

ORDINANCE NO. 2017-06

AN ORDINANCE REGULATING SOUND AMPLIFYING DEVICES AND UNREASONABLE NOISE WITHIN THE VILLAGE OF BERLIN HEIGHTS.

WHEREAS, Council has received complaints relative to the use of sound amplifying devices and unreasonable noise causing a disturbance; and

WHEREAS, Council has now determined that it is necessary to regulate the use of sound amplifying devices and unreasonable noise which disturb the peace and quiet of the residents of the community; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BERLIN HEIGHTS, STATE OF OHIO:

Section 1. That from and after the effective date of this Ordinance, the use of sound amplifying devices and unreasonable noise shall be regulated as follows:

SOUND AMPLIFYING DEVICES.

(A) No person shall generate or permit to be generated noise or loud sound which is likely to cause inconvenience or annoyance to persons of ordinary sensibilities by means of a live performance, radio, phonograph, television, tape player, compact disc player, loudspeaker or any other sound amplifying device which is plainly audible at a distance of 150 feet or more from the source of the noise or loud sound. It is prima facie unlawful for a person to generate or permit to be generated sound by the above described devices or instruments in the following circumstances:

(1) On all private property between the hours of 10:00 p.m. to 8:00 a.m. Sunday through Thursday and 12:00 p.m. to 8:00 a.m. Friday and Saturday in all zoning districts as set forth in the Zoning Ordinance of the village, regardless of any existing nonconforming use or variance, where the sound is plainly audible 150 feet or more from the source of the sound;

(2) On a street, highway, in the public right-of-way, or on village owned land where the sound is plainly audible 150 feet from the device generating the sound. Persons in possession of a current parade or festival permit issued by the Mayor's office are exempt from the provisions of this subsection.

(B) No person, being the owner, or person in possession of a premises or person in control of the premises by reason of employment, agency or otherwise whether such ownership, possession or control is exclusive or joint, shall permit a violation of this section.

(C) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures. Furthermore, the provisions of this section do not apply to the noise made by a horn, siren or other warning device required or permitted by state law.

(D) Any and all complaints under this section shall be made in writing and signed by the complainant or a law enforcement officer.

(E) As used in this section, **PLAINLY AUDIBLE** means any sound produced by a live performance, radio, phonograph, television, tape player, compact disc player, loudspeaker or any other mechanical or electronic soundmaking or sound amplifying device, or instrument, that can be clearly heard by a person using his normal hearing faculties, (F) Any law enforcement officer or

person who hears a sound that is plainly audible as defined herein shall be entitled to measure the sound according to the following standards:

(1) The primary means of detection shall be by means of the officer's or person's ordinary auditory senses, so long as the officer's or person's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid;

(2) The officer or person must have a direct line of sight and hearing to the source that is producing the sound so that the officer or person can readily identify the offending person and the distance involved; and

(3) The officer or person need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute plainly audible sound.

UNREASONABLE NOISE.

(G) No person shall unreasonably make or continue, or cause to be made or continued, or permit, any noise disturbance at a distance of 150 feet or more from the source of the noise or loud sound.

(1) As used in this section, "noise" means any sound which annoys or disturbs persons or which causes or tends to cause an adverse psychological or physiological effect on persons. "noise disturbance" means any sound which:

- (i) Endangers or injures the safety or health of persons or animals;
- (ii) Annoys or disturbs a reasonable person of normal sensibilities; or
- (iii) Endangers or injures personal or real property.

The following acts, and the causing or permitting thereof, are hereby declared to be violations of this section, but such enumerations are neither deemed to be exclusive of nor limited to:

(2) Signal devices. Sounding of any horn, bell or other signal or warning device on any motor vehicle, motorcycle, bus or other vehicle in such a manner as to create a noise disturbance, except as a danger or warning signal or as otherwise excepted in paragraph C above;

(3) Vehicles. Using or operating any automobile, motorcycle, all-terrain vehicle, dirt motorcycle, or other motorized vehicle so out of repair, so loaded or in such a manner as to create loud or unnecessary grating, grinding, rattling or other noise so as to cause a noise disturbance;

(4) Vehicle or motorboat repairs and testing. Repairing, rebuilding, modifying or testing of any motor vehicle, motorcycle, motorized vehicle or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary;

(5) Loading and unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects in such a manner as to cause a noise disturbance across a residential real property boundary;

(6) Heavy vehicles; racing engines. Operating or permitting the operation of any motor vehicle with a gross weight rating in excess of 10,000 pounds, or any auxiliary equipment attached to such vehicle, for longer than five minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, except while loading and unloading perishables, where such noise creates a noise disturbance across a residential real property boundary; or racing the motor of any vehicle unnecessarily or operating any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the pavement or other surface, commonly known as "peeling";

(7) Construction. Operating or permitting the operation of any tools, other than domestic power tools, or equipment used in construction, drilling or demolition work, between 8:00 p.m. and

7:00 a.m. of the following day, such that the sound creates a noise disturbance across a residential real property boundary, except for emergency work of public service utilities or by a special permit by the Mayor's office; and

(8) Vibration. Operating or permitting the operation of any device that creates vibration which is above the vibration perception threshold of any individual at or beyond the property boundary of the source. For the purpose of this section, "vibration perception threshold" means the minimum ground or structure-born vibrational motion necessary to cause a normal person to be aware of the vibration by direct means, such as, but not limited to, sensation by touch or visual observation of moving objects.

(9) This section shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or to the emission of sound in the performance of emergency work. Noncommercial public speaking and public assembly activities conducted on any public space or public right of way are also exempt from this section.

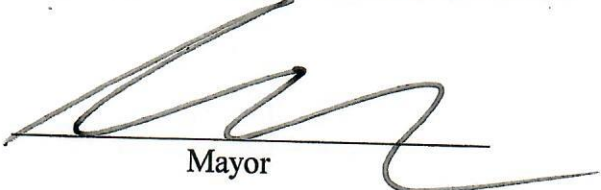
(H) Except as otherwise provided in this section, whoever violates this section is guilty of generating unreasonable noise, a minor misdemeanor. If within 12 months of the offense, the offender has been convicted of or pleaded guilty to one violation of this section, whoever violates this section is guilty of a fourth-degree misdemeanor. If within 12 months of the offense, the offender has been convicted of or pleaded guilty to two or more violations of this section, whoever violates this section is guilty of a third-degree misdemeanor.

Section 2. That upon the adoption of the within Ordinance, the Fiscal Officer shall cause a certified copy of the within Ordinance to be forwarded to the Erie County Municipal Court.

Section 3. That this Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Council; and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including §121.22 of the Revised Code.

Section 4. That this Ordinance shall be in full force and effect at the earliest time permitted by law.

Attest:


Mayor


Kathy A. Deeb
Village Fiscal Officer

1st Reading: June 14, 2017
2nd Reading: July 12, 2017
3rd Reading: September 13, 2017 (as amended)
Adopted: September 13, 2017 (as amended)