

Mr. Francy offered the following ordinance and moved on its final reading and adoption publication according to law :

**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

O-13-10

**AN ORDINANCE AMENDING SECTION 3-2.2, "PROHIBITED NOISE," TO
EXPAND THE APPLICATION OF THE NOISE ORDINANCE TO ALL
"STRUCTURES" RATHER THAN ONLY "DWELLINGS" AND SECTION 3-2.3,
"ENUMERATION OF NOISES," OF THE CODE OF THE BOROUGH OF
HIGHLANDS AND TO PERMIT THE PLAYING OF OUTDOOR MUSIC UNTIL
11:00 P.M. ON SUNDAY, SEPTEMBER 1, 2013**

Whereas, the Borough 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 3-2.2 and 3-2.3 of the Borough Code to provide clarification of prohibited noises; and

Whereas, by previous Ordinance adopted earlier this year, the Borough permitted outdoor music until 11:00 p.m. on Sunday evening of Memorial Day Weekend 2013 in an effort to encourage business in the aftermath of Hurricane Sandy; and

Whereas, those efforts were successful in encouraging business activity in the Borough and did not result in any extraordinary complaints or police activity; and

Whereas, the business community requested to permit such activity on Sunday of Labor Day Weekend 2013; and

Whereas, the Borough wishes to continue to encourage business activity in the Borough while balancing those interests with the quality of life in the Borough; and

Whereas, the outdoor music contemplated by this Ordinance balances those interests by limiting outdoor music for one specific day while strengthening and expanding the application of noise proscriptions to all "structures" rather than only "dwellings."

Now, therefore, be it ORDAINED as follows:

Section One. Section 3-2.2 and 3-2.3 of the Code of the Borough of Highlands shall be amended as follows (strikethroughs represent deleted material; underscore indicates new language):

3-2.2 Prohibited Noise.

a. The making, creation or permitting of any unreasonable, disturbing or unnecessary noise in the Borough of Highlands is hereby prohibited.

1. No person shall permit any noise to emanate from any speaker, vehicle or instrument, whether natural or artificial, or use amplification or sound system equipment inside or outside a fully enclosed ~~principal dwelling~~ structure on a property in the Borough of Highlands such that the noise created thereby is plainly audible at a distance of 100 feet from the boundary line of such property.

2. When an officer can hear plainly audible music or other noise 100 feet beyond the property line of the noise-generating property, or any unreasonably, disturbing or unnecessary noise, there is a violation of this section.

3. The following activities, among others, are declared unreasonably loud, disturbing and unnecessary noise in violation of this section, but said enumeration shall not be deemed to exclude those not included herein:

(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 playing, using, operating or permitting to be played, used or operated of any electronic receiving set, musical instrument, phonograph or machine or device for the production or reproduction of sound with louder amplified volume than is necessary for the normal sensitive hearing of the person so playing, using or operating such instrument or device and such persons who are voluntary listeners thereto or in such manner as to unreasonably disturb the peace, quiet and comfort of neighboring inhabitants.

(c) The use, operation or playing of any loudspeakers, amplifiers 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.

(d) The keeping of any animal or bird which by causing frequent or long-continued noise, such as barking or jabbering, shall disturb the peace, quiet and comfort of neighboring inhabitants.

(e) Creating an audible noise by landscape and erection, excavation, demolition, alteration or repair of any building other than between the hours of 8:00 a.m. and 6:00 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 the interest of public safety and health.

(f) The making, creation or permitting of any unreasonable, disturbing or unnecessary noise in the Borough of Highlands is hereby prohibited, especially between the hours of 8:00 p.m. and 8:00 a.m. on Sunday, Monday, Tuesday, Wednesday and Thursday, and 10:00 p.m. and 8:00 a.m. on Friday and Saturday. Consequently, no person shall permit any noise to emanate from any source or instrument whether natural or artificial, or use equipment outside a fully enclosed principal dwelling, structure or other establishment on a property in the Borough of Highlands such that the noise created thereby is plainly audible, as defined in paragraph b. hereinafter, at a distance of 100 feet from the property line.

b. "Plainly audible" shall mean any sound that can be detected by a person using his or her unaided hearing faculties. 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.

3-2.3 Enumeration of Noises.

The following are declared to be loud, disturbing and unnecessary noise in violation of this section, but said enumeration shall not be deemed to be exclusive:

a. The playing of any radio, phonograph or any musical instrument or instruments or singing or talking in such a manner or in such volume as to annoy or disturb the quiet, comfort, repose, peace or tranquility of persons in any dwelling, hotel or other type residence or structure.

b. (1) The playing of music outdoors, either live or recorded, between the hours of 8:00 p.m. and the following 8:00 a.m. on Sunday, Monday, Tuesday, Wednesday, Thursday, and between the hours of 10:00 p.m. and the following 8:00 a.m. on Friday and Saturday is hereby prohibited;

(2) On Sunday, September 1, 2013, the restriction provided by subparagraph (b)(1) above shall read "the playing of music outdoors, either live or recorded, between the hours of 11:00 p.m. and the following 8:00 a.m. on Friday, Saturday and Sunday is hereby prohibited;"

c. The keeping of any animal or bird which has been causing or causes frequent or long continued noise which disturbs the comfort and repose of any person within the vicinity.

d. The shouting of peddlers, hawkers and vendors which disturb the peace and quiet of the neighborhood.

e. The sound of any horn or signal device on any automobile or other vehicle, while not in motion or occupied, as well as any structure, for any unnecessary or unreasonable period of time, except as a danger signal.

Section Two. 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 Three. REPEALER. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section Four. EFFECTIVE DATE. This Ordinance shall take effect after final passage as provided by law.

Seconded by Mr. Redmond and adopted on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Redmond, Mr. Francy, Ms. Kane,

NAYES: None

ABSENT: Mayor Nolan

ABSTAIN: None

DATE: July 17, 2013

Carolyn Cummins, Borough Clerk