

Passed June 3, 2002

ORDINANCE 2002-4

ORDINANCE ENACTING A NOISE CONTROL ORDINANCE INCLUDING PROVISIONS FOR THE ADMINISTRATION AND ENFORCEMENT

WHEREAS, the Council for the Village of La Rue has found a need for the adoption of a Noise Control Ordinance within the Village, after much investigation and consideration the Council has found noise levels in excess of the limits contained herein to be declared public nuisance, as the limits contained herein are reasonable for our community and will combat the existing public nuisances, and

WHEREAS, considerable hearings and debate have been conducted regarding noise levels in order to determine what levels are acceptable in the community and finding, after considerable debate and evaluation that the levels set forth herein are those maximum levels above which the general public is impacted in negative ways, such as the peaceful enjoyment of their premises. Further, Council finds that public nuisances do exist in the community related to excess noise and that there is a real and present need to ensure the abatement of pre-existing public nuisances, along with future public nuisances, and

WHEREAS, the Council wishes no further delay in the enactment of Code restrictions, regulations and accompanying rules and expressly determines and declares that all existing nonconforming noise constitutes a public nuisance in need of abatement to ensure the continued health, safety, morals and general welfare of the public, wherefore

BE IT ORDAINED by the Council of the Village of La Rue, Marion County, Ohio:

Section 1. There shall be created, adopted and enacted a Noise Control Ordinance to be established providing for laws and of noise control by and within the Village of La Rue, Ohio to read as follows:

DEFINITIONS

As used in this Ordinance:

- (A) "A-Weighted sound level" means the sound pressure level in decibels as measured on a sound level meter using the A-Weighting network. The level so read is designated dB(a) or dBA.
- (B) "Commercial area" means any office building, local retail, and general retail districts as set forth in the La Rue Village Zoning Code.

- (C) "Construction" means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition, for or on public or private rights of way, structures, utilities, or similar property.
- (D) "Cyclically varying noise" means any sound which varies in sound level such that the same level is obtained repetitively at reasonable uniform intervals of time.
- (E) "Decibel" means a unit for measuring the volume of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).
- (F) "Demolition" means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.
- (G) "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where the trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle, shall be used.
- (H) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.
- (I) "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.
- (J) "Impulsive sound means sound of short duration, usually less than one second.

NOISE DISTURBANCES PROHIBITED

In addition to the general prohibitions outlined in this chapter, no person shall unreasonably make, continue, or cause to be made, continued or permitted, any noise disturbance. This section shall not apply to noncommercial public speaking and public assembly activities conducted on any public space or public right of way or any activity specifically permitted herein.

SPECIFIC ACTS PERMITTED

The following acts, and the causing or permitting thereof, are declared to not be in violation of this chapter.

- (A) Air Conditioners. Maintaining or using any refrigeration machinery or air conditioning, consisting of air compressors or rotating or reciprocating machinery.
- (B) Construction. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work between the hours of 7:00 a.m. and 9:00 p.m. such that the sound there from creates a noise disturbance across a residential real property boundary except for emergency work of public service utilities or by special variance. This

subsection shall not apply to the use of domestic power tools subject to subsection (C) hereof.

- (C) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawn mower or other similar device used outdoors, other than powered snow removal equipment, outdoors between the hours of 7:00 a.m. and Emergency Signaling Device.
- (1) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device for emergency purposes or for testing, as provided in this section. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed but not before 7:00 a.m. or after 9:00 p.m. or the closing time of a commercial establishment whichever shall occur later. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur before 7:00 a.m. or after 9:00 p.m. In no case shall such test exceed ten (10) minutes.
- (2) Sounding or permitting the sounding of exterior burglar or fire alarm or any motor vehicle burglar alarm if such alarm is automatically terminated with two (2) minutes of activation, or within a reasonable time after notification of activation.
- (D) The sounding of any horn or other auditory signaling device on or in any motor vehicle on any public right of way or public space, as a warning of danger 9:00 p.m., or Sunday after the hour of 9:00 a.m.

MUSICAL INSTRUMENTS

No person shall use or perform any hand organ or other musical instrument or device, for pay or in expectation of payment, in any public way or outdoors public place of the Village before 9:00 a.m. or after 11:00 p.m. of any day.

RADIOS, PHONOGRAPHS, ETC.

No person shall use, operate or play any radio, music player, such as a "boom box", tape cassette, disc player, television, audio system or musical instrument, or any other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. Such operation in such a manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located shall be prima-facie evidence of a violation of this section.

LOUDSPEAKERS; AMPLIFIERS.

No person shall use any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public.

EXHAUSTS.

No Person shall discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat, motorized off-road vehicle or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises there from.

BUILDING OR PROPERTY USE RESTRICTIONS.

No person owning or in possession or control of any building or premises shall use the same, permit the use of the same or rent the same to be used for any business, employment or residential use, or for any purpose of pleasure or recreation, if such use shall, by it's boisterous nature, substantially raise the ambient noise level of the neighborhood in which such building or premises is situated, or would be dangerous or detrimental to health.

PERMITTING NOISE POLLUTION.

In addition to the prohibitions contained in this Ordinance no person owning, leasing or controlling the operation of any source or sources of noise, including an animal or animals, shall willfully, negligently or through failure to take necessary precautions, permit the establishment or continuation of a condition of noise pollution.

NOISE IN PLACES USED FOR ENTERTAINMENT.

No person or persons owning, leasing or controlling the operation of any place used for entertainment shall willfully, negligently or through failure to take necessary precautions, permit the imposition or continuation of a sound pressure (noise) level exceeding eighty-five dBA on any member of the audience by said person or by any person engaged or employed by said person.

MOTOR VEHICLE HORNS AND SIGNAL DEVICES.

No person shall sound any horn or audible signal device or any motor vehicle or light motor vehicle of any kind while not in motion, nor shall such horn or signal device be sounded under any circumstances except as required by law, nor shall it be sounded for any unnecessary or unreasonable period of time.

INSPECTIONS BY LAW ENFORCEMENT OFFICERS.

Any law enforcement official, with jurisdiction within the Village, in addition to any other authority vested in him, has the power, upon presentation of proper credentials, to enter and inspect any dwelling, multi-family dwelling, building, structure or premises within the Village as may be necessary to enforce the provisions of this chapter, provided permission is obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused, or is otherwise unobtainable, a search warrant must be obtained upon the showing of probable cause to believe that a violation of this chapter may exist, before such entry or inspection is made.

SPECIAL VARIANCES.

- (A) The Mayor or his/her designated representative shall have the authority, consistent with this section, to grant special variances.
- (B) Any person seeking a special variance pursuant to this section shall file an application with the Mayor, or his/her representative. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community, or on other persons. Notice of an application for a special variance shall be given by the Mayor or his/her representative to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the Mayor or his/her representative containing any information to support his claim.
- (C) In determining whether to grant or deny the application, the Mayor or his/her designated representative shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected, and any other adverse impact of granting the special variance. Applicants for special variances and persons contesting special variances may be required to submit any information to the Mayor or his/her representative may reasonably require. In granting or denying an application, the Mayor or his/her representative shall place on public file a copy of the decision and the reasons for denying or granting the special variance.
- (D) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any conditions of the special variances shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special variance was granted.
- (E) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances.
- (F) The Mayor or his/her designated representative may issue guidelines approved by Council defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

- (G) A person filing an application for a special variance pursuant to this section shall comply with this code until such time as the application is acted upon by the Mayor or his/her designated representative.

ABATEMENT ORDERS.

In lieu of issuing a notice of violation any law enforcement official with jurisdiction in the Village may issue an order requiring the immediate abatement or any source of sound alleged to be in violation of this chapter.

NOTICE OF VIOLATION.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to this chapter, violation of any provision of this chapter shall be cause for a notice of violation to be issued by any law enforcement with jurisdiction in the Village.

OTHER REMEDIES.

No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this chapter or from other law.

EXCEPTIONS.

The provisions of this chapter shall not apply to the following:

- (A) The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of emergency work.
- (B) Organized school or church related programs, activities or events, or parades or other public programs, activities, or events authorized by the Mayor or his/her designated representative.

APPLICABILITY.

Nothing in this chapter shall be construed to permit conduct prohibited by any other statute, ordinance or regulation, or to prohibit the enforcement thereof.

SEVERABILITY.

If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated.

PENALTY.

Whoever violated any section is guilty of using unreasonable sound amplifying devices, a minor misdemeanor, except that if the offender persists in this violation after reasonable warning or request to desist, using unreasonable sound

amplifying devices is a misdemeanor of the fourth degree and charged a penalty of \$100.00.

Section 2. That this ordinance be declared an emergency for the benefit of the residents of the Village of LaRue and shall take effect and be in full force upon its passage, provided it receives an affirmative vote of two-thirds of all members elected to council and approval by the Mayor, at the earliest date allowed by law.

FIRST READING DATE

April 1, 2002

SECOND READING DATE

May 6, 2002

THIRD READING DATE

June 3, 2002

VOTES: YEAS 5 NAYS 1

Mary Price
Clerk

P. Milton Sigler, Jr.
Mayor
John Howard
President of Council