

BOROUGH OF BEN AVON

ORDINANCE No. 795

AN ORDINANCE OF THE BOROUGH OF BEN AVON, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 6 OF THE BOROUGH'S CODE OF ORDINANCES TO REGULATE AND CONTROL LOUD AND OFFENSIVE SOUND AND NOISE WITHIN THE BOROUGH; SET FORTH EXEMPTIONS; AND ESTABLISH ENFORCEMENT PROCEDURES, VIOLATIONS, AND PENALTIES

WHEREAS, the Borough Council of the Borough of Ben Avon ("Borough Council") finds that it will promote the health, safety and public welfare of the citizens of the Borough of Ben Avon ("Borough") if enforceable standards are provided to prevent loud, excessive or unreasonable noise in the Borough; and

WHEREAS, the Borough Council seeks to regulate and limit unlawful noises to ensure that the residents of the Borough may peacefully enjoy the properties that they occupy; and

WHEREAS, the Borough Council desires to set forth limitations on the noise levels permitted within the Borough and to provide for certain exemptions to those limitations; and

WHEREAS, the Borough Council has determined that the following time, place and manner regulation of noise disturbances and noise levels will promote and protect the health, safety and general welfare of the Borough and its citizens.

NOW THEREFORE, the Council of the borough of Ben Avon, Allegheny County, Pennsylvania, hereby ordains as follows:

Section 1. A new Part 6 entitled "Noise Control" shall be added to Chapter 6 ("Conduct") of the Borough of Ben Avon Code of Ordinances, stating as follows:

§6-601. Title. This Chapter shall be known and cited as the "Noise Control Ordinance" of the Borough of Ben Avon, Allegheny County, Pennsylvania.

§6-602. Purpose. The purpose of this Chapter is to establish an effective means of regulating and controlling loud and offensive sound and noise within the Borough to promote the health, safety and general welfare for residents and visitors.

§6-603. Definitions. As used in this Chapter, the following terms shall have the meanings indicated:

A-WEIGHTED DECIBEL (dBA). The symbol designation of a noise level, reported in decibels, using the A-weighted network of a decibel meter.

BOUNDARY. Either:

- A. The imaginary line, including its vertical extension, that separates one parcel of real property from another;
- B. The vertical and horizontal boundaries of a dwelling unit that is one in a multi-dwelling unit building; or
- C. The vertical and horizontal boundaries of a dwelling unit or commercial unit of a mixed residential-business use building.

DECIBEL (dB). A unit for measuring the sound pressure level at a specific location.

NOISE. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE. Any sound at or exceeding any or all of the sound level limitation noise criteria identified in this chapter and which does not fall within an exemption provided herein.

PERSON. 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. "Person" includes the owner or operator of the noise disturbance source; the owner, tenant or manager of real property from which the noise disturbance emanates; and any other individual responsible for producing the noise disturbance or allowing such disturbance to occur.

PUBLIC RIGHT-OF-WAY. Any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

PUBLIC SPACE. Any real property or structures thereon which are owned or controlled by a governmental entity.

REAL PROPERTY. All land, whether publicly or privately owned, whether improved or not improved, with or without structures, exclusive of any areas to public right-of-way.

§6-604. Noise Regulations. No operation or activity shall cause or create noise in excess of the sound levels prescribed below.

1. Residential Properties: At no point on or beyond the boundary of any lot that is a residential property shall the exterior noise level resulting from any use or activity located on such lot exceed a maximum of sixty (60) dBA.
2. Commercial Properties: At no point on or beyond the boundary of any lot that is a commercial property shall the exterior noise level resulting from any use or activity located on such lot exceed a maximum of sixty-five (65) dBA.

3. **Industrial Properties:** At no point on or beyond the boundary of any lot that is an industrial property shall the exterior noise level resulting from any use or activity located on such lot exceed a maximum of seventy-five (75) dBA.

§6-605. Exemptions. The following uses or activities shall be exempted from the noise regulations of this Chapter:

1. Noises emanating from construction and/or maintenance activities between 7:00 A.M. and 7:00 P.M.;
2. Noises from lawn mowers, weed trimmers, edging machines, leaf blowers or other similar small-engine yard maintenance equipment used between 7:00 A.M. and 7:00 P.M.;
3. Fireworks exhibitions held by the Borough or held pursuant to a permit issued by the Borough;
4. Musical accompaniment/noise associated with any event held in recognition of a community celebration of national, state, county, or local events or public festivals.
5. All state, county, and Borough snow removal equipment. All other snow removal equipment is excluded from this Chapter during periods of substantial snowfall and immediately thereafter until such time as both private and public roads, sidewalks, and parking lots are cleared so as to prevent a hazard to citizens.
6. 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.
7. Noises caused by safety signals, warning devices and other emergency-related activities or uses.

§6-606. Compliance with applicable law and regulation. In addition to the noise regulations of this Chapter, all uses or activities within the Borough shall conform to any applicable county, state, federal, or local zoning noise regulations. Wherever the regulations contained in this Ordinance are in variance with other lawfully adopted rules or regulations, the most restrictive requirements shall govern.

§6-607. Procedures for determining compliance. The following standards and procedures shall be used for determining compliance with this Part:

1. Sound levels shall be measured with a decibel meter.
2. The decibel meter shall be set to the A-weighted scale and set to “fast” response.
3. The measurement of noise levels under this Part shall be performed at a point or points on the boundary of the subject property.
4. The report of each measurement location shall include the following data:
 - a. The date, time and day of the week when the measurements are performed;
 - b. The times of calibration;
 - c. The weather conditions; and

- d. The identification of all monitoring equipment by the manufacturer, model number and serial number (and provide factory calibration certificates).
6. The monitoring test shall last for a period of time sufficient to ensure that the sounds levels measured are typical of the noise source (or background conditions) in question.

§6-608. Enforcement; violations and penalties.

1. Criminal Enforcement. Any person who is found to have violated an order of the Borough or who willfully or negligently failed to comply with the provisions of this Chapter and the orders, rules, and regulations issued hereunder shall be prosecuted by action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The Borough shall pursue criminal fines not to exceed \$1,000 for the violation of this Chapter and imprisonment to the extent allowed by law for the punishment of summary offenses. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Chapter that is violated shall also constitute a separate offense. The Borough may also take any appropriate action at law or equity, civil or criminal, to enforce the provisions of this Chapter and recover the fees, expenses and costs associated with enforcement. This Chapter shall in no way restrict any remedies, including but not limited to injunctive remedies, otherwise available and provided by law.
2. Civil Enforcement. In addition to the criminal penalties provided for in subsection 1 above, any person who violates or permits a violation of this Chapter shall pay a fine of \$500. If this fine is not voluntarily paid to the Borough, the Borough shall initiate a civil enforcement proceeding before a district justice. The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. In any case where a penalty for a violation of this Chapter has not been timely paid and the person upon whom the penalty was imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the Borough in the enforcement proceedings. The Borough shall be exempt from the payment of costs in any civil case brought to enforce the regulations of this Chapter. In addition to or in lieu of enforcement under this subsection, the Borough may enforce this Chapter in equity in the Court of Common Pleas of Allegheny County.
3. A separate offense shall arise for each day or portion thereof in which a violation is found to exist and for each section of this Chapter which is found to have been violated.

Section 2. SEVERABILITY

If any provision or provisions of this Ordinance shall be deemed by a court of law having jurisdiction over such matters to be unenforceable, invalid, or unconstitutional for any reason, such declaration shall not affect the validity of the Ordinance as a whole, or any part thereof that is not specifically declared to be.

Section 3. CONFLICT OF LAWS OR CHAPTER PROVISIONS

Whenever the regulations of this Chapter conflict with each other, or with the requirements of another statute, the more restrictive standard shall govern.

Section 5. REPEALER

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

Section 6. EFFECTIVE DATE. This Ordinance shall take effect as of the date of enactment identified below.

ORDAINED AND ENACTED INTO LAW THIS _____ DAY OF _____, 2023.

ATTEST:

BOROUGH OF BEN AVON

Terrie Patsch
Borough Secretary

Richard Wagner
President of Council