

NOISE
ORDINANCE

ORDINANCE 2013 - 6

An Ordinance of the Borough of Warrior Run, Luzerne County, Pennsylvania
Defining and Prohibiting Sound/Noise Disturbances
and Providing Penalties for Violations Thereof

**BE IT ORDAINED BY THE COUNCIL OF THE BOROUGH OF WARRIOR RUN, AS
FOLLOWS:**

SECTION 1. PURPOSE AND SCOPE.

- A. The Council for the Borough of Warrior Run finds that excessive levels of sound/noise are detrimental to the physical, mental, and social well-being of the people, as well to their comfort, living conditions, general welfare, and safety and being. Therefore, in order to address a public health and welfare hazard, the Council for the Borough of Warrior Run hereby declares it necessary to provide for the greater control and more effective regulation of excessive sound/noise and the sources of excessive sound/noise within the Borough of Warrior Run. The provisions of the Borough Code of the Commonwealth of Pennsylvania, 53 PS section 46202, allows the Council for the Borough of Warrior Run, the governing body, to enact an ordinance to promote and achieve these objectives.
- B. This Ordinance aims to ensure that public health, safety, and welfare shall not be abridged by the making and creating of public nuisances from disturbing, excessive, or offensive sound/noises in the Borough of Warrior Run. The residents of the Borough of Warrior Run recognize that uncontrolled sound/noise represents a danger to the health and welfare of their neighbors, and that each person in the community is entitled to live in an environment in which the level of sound/noise is minimized for the good of the community. This Ordinance attempts to foster mutual respect among residents and to establish a community position against sound/noise pollution. The community believes that it should rely on the good sense of all residents to respect one another's living

and working environments, and one another's right to an environment that is free from sound/noise disturbances.

- C. To achieve the intent and purpose of the Council for the Borough of Warrior Run, this Ordinance regulates sound/noise in three manners: (1) through an objective, reasonable person standard of annoyance, (as set forth in Section 3); (2) through per se prohibitions on certain types of sound/noise known to cause annoyance, (as set forth in Section 4); and (3) through per se prohibitions on certain types of sound/noise known to cause annoyance, (as set forth in Section 5). Noncompliance with any of these three methods of sound/noise control constitutes a violation of this Ordinance, and is subject to the penalties provided herein.
- D. This Ordinance applies to all persons, property, animals, equipment, appliances, instruments, and other sound/noise-emitting devices, as regulated herein.
- E. The provisions of this Ordinance are not intended to interfere with, abrogate, or annul other rules, regulations, or ordinances, including, but not limited to, the Pennsylvania Crimes Code, Pennsylvania Vehicle Code, or any Pennsylvania Consolidated Statutes. If more stringent requirements concerning sound/noise abatement are contained in the other rules, regulations, or ordinances, the more stringent regulation shall apply.

SECTION 2. DEFINITIONS.

For the purpose of this Ordinance, the following words, terms, and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning. All terminology used in this Ordinance, not defined below, shall be in conformance with the applicable publications of the American National Standards Institute, (ANSI and its revisions), or its successor body.

AMBIENT SOUND/NOISE - The all-encompassing sound/noise associated with a given environment, being usually a composite of sounds/noises from many sources near and far.

BOROUGH - The Borough of Warrior Run, Luzerne County, Pennsylvania.

CONSTRUCTION OPERATION - The erection, repair, renovation, demolition, or removal of any building or structure; and the excavation, filling, grading, and regulation of lots in connection therewith.

EMERGENCY – Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.

EMERGENCY WORK – Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

IMPULSIVE SOUND/NOISE – Sound/noise of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of impulsive sound/noise include, but are not limited to, explosions, drop forge impacts, and the discharge of firearms.

MUFFLER OR SOUND/NOISE DISSIPATIVE DEVICE – A device designed for decreasing or abating the level of sound/noise escaping from an engine or machinery system.

NOISE DISTURBANCE – 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 personal or real property.

PERSON - Any individual, association, trust, partnership, or corporation, including any members, directors, officers, employees, partners, or principals thereof. Whenever used in any clause prescribing and imposing a penalty, “person” includes the members, trustees, partners, directors, officers, managers, and supervisors, or any of them, of partnerships, associations, corporations, or other forms of entity.

POWERED MODEL VEHICLE – Any self-propelled airborne, waterborne, or land-borne plane, vessel, or vehicle which is not designed to carry persons including, but not limited to, any model airplane, boat, car, or rocket. This definition shall also include dirt bikes, four-wheelers, and all-terrain vehicles, (“ATVs”), being used to carry persons, but which are not being operated on a street, boulevard, circle, highway, or similar place. To the extent that dirt bikes, four-wheelers, or ATVs are being operated on a public right-of-way, the restrictions in this Ordinance for such shall be governed by the motor vehicle prohibitions as set forth in Section 5 below.

PROPERTY LINE (BOUNDARY) – An imaginary line or “party wall” that separates adjoining lands or the dwelling units of apartments, condominiums, townhomes, or duplexes, drawn through the points of contact of adjoining lands, or, in the case of apartments, condominiums, townhouses, and duplexes owned, rented, or leased by different persons, a demarcation or a line of separation between dwelling units or properties. In the circumstances of any two or more buildings sharing common grounds, the line drawn midway between any two such buildings. All areas devoted to public right-of-way or a common or shared area shall be deemed to be across the property line.

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

PUBLIC SPACE – Any real property or structure 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 devoted to the public right-of-way.

SOUND/NOISE - Any sound/noise which annoys or disturbs humans, or which causes or tends to cause an adverse psychological or physiological effect on humans, excepting any law enforcement activity including, but not limited to, training sessions. 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/noise may include any characteristics of such sound/noise, including duration, intensity, and frequency.

SOUND/NOISE DISTURBANCE – Any sound/noise which endangers, would endanger, or is likely to endanger; or injures, would injure, or is likely to injure, the safety or health of humans or animals; annoys, would annoy, or is likely to annoy, or disturb a reasonable person of ordinary sensibilities; endangers, would endanger, or is likely to endanger; or injures, would injure, or is likely to injure, personal or real property; disturbs, would disturb, or is likely to disturb, the peace; creates, would create, or is likely to create, a nuisance; a violation of Section 4 or Section 7 of this Ordinance.

ZONING DISTRICTS – The land use districts as established by the Code and all subsequent amendments governing the various zoning districts of the Borough of Warrior Run

SECTION 3. SOUND/NOISE DISTURBANCE PROHIBITED.

It shall be unlawful for any person to make or cause to be made a sound/noise disturbance within the limits of the Borough of Warrior Run, except as otherwise permitted in this Ordinance.

SECTION 4. SPECIFIC PROHIBITED ACTS.

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

- A. Radios, Television Sets, Musical Instruments, and Similar Devices. Operating, using, or playing of any radio, television, phonograph, drum, musical instrument, sound/noise amplifier, automobile radio, automobile stereo, high fidelity equipment, or similar device which produces, reproduces, or amplifies sound/noise to the extent that such use creates a sound/noise disturbance;

- B. At any time and in such a manner as to cause a sound/noise disturbance across a property line, (boundary), or between the hours of 10:00 P.M. and 7:00 A.M., so as to be plainly audible across a property line, (boundary); or
- C. In such a manner as to create a sound/noise disturbance across a property line, (boundary), or at twenty (20) 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
- D. In such a manner as to create a sound/noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier;
- E. Yelling and Shouting. Engaging in loud or raucous yelling, hooting, whistling, or singing on the public streets between the hours of 10:00 P.M. and 7:00 A.M.; or at any time or any place in such a manner as to create a sound/noise disturbance;
- F. 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 10:00 P.M. and 7:00 A.M., Monday through Saturday, or at any time on Sundays or any holidays recognized by Luzerne County, such that sound/noise therefrom creates a sound/noise disturbance across a residential property line, (boundary), except for emergency work; or
- G. Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn/garden tool, or similar device used outdoors between the hours of 10:00 P.M. of one day and 7:00 A.M. of the following day, so as to cause a sound/noise disturbance across a residential property line, (boundary), except in an emergency.
- H. Loading and Unloading. Loading, unloading, opening, closing, or otherwise handling of boxes, crates, containers, building materials, garbage cans, or other objects between the hours of 10:00 P.M. of one day and 7:00 A.M. of the following day, in such a manner as to cause a sound/noise disturbance across a residential property line, (boundary). Such restrictions shall also apply to truck idling and truck refrigerants.

- I. Street Sales. No person shall offer for sale or sell by shouting, outcry, or by any other amplified or unamplified sound/noise, except between the hours of 7:00 A.M. of one day and 7:00 P.M. of the same day.
- J. Animals and Birds. Owning, possessing, harboring, or controlling any animal or bird which howls, barks, meows, squawks, or makes other sound/noises continuously and/or incessantly for a period of ten (10) minutes, or makes sound/noise intermittently for thirty (30) minutes 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 sound/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.
- K. Tampering. No person shall remove or render inoperative, other than for purposes of maintenance, repair, replacement, or other work, any muffler or sound/noise-dissipative device or element of design or sound/noise label of any product; intentionally move or render inaccurate or inoperative of any sound/noise-monitoring instrument or other device positioned by or for the Borough or other government entity, provided that such device or the immediate area is clearly labeled or posted to warn of the potential illegality; or use a product which has had a muffler or sound/noise-dissipative device or element of design or sound/noise label removed or rendered inoperative with knowledge or reason to know that such action has occurred.
- L. Vehicle, Motorboat, or Aircraft Repairs and Testing. No person shall build, repair, rebuild, test, or otherwise work on any motorcycle, automobile, or other motor vehicle, motorboat, or aircraft in such a manner as to cause a sound/noise disturbance across a property line, (boundary).
- M. Powered Model Vehicles. No person shall operate a motorcycle, truck, automobile, or other motor vehicle in such a manner as to cause to create a sound/noise disturbance.

SECTION 5. MOTOR VEHICLE PROHIBITIONS.

- A. Motor Vehicles and Motorcycles on Public Right-of-Ways. No person shall operate, or cause to be operated, a public or private motor vehicle, motorcycle, or any equipment attached to such a vehicle, on or near a public right-of-way at any time in such a manner that the sound/noise level emitted by the motor vehicle, motorcycle, or any equipment attached to such a vehicle, exceeds the level set forth in 67 Pa. Code, Chapter 157, "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 for a period longer than fifteen (15) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, anywhere within one hundred fifty (150) feet of any residential property line, (boundary), in such a manner as to cause a sound/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 a vehicle, or unless necessary in the testing of such for state inspection purposes. (EXCEPTION: A brief, momentary use of the automobile horn shall be permitted in appropriate situations, such as greeting a pedestrian or arriving at a residence, so long as such use does not become a nuisance or result in a danger to the public).
- D. Sound Trucks. No person shall operate 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 sound/noise emissions as set forth herein.

SECTION 6. PRIMA FACIE VIOLATION.

The sound/noise prohibited in Sections 3, 4, and 5 of this Ordinance that disturbs two (2) or more residents who are in general agreement as to the times and durations of the sound/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 sound/noise is generated, shall be prima facie evidence of a sound/noise disturbance. This is not the exclusive example of a prima facie violation.

SECTION 7. EXEMPTIONS.

The following sounds/noises are exempted from these provisions:

- A. **Blasting.** Only if performed in accordance with a permit issued by the official in charge of the Borough's Code Enforcement Office or its designee. Such blasting may occur only between 9:00 A.M. and 4:00 P.M., Monday through Friday, unless specifically authorized otherwise by the permit.
- B. **Concerts, Etc.** Band concerts, carnivals, or other performances, or similar activities, publicly or privately sponsored, and presented in any public or private space outdoors, so long as:
- C. Such activities do not occur between the hours of 10:00 P.M. and 7:00 A.M.; and/or
- D. All necessary permits as defined by the Borough of Warrior Run's Ordinances have been procured, i.e., special event permit.
- E. **Emergency Work.** Sound/noises caused by the performance of emergency work, or by the ordinary and accepted use of emergency apparatus and equipment.
- F. **Municipal And Utility Services.** Sound/noises resulting from the provision, repair, and maintenance of municipal/governmental facilities, services, or public utilities.
- G. **Amplified Announcements.** Sound/noises created by organized school-related programs, activities, athletic and entertainment events, or other public programs, activities, or events, other than motor vehicle racing events.
- H. **Warning Devices.** Sound/noises made by warning devices operating continuously for three (3) minutes or less, except that, in the event of an actual emergency, the limitation shall not apply.

- I. Celebrations. Sound/noises made by bells, chimes, carillons used for religious purposes, or in conjunction with national, state, or local celebrations or public holidays; existing bells, chimes, carillons, and clock strike mechanisms that are currently in use for any purpose.
- J. Snow Blowers. Sound/noises made by snow blowers or similar snow removal equipment used in the maintenance of private or public property following snowstorms.

SECTION 8. ENFORCEMENT.

This Ordinance shall be enforced individually or jointly and severally by the Borough of Warrior Run Police Department or the police department retained by the Borough of Warrior Run and/or the Borough Code Enforcement Office.

SECTION 9. VIOLATIONS AND PENALTIES.

- A. Upon the first violation, any person who violates or permits the violation of any provision of this Ordinance shall be issued a citation by the Borough of Warrior Run in the amount of seventy-five and 00/100 dollars, (\$75.00). Each section or provision of this Ordinance that is violated shall constitute a separate offense, and each day or portion thereof in which a violation of this Ordinance is found to exist shall constitute a separate offense, each of which violation shall be punishable by a separate fine imposed by the Borough of Warrior Run of seventy-five and 00/100 dollars, (\$75.00). Upon default of payment thereof, the citation will be turned over to a collection agency and will be subject to additional costs incurred for further collection efforts, including, but not limited to, collection fees, interest, penalties, and attorney's fees.
- B. Upon any subsequent violations, any person who violates or permits the violation of any provision of this Ordinance shall, upon conviction thereof in a summary proceeding brought before a District Justice, be guilty of a summary offense, and shall be subject to the payment of a fine of not less than one hundred and 00/100 dollars, (\$100), and not more than one thousand and 00/100 dollars, (\$1,000), plus the costs of prosecution. Upon default of payment

thereof, the defendant may be sentenced to imprisonment in the county prison for a period of not more than thirty (30) days. Each section or provision of this Ordinance that is violated shall constitute a separate offense, and each day or portion thereof in which a violation of this Ordinance is found to exist shall constitute a separate offense, each of which violation shall be punishable by a separate fine imposed by the District Justice of not less than one hundred and 00/100 dollars, (\$100), and not more than one thousand and 00/100 dollars, (\$1,000), plus the costs of prosecution, and, upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than thirty (30) days.

SECTION 10. VARIANCES.

- A. AUTHORITY. The Council of the Borough of Warrior Run shall have the authority to grant variances, consistent with the provisions of this section, after public hearing, upon application of any person who owns, controls, or operates any sound source which does not comply with the provisions or standards of this Section.
- B. APPLICATION. The application shall state the standard or provision from which the variance is being sought and the period of time and reasons for which the variance is sought and shall contain information which demonstrates that bringing the sources of sound or activity for which the variance is sought into compliance with the Section would constitute an unreasonable hardship on the applicant and shall contain any other supporting information which may reasonably be required.
- C. PUBLIC NOTIFICATION. Notice of the application and the date, time, and place of the hearing to be held thereon for a variance shall be given by publishing notice thereof in a newspaper of general circulation in the Borough at least once, and not less than three (3) days prior to the scheduled public hearing and by, if practical, conspicuously posting the premises that is the source of the sound for which the variance is sought.

- D. HEARING. The Council of the Borough of Warrior Run shall hold a hearing to decide variance applications presented to it. Any person who claims to be affected by the sound source or by the variance may be present and may present testimony either in support of or against the requested variance.
- E. REVIEW STANDARDS. In determining whether to grant or deny the application, the Council of the Borough of Warrior Run shall balance the hardship to the applicant versus the adverse impact to the public health, safety, and welfare and shall consider at a minimum the following conditions: (1) The physical characteristics of the emitted sound; (2) The times and duration of the emitted sound; (3) The geography, zone, and population density of the affected areas; (4) Whether the public health and safety is endangered; (5) Whether the sound source predated the receivers; and (6) Whether compliance with the standards from which the variance is sought would produce hardship without equal or greater benefit to the public.
- F. DECISION. The Council of the Borough of Warrior Run shall render a written decision in granting or denying the application for variance and, if denied, shall state the reasons therefor. The Board's decision shall be made available to the applicant and any other person who requests it in writing. In granting a variance, the Hearing Board may attach reasonable conditions, including, but not limited to, placing a time limit on the permitted activity and/or establishing a time schedule within which the source of sound or activity for which the variance was sought must be brought into compliance with this chapter. Where the grant of a variance is conditioned, the variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance 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 variance was granted. Variances may be granted for a period of up to one (1) year. The person obtaining the variance may reapply for additional variance periods under terms set forth by the applicant and the Council of the Borough of Warrior Run.

G. APPEALS. Appeal from an adverse decision of the Council of the Borough of Warrior Run shall be made to the Court of Common Pleas of Luzerne County.

SECTION 11. SEVERABILITY.

If any provision, paragraph, word, section, subsection, sentence, or clause of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, or subsections shall not be affected, and shall remain in full force and effect.

If any provision, paragraph, word, section, subsection, sentence, or clause of this Ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

SECTION 12. CONFLICT.

Any ordinance or part of an ordinance conflicting with the provisions of this Ordinance shall be, and the same is hereby repealed, to the extent of such conflict. All relevant ordinances, regulations, and policies of the Borough of Warrior Run not amended shall remain in full force and effect.

SECTION 13. EFFECTIVE DATE.

This Ordinance shall be effective immediately upon passage and approved in the manner prescribed by law.

ORDAINED AND ENACTED by Council at a public meeting, duly advertised, this 30th day of December, 2013.



MAYOR



MEMBER OF COUNCIL

MEMBER OF COUNCIL



COUNCIL CHAIR



MEMBER OF COUNCIL

MEMBER OF COUNCIL

ATTEST:

Dolores Mynrea
BOROUGH SECRETARY
(SEAL)