

ORDINANCE NO: 12 – 1067

AN ORDINANCE TO AMEND CHAPTER 509.01 OF THE RUSSELLS POINT CODIFIED ORDINANCES AND TO ADOPT CHAPTER 509.09 TO ENACT A SOUND AMPLIFYING AND LOUD NOISES ORDINANCE IN THE VILLAGE OF RUSSELLS POINT, OHIO

WHEREAS, the Village of Russells Point has recently received a number of complaints from residents regarding loud noise; and

WHEREAS, the codified ordinances of the village do not contain a specific prohibition against unreasonable noise; and

WHEREAS, this Council believes it is necessary to enact such an ordinance in the village;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Russells Point, Ohio:

SECTION I: That Chapter 509 of the Village of Russells Point Codified Ordinances in effect before the effective date of this ordinance is hereby amended and shall have the effect of law in the Village of Russells Point.

SECTION II: That Chapter 509.01 of the Village of Russells Point Codified Ordinances be amended and written as follows and that Chapter 509.09 of the Village of Russells Point Codified Ordinances now shall be enacted and written as follows:

**CHAPTER 509
Disorderly Conduct and Peace Disturbance**

501.01 DEFINITIONS.

As used in the Codified Ordinances:

- (a) "Force" means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.
- (b) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.
- (c) "Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.
- (d) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.
- (e) "Serious physical harm to persons" means any of the following:
 - (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

- (2) Any physical harm that carries a substantial risk of death;
- (3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;
- (5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.
- (f) "Serious physical harm to property" means any physical harm to property that does either of the following:
 - (1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace;
 - (2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use and enjoyment for an extended period of time.
- (g) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.
- (h) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.
- (i) "Offense of violence" means any of the following:
 - (1) A violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1) to (3) or 2919.22(B)(1) to (4), or felonious sexual penetration in violation of former Ohio R.C. 2907.12;
 - (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section listed in subsection (i)(1) hereof;
 - (3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed, purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
 - (4) A conspiracy or attempt to commit, or complicity in committing any offense under subsection (i)(1), (2) or (3) hereof.
- (j) (1) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a

trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(2) As used in this section, "trade secret" has the same meaning as in Ohio R.C. 1333.61, and "telecommunications service" and "information service" have the same meanings as in Ohio R.C. 2913.01.

(3) As used in this section, "cable television service", "computer", "computer software", "computer system", "computer network", "data", and "telecommunications device" have the same meanings as in Ohio R.C. 2913.01.

(k) "Law enforcement officer" means any of the following:

(1) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under Ohio R.C. 3735.31(D) or State highway patrol trooper;

(2) An officer, agent or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, Charter or ordinance, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(3) A mayor or manager in the mayor's or manager's capacity as chief conservator of the peace within the mayor's or manager's municipal corporation;

(4) A member of an auxiliary police force organized by county, township or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(5) A person lawfully called pursuant to Ohio R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(6) A person appointed by a mayor pursuant to Ohio R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(7) A member of the organized militia of this State or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor.

(9) A veterans' home police officer appointed under Ohio R.C. 5907.02.

(10) A member of a police force employed by a regional transit authority under Ohio R.C. 306.35(Y).

(11) A special police officer employed by a port authority under Ohio R.C. 4582.04 or 4582.28.

(12) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in Section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States Department of Transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.

(l) "Privilege" means an immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity.

(m) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(1) Any controlled substance, as defined in Ohio R.C. 3719.01, or any device, or paraphernalia;

(2) Any unlawful gambling device, or paraphernalia;

(3) Any dangerous ordnance or obscene material.

(n) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(o) "School", "school building" and "school premises" have the same meaning as in Ohio R.C. 2925.01.

(p) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Ohio R.C. Chapter 3314; a governing body of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under Ohio R.C. 3301.07.

(q) "School bus" has the same meaning as in Ohio R.C. 4511.01.

(r) "Unreasonable noise" means sound which disturbs humans or other animals, or which causes or tends to cause an adverse physical or psychological effect on humans or other animals.

509.09 SOUND AMPLIFYING DEVICES AND LOUD NOISES.

(a) No person shall generate or permit to be generated unreasonable noise or loud sound which is likely to cause inconvenience or annoyance to persons of ordinary sensibilities by means of a radio, phonograph, television, tape player, loud speaker or any other sound amplifying device or by any horn, drum, piano or other musical percussion instrument. For purposes of this section, "sound amplification system" includes but is not limited to, any radio, tape player, compact disk player, loud speaker or other electronic device used for the amplification of the human voice, music or any other noise or sound.

(b) No persons, 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) No operator or passenger of a motor vehicle shall operate, or permit the operation of any sound amplification system which can be heard outside the vehicle from fifty or more feet from such vehicle when the vehicle is being operated or parked upon a street or highway.

(d) It is an affirmative defense to a charge under this section that the person was not otherwise prohibited by law from operating the sound amplification system, and that any of the following apply:

(1) The system was being operated to request medical or vehicular assistance or to warn of a hazardous condition;

(2) The vehicle was an emergency or public safety vehicle;

(3) The vehicle was owned and/or operated by the Village or a utility company;

(4) The vehicle is being used in a parade and the person or organization conducting the parade had obtained a parade permit from the appropriate Village office.

(e) It is prima facie unreasonable to cause, suffer, allow or permit the operation of any sound source on a particular category of property or any public space or right-of-way in such a manner as to create a sound level that exceeds the background sound level by at least 10 decibels during daytime (7:00 a.m. to 11:00 p.m.) hours and by at least 5 decibels during nighttime (11:00 p.m. to 7:00 a.m.) hours when measured at or within the real property line of the receiving property. Such a sound source shall constitute an unreasonable noise disturbance. If the background sound level cannot be determined, the absolute sound level limits set forth in Table 1 shall be used.

TABLE 1: Maximum Permissible Sound Levels		Receiving Property
		<u>Commercial</u>
	<u>Residential</u>	
<u>Source Property</u>	7:00 a.m.-11:00 p.m.	11:00 p.m.-7:00 a.m.
<u>Residential</u>	60 decibels	55 decibels
<u>Commercial</u>	65 decibels	55 decibels
<u>Industrial</u>	65 decibels	55 decibels
		(All Times)
		65 decibels
		65 decibels
		65 decibels

(f) Whoever violates this section is guilty of generating unreasonable noise and a violation of this section upon a first offense shall be a minor misdemeanor. If the offender persists generating or permitting to be generated unreasonable noise after reasonable warning or request to desist,

generating unreasonable noise is a misdemeanor of the fourth degree. Further, upon a person being convicted of this section more than once, each subsequent conviction after the first conviction shall be a misdemeanor of the third degree.

SECTION III: That the existing Chapter of 509.01 of the Village of Russells Point Codified Ordinances is hereby repealed.

SECTION IV: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this council and that all deliberations of this Council, and any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of the Ohio Revised Code.

SECTION V: That this ordinance shall, therefore, be in force and take effect upon its passage and signature by the Mayor.

Dave Leonard
President Pro Tem of Council

Robin Reames
Mayor

Attested: _____
Jeff Weidner
Fiscal Officer

First Reading _____, 2012

Second Reading _____, 2012

Passed: _____, 2012

Approved as to Form

Robert N. Eshenbaugh Jr.
Village Solicitor