

ORDINANCE NO. 425-2011

AN ORDINANCE OF THE BOROUGH OF SHOEMAKERSVILLE, BERKS COUNTY, PENNSYLVANIA, DEFINING "DISTURBING THE PEACE" BY SETTING STANDARDS IN ORDER TO ABATE AND PRESENT EXCESSIVE NOISE OCCURRING WITHIN THE LIMITS OF THE BOROUGH, PROVIDING FINES AND IMPRISONMENT FOR NON-PAYMENT OF THE FINES FOR VIOLATION OF THE ORDINANCE.

The Council of the Borough of Shoemakersville in session duly called does hereby enact:

Section 1. INTENT AND PURPOSE.

Council finds that excessive levels of sound are detrimental to the physical, mental, and social well-being of the people as well as to their comfort, living conditions, general welfare and safety and being therefore a disturbance of the peace as well as a public health and welfare hazard, hereby declares it to be necessary to provide for the greater control and more effective regulation of excessive sound and the sources of excessive sound within the Borough.

Section 2. DEFINITIONS.

The following words, terms, and phrases when used in this article shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) "Construction operation" means the erection, repair, renovation, demolition or removal of any building or structure; and the excavation, filling, grading, and regulation of lots in connection therewith.

(b) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage including but not limited to plowing or removal of snow and ice.

(c) "Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(d) "Muffler or sound dissipative device" means a device designed or used for decreasing or abating the level of sound escaping from an engine or machinery system.

(e) "Noise" means any sound which annoys or disturbs human or which causes or tends to cause an adverse psychological or physiological effect on humans.

(f) "Noise disturbance" means any sound which:

- (1) Endangers or injures the safety or health of humans or animals; or
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or

(3) Endangers or injures a personal or real property; or

(4) Is audible on a public street for a distance of fifty feet from the place of origin of such sound or noise.

(g) "Person" means any individual association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state. Whenever used in any clause prescribing and imposing a penalty, person includes the individual members, partners, officers and managers, of any of them, of partnerships and associations, and as to corporation, the officers and managers thereof or any of them.

(h) "Powered model vehicle" means any self-propelled airborne, waterborne or land borne plane, vessel or vehicle, which is not designed to carry persons, included but not limited to, any model airplane, boat, car or rocket.

(i) "Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

(j) "Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

(k) "Property line (boundary)" means an imaginary line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses and duplexes owned, rented or leased by a different person, a demarcation or a line of separation of properties, and also, for any two or more buildings sharing common grounds, the line drawn midway between any two such buildings. ~l areas devoted to public right-of-way shall be deemed to be across the property line. For the purposes of this regulation, the property line includes all points on a plane formed by projecting the property line in a manner deemed appropriate by the enforcing police officer.

(l) "Real property" means all land whether publicly or privately owned, whether improved or not improved, with or without structures, exclusive of any areas devoted to public right-of-way.

(m) "Sound" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium, or the superposition of such propagated oscillation which evokes an auditory sensation. The description of sound may include any characteristics of such sound, including duration, intensity and frequency.

Section 3. NOISE DISTURBANCE PROHIBITED.

No person shall make, continue or cause to be made or continued any noise disturbance, nor shall any person suffer, allow or permit any noise disturbance to be made or continued from or at any property, whether real or personal, that is subject to such person's right to control.

Section 4. SPECIFIED PROHIBITED ACTS.

The following acts, and the causing thereof, are declared to be noise disturbances and therefore in violation of this article:

(a) Radios, Television Sets, Musical Instruments and Similar Devices. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, automobile radio, automobile stereo or high fidelity equipment, disc or tape player, loudspeaker or other similar device, not in connection with the lawful operation of an emergency vehicle such as an ambulance, police or fire vehicle, nor in connection with a lawfully permitted parade, public assembly, or other activity for which a permit is issued by the duly constituted legal authority, or similar device which produces, reproduces or amplifies sound:

(1) At any time in such a manner as to cause a noise disturbance across a property line (boundary), or between the hours of 7:00 p.m. and 7:00 a.m. Eastern Standard Time (E.S.T.) of the following day so as to be plainly audible across a property line (boundary); or which is audible on a public street for a distance of fifty feet from the place or origin of such sound or noise; or

(2) In such a manner as to create a noise disturbance across a property line (boundary) or at fifty feet from such device, whichever is less, when the device is operated in or on a motor vehicle, or hand carried, on a public right-of-way or public space; or

(3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by a passenger on a common carrier.

(b) Yelling or Shouting. Engaging in loud or raucous yelling, shouting, hooting, whistling or singing:

(1) On the public streets between the hours of 7:00 p.m. and 7:00 a.m. E.S.T. of the following day; or

(2) At any time or place in such a manner as to create a noise disturbance.

(c) Construction Tools or Equipment. Operating or permitting the operation of any tools or equipment used in construction operations, drilling or demolition work;

(1) Between the hours of 7:00 p.m. and 7:00 a.m. E.S.T. the following day on weekdays and Saturdays or at any time on Sundays or legal holidays, such that the sound therefore creates a noise disturbance across a residential real property line (boundary), except for emergency work.

(2) This subsection (c) shall not apply to the use of domestic power tools as hereinafter provided in Subsection (d) hereof.

(d) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snowblower or similar device used outdoors in residential areas between the hours of 7:00 p.m. and 7:00 a.m. E.S.T. of

the following day so as to cause a noise disturbance across a residential property line (boundary) except in an emergency.

(e) Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 7:00 a.m., E.S.T. the following day in such a manner as to cause a noise disturbance across a residential property line (boundary).

(f) Animals and Birds. Owning, possessing, harboring or controlling any animal or bird which howls, barks, meows, squawks, or makes other sounds continuously and/or incessantly for a period of ten minutes or makes such noise intermittently for one-half hour or more to the disturbance of any person at any time of the day or night regardless of whether the animal or bird is situated in or upon private property; provided, however, that at the time the animal or bird is making such noise, no person is trespassing or threatening to trespass upon private property; provided, however, that at the time the animal or bird is making such noise, no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated or for any other legitimate cause which teased or provoked the animal or bird.

(g) Powered Model Vehicles. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential property line (boundary) between the hours of 7:00 p.m. and 7:00 a.m. E.S.T of the following day.

(h) Street Sales. Offering for sale or selling by shouting or outcry or by any other amplified or unamplified sound within any residential or commercial area of the Borough.

(i) Tampering. The following acts or the causing thereof are prohibited:

(1) The removal or rendering inoperative by any person, other than for the purposes of maintenance, repair or replacement, of any muffler or sound dissipative device or element of design or noise label of any product.

(2) The use of a product which has had a muffler or sound dissipative device or element of design or noise labeled removed or rendered inoperative, with knowledge that such action has occurred.

(j) Vehicle, Motorboat or Aircraft Repairs and Testing. Repairing, rebuilding or testing any motor vehicle, motorcycle, or aircraft in such a manner as to cause a noise disturbance across a residential real property line (boundary).

(k) Daylight Savings Time. During the months of the year when Daylight Savings Time is observed, the time limitations set forth in subsections (a), (b), (c) (d), (e), (g), shall be modified to read between the hours of 9:00 p.m. and 7:00 a.m. of the following day, Eastern Daylight Savings Time.

Section 5. MOTOR VEHICLE PROHIBITIONS.

(a) Motor Vehicle and Motorcycles on Public Right-of-Way. No person shall operate or cause to be operated a public or private motor vehicle or motorcycle, or any equipment

attached to such a vehicle, on a public right-of-way at any time in such manner that the sound level emitted by the motor vehicle or motorcycle, or any equipment attached to such a vehicle, on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle, or any equipment attached to such a vehicle exceeds the level set forth in Pennsylvania Code Title 67, Chapter 157 entitled "Established Sound Levels".

(b) Standing Motor Vehicles. No person shall operate or permit the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle while the vehicle is stationary, for reasons other than traffic congestion, anywhere within 150 feet of any residence in such a manner as to cause a noise disturbance across a residential property line (boundary).

(c) Unnecessary Horn Blowing. No person shall at any time sound the horn or other warning device of a vehicle except when absolutely necessary as a warning while actually driving such vehicle in such a manner as to exceed permissible motor vehicle noise emissions as set forth in subsection (a) hereof.

(d) Sound Trucks. No person shall operate sound amplifying equipment mounted on or attached to any motor vehicle at any time in such a manner as to exceed the maximum permissible motor vehicle noise emissions as set forth in subsection (a) hereof.

(e) Automatic Motor Vehicle Protection. The sensory mechanism used in connection with an automatic motor vehicle protection device shall be adjusted to suppress false indications of burglary or intrusion so that the device will not be activated by impulse or vibration caused by any force not related to the alarms. All components comprising such a device shall be maintained by the owner or lessee in good repair to assure maximum reliability of operation.

Section 6. PRIMA-FACIE VIOLATION.

Prima-facie evidence of a noise disturbance shall exist if the noise from any of the acts prohibited in Sections Three to Five inclusive, of this Ordinance:

(a) Disturbs two or more residents who are in general agreement as to the times and duration of the noise and who reside in separate residences, including apartments and condominiums located within the same building, located across a property line (boundary) from the property on which the source of the noise is generated; or

(b) Disturbs one resident located across a property line (boundary) from the property on which the source of the noise is generated, and corroborated by a police officer, or

(c) Solely witnessed/observed by a police officer when citing any section hereunder.

Section 7. EXEMPTIONS.

The following sounds are exempted from the provisions of this article:

(a) Blasting. Blasting, under proper permit. Such blasting may occur only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, unless specifically authorized by permit.

(b) Emergency Work. Sounds caused by the performance of emergency work, or by the ordinary and accepted use of emergency apparatus and equipment.

(c) Municipal and Utility Services. Sounds resulting from the repair or replacement of any municipal or utility installation in or about the public right-of-way.

(d) Special Permits. Any member of the Department of Police, upon application grant special permits for infrequent events or activities; provided, however, the permit shall not become effective until a copy of the written permit is lodged with the Secretary of the Borough.

Section 8. ENFORCEMENT.

Any person who shall create, continue, cause, maintain, or permit to exist any prohibited noise disturbance at any place within the Borough of Shoemakersville, in violation of this ordinance shall be subject to issuance of a citation and/or an order to remove or abate such noise disturbance from a police officer, having jurisdiction in the Borough of Shoemakersville, a state trooper, an appointed code enforcement officer or other designated representative of the Borough Council of Shoemakersville authority to cite such person for a violation of this ordinance and/or to remove or abate such nuisance.

Section 9. CONFLICT AND REPEAL.

All ordinances conflicting with the provisions of this article, including but not limited to Ordinance No. 360-98, are hereby repealed.

Section 10. PENALTY.

(a) Whoever violates any provision of this article shall, upon conviction thereof, in a summary proceeding, be fined for the first violation, Fifty Dollars (\$50.00). Thereafter any conviction resulting from a subsequent violation the fine shall be not less than One Hundred Dollars not more than Six Hundred Dollars (\$100.00 - \$600.00) for each and every offense, to be collected as other fines and costs are by law collectible, and in default of payment thereof shall be imprisoned for not more than thirty (30) days. Each day during which any person violates any provision of this article shall constitute a separate offense.

(b) This article and the foregoing penalties shall not be construed to limit or deny the right of the Borough or any person to such equitable or other remedies as may otherwise be available with or without process of law.

Section 11. SEVERABILITY.

Each section or part of this Ordinance shall and is considered separate, severable and independent of any other section or part of this Ordinance and shall be effective even if another section or part of this Ordinance is declared invalid, unenforceable or unconstitutional by a Court having jurisdiction to do so.

Section 12. EFFECTIVE DATE.

This Ordinance shall become effective according to law.

Enacted into law this 6th day of December, 2011.

BOROUGH OF SHOEMAKERSVILLE

By: Brian J. Haber
Council President

Attest:

Melissa Wagner
Secretary

Approved this 6th day of December, 2011.

Mayor Richard K. Kepner
Mayor