiver, from the provisions of this article. The town manager or town designee may grant such waiver, or partial waiver, upon a finding that any of the following circumstances exists:

(1) The noise does not endanger the public health, safety or welfare; or

(2) Compliance with the provisions of this article from which a waiver is sought would produce serious economic hardship without producing substantial benefit to the public.

(b) In determining whether to grant such waiver, the town manager or town designee shall consider the time of day the noise will occur, the duration of the noise, whether the noise is intermittent or continuous, the technical and economic feasibility of bringing the noise into conformance with this article, and such other matters as are reasonably related to the impact of the noise on the health, safety, and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this article.

(c) No waiver, or partial waiver, issued pursuant to this article shall be granted for a period to exceed one year, but any such waiver or partial waiver may be renewed for successive like periods if the town manager or town designee shall find such renewal is justified pursuant to the standards set forth in this ordinance. No renewal shall be granted except upon written application therefore.

Sec. 17-88. Other remedies.

No provision of this article shall be construed to impair any common law or statutory cause of action or legal remedy of any person for injury or damage to person or property arising from violation of this article or arising from noise that either is exempted or does not violate this article.

This ordinance shall become effective upon adoption.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held October 19, 2010, the members of the Council of the Town of Christiansburg, Virginia present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	Aye	Nay	Abstain	Absent
Mayor Richard G. Ballengee*				
D. Michael Barber				
Cord Hall				
Steve Huppert				
Henry Showalter				
Bradford J. "Brad" Stipes				
James W. "Jim" Vanhoozier				

*Votes only in the event of a tie vote by Council.

SEAL:

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Michele M. Stipes, Town Clerk Richard G. Ballengee, Mayor