

Ordinance No: 26-08-049

Committee: Judiciary and Annexation

AN ORDINANCE ENACTING VAN WERT CODE OF ORDINANCES BY CHAPTER 102 NOISE.

WHEREAS, the City Council of Van Wert has met and decided that it needs to enact new ordinances for Noise; and

WHEREAS, the Council for the City of Van Wert has been advised of proposed changes and believe those changes are in the best interests of the City of Van Wert; and

Be it **ORDAINED** by the Council of the City of Van Wert, Van Wert County, Ohio, to wit:

Section 1. To approve the enactment of Chapter 102 - Noise which are attached hereto and marked as Exhibit "A".

Passed this _____ day of _____.

Thad R. Eikenbary – President of Council

Attest: _____
Stephanie R. Phillips, Clerk of Council

Kenneth J. Markward, Mayor

EXHIBIT A

CHAPTER 102 – NOISE

102.01 Purpose.

- (A) This sections is intended to protect persons from excessive noise levels, which interfere with the comfortable enjoyment of life, property, and recreation because excessive noise can interfere with sleep, communication, relaxation, and the full enjoyment of one's property.
- (B) Nothing in this chapter shall be interpreted to conflict with or inhibit the enforcement of Chapter 72 Sections 95, 96, 97 or 98 relating to Motor Vehicle Noise Control.

102.02 Definitions.

- (A) "Amplified sounds" means any sound augmented by an electronic means that increases the sound level or volume.
- (B) "Device" means any mechanism, which actually produces noise.
- (C) "Live music" means any sound comprised of instrumental music, song, or a combination of instrumental music and song, produced in whole or in part by a singer vocalizing or by a musician playing a musical instrument on the same premises as the sound source.
- (D) "Receiving property" means any lot, parcel of land, public space, institution, or dwelling unit onto which sound, not originating therefrom, travels.
- (E) "Recorded music" means any sound comprised of instrumental music or song, or combination thereof, produced and generated by a speaker, loudspeaker, radio, television, tape deck, record player, compact disc player, jukebox, computer, or synthesizer, or other sound producing devices.
- (F) "Sound source" means the place from which sound emanates without limitation to a speaker, loudspeaker, or any other sound producing instrument or person.

102.03 Prohibition.

- (A) Noise shall be presumed unreasonable given the following:
 - (1) If uninvited noise is plainly audible at a receiving property, or part thereof, greater than fifty (50) feet away from the property line of the sound source;
- (B) Vibration shall be presumed unreasonable given the following:
 - (1) If steady state vibration reaches or exceeds 0.20 inches peak particle velocity, or its equivalent in displacement or acceleration, in any one of the three mutually perpendicular components of motion: vertical, longitudinal, or transverse.
 - (2) If impulsive vibration reaches or exceeds 4.0 inches peak particle velocity, or its equivalent in displacement or acceleration, in any one of the three

mutually perpendicular components of motion: vertical, longitudinal, or transverse.

- (3) All vibration recordings shall be made on the ground at the property line of the nearest adjacent property.
- (4) Construction operations by the City, by contractors for the City, or by parties permitted by the City to perform such construction shall be exempt from subsection (B).

102.04 Noise Enumerated The following acts, among others, are declared to be loud, disturbing, and unreasonable noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- (A) Radios, stereo, etc. The using, operating or permitting to be played, used, or operated any radio receiving set, musical instrument, television set, stereo, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with louder volume than necessary for convenient hearing for the person or persons who are in the room, yard, vehicle, or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, stereo, machine, or device between the hours of 9:00 p.m. and 6:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the source of such sound including but not limited to a yard, building, structure, or vehicle in which it is located shall be prima-facie evidence of a violation of this section.
- (B) Loudspeakers, amplifiers, for advertising. The using, operating, or permitting to be played, used or operated of any radio receiving set, musical instrument, stereo, 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 to any building or structure;
- (C) Street sales. Offering for sale, selling, or advertising an object or service within the City, its streets or sidewalks, by shouting or outcry in a louder voice than would be used in ordinary conversation in transacting, promoting, or procuring business;
- (D) Animals. The permitting of animals to make loud and frequent or habitual noises in the way of barking, yelping, howling, meowing, whining, yowling, crying, wailing, or other similar sound, which causes serious annoyance or disturbance to the neighborhood.
- (E) Industrial and mechanical. The general operation of industrial or mechanical uses or any use exclusive to I-1 or I-2 Districts as defined by 150.08, and all uses of the site thereon, including but not limited to the operation of fans, chillers, cooling towers, electrical equipment, generators, and any accessory activities.
 - (1) The sound level of any operation by such industrial or mechanical uses as experienced within the nearest residential district shall be presumed to be plainly audible if it exceeds 60 dbA as measured at the property line by the use of a Type 2 sound level meter as defined in ANSI S1.4-2014, or the most recent version.
- (F) Inaudible sound. Sound of low or high frequencies which may or may not be audible but that otherwise disturb the peace and inhibit quality of life.

102.05 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 emission of sound in the performance of emergency work;
- (B) Warning devices necessary for the protection of public safety;
- (C) Use of any mechanical device, apparatus, or equipment used, related to or connected with emergency activities or emergency work or associated with work performed by private or public utilities in the maintenance or modification of its facilities;
- (D) Noise sources resulting from emergency work, being work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger;
- (E) Public gatherings, assemblages, processions, or other entertainment events that have been permitted by the City. Such events may be permitted by the Safety-Service Director to extend to 11 p.m. with written permission;
- (F) The sound system established and operated in the Central Business District by the Historic Main Street Van Wert;
- (G) Lawn maintenance including the use of the lawnmowers, blowers, edge trimmers, electric trimmers, or tree trimming equipment, except that such maintenance shall not be conducted on any day between the hours of 9:00p.m. and 6:00a.m.
- (H) Snow clearing including the use of snow blowers, plows, and shovels;
- (I) Noise sources resulting from the activities sponsored by a public entity and taking place on public property;
- (J) Noise sources resulting from construction operations by the City or by contractors for the City, or by parties permitted by the City to perform such construction. This exception shall not apply when in conflict with Chapter 102, Sections 20, 21, 22 and 23 relating to hours of work;
- (K) The emission of sounds from I-1 or I-2 districts when those sounds are only audible within I-1 or I-2 districts. This exception shall not apply when sounds are audible within other districts.
- (L) The emission of sounds from I-1 or I-2 districts when those sounds have been part of regular operation of a permitted industrial use in the district prior to adoption of this ordinance.
- (M) Those exceptions listed in Chapter 102, Sections 20, 21, 22, and 23 relating to hours of work.
- (N) Sounds created by church bells or chimes or calls to worship from places of worship.

102.06 Inspections.

- (A) The Building and Zoning Officer of the City or other member of his or her staff may enter at any reasonable time, with reasonable notice, into or upon any private or public property, except the administrative offices of any person, for the purposes of

inspection and investigation of any condition or equipment which the Building and Zoning Officer has reasonable cause to believe is causing the unnecessary noise or vibration in violation of any of the provisions of subsections (a) through (e) hereof.

- (B) No person shall refuse entry, nor obstruct, delay, prevent, or in any way interfere with the Building and Zoning Officer or other member of his or her staff while carrying out an inspection or in the performance of his or her duties. If such entry is unreasonably denied, then the Building and Zoning Officer is authorized to obtain a search warrant.

102.07 Evidence.

- (A) Evidence may include officer observations, witness testimony, body-camera recordings, audio recordings, video recordings, sound level meter readings, and any other competent evidence. A sound level meter reading shall not be required where a violation may otherwise be established by competent evidence.

102.08 Penalty.

- (A) Any person violating any provision of this chapter, after receiving a warning of said violation, and ignoring or refusing to comply with such order, or permitting the violation to continue, shall be guilty of a minor misdemeanor on the first offense, and shall be fined not more than one hundred fifty dollars (\$150.00). On a second or subsequent offense, if less than twelve months have elapsed since the last offense of the same provision, a person is guilty of a misdemeanor of the fourth degree and shall be fined not more than five hundred dollars (\$500.00). Each day such violation continues shall constitute a separate offense and shall be punishable as such.

102.09 Civil Enforcement.

- (A) In addition to criminal penalties, the City may pursue injunctive relief, nuisance abatement, declaratory relief, equitable relief, temporary restraining orders, preliminary injunctions, permanent injunctions, and any other remedy authorized by law.

102.10 Construction and Interpretation.

- (A) This Chapter shall be construed consistently with Ohio law and constitutional requirements. Interpretations preserving validity shall be preferred.

102.11 Severability.

- (A) If any provision is held invalid, the remaining provisions shall remain in full force and effect.

HOURS OF WORK.

102.20 Purpose.

- (A) These standards are intended to protect persons from excessive noise levels, which interfere with the comfortable enjoyment of life,, property, and recreation because they can interfere with sleep, communication, relaxation, and the full enjoyment of one's property.

102.21 Work Enumerated.

- (A) The following types of work conducted outside are considered to be loud, disturbing, and unnecessary noises and shall not be performed in the City between the hours 9:00 p.m. and 6:00 a.m.
- (1) Pile drivers, hammers, etc.: The operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance, the use of which is attended by loud or unusual noise.
 - (2) Tools: The use or operation of any noise producing power tool, generator, air compressor, or other tools or appliances which can be heard from the property boundaries. Interior work may be conducted if the work does not emit noise to the exterior which is plainly audible at the property line.
 - (3) Construction: The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing thereof, of any building, structure, or infrastructure, the operation or the permitting or causing the operation of any tools, or equipment used in construction, excavation, drilling, demolition, alteration or repair work.
 - (4) Sweeping: Cleaning of non-residential parking lots.

102.22 Near Residential Areas.

- (A) The loading, unloading, or engine idling of any commercial truck or van in a commercially zoned area which borders a residential area shall not be performed in the City between the hours of 9:00 p.m. and 6:00 a.m.

102.23 Exceptions.

- (A) The following types of work shall be exempt from the provisions of this ordinance:
- (1) Use of any mechanical device, apparatus, or equipment used, related to, or connected with emergency activities or emergency work;
 - (2) Noise sources resulting from emergency work, being work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger;
 - (3) Lawn maintenance including the use of lawnmowers, blowers, edge trimmers, electric trimmers, or tree trimming equipment may be conducted on Sunday but shall not be conducted on any day between the hours of 9:00 p.m. and 6:00 a.m.
- (B) The Safety-Service Director shall, at their discretion, and upon formal request received in writing by the permittee, permit special exceptions 102, Sections 20, 21, 22, and 23 relating to hours of work, Special exceptions may be revoked by the Safety-Service Director at any time for any reason.