

RECORD OF ORDINANCES

Ordinance No. 3670

Passed: July 14, 2020

AN ORDINANCE REPEALING ORDINANCE NO. 3060, CHAPTER 138: PUBLIC ORDER, SECTION 138.08 "DISTURBING THE PEACE."

WHEREAS, this Council of the City of West Carrollton, Ohio passed an ordinance on August 26, 1997, Ordinance No. 3060, which created section 138.08, Disturbing the Peace, for the City; and

WHEREAS, the City Council reviewed these proposals at its public work session on June 9, 2020, and requested they be introduced for consideration at the next regularly scheduled City Council Meeting; and

WHEREAS, notification of these items on the June 9, 2020 meeting agenda of the West Carrollton City Council was duly advertised; and

WHEREAS, approval of the proposed updates to Chapter 138, Public Order, Section 138.08, is in the best interest of the citizens of the City of West Carrollton.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO:

SECTION 1: That by virtue of the authority vested in the City Council by the Charter for the City of West Carrollton, Ordinance 3060 is hereby repealed in its entirety.

SECTION 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3: That this Ordinance, the wording of such is contained in Exhibit #1, shall take effect at the earliest possible date allowable by law.

Passed: July 14, 2020

Attest:


Clerk of Council


Mayor

Effective Date: August 14, 2020

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CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the Ordinance to be a true and correct copy of Ordinance No. 3670, adopted on the 14th, day of July, 2020.

Clerk of Council

Date: _____

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EXHIBIT #1

138.08 DISTURBING THE PEACE.

Definitions. For the purpose of this section, certain words and phrases used herein are defined as follows:

- (1) **"Amplified Sound"** means any sound augmented by any electronic means that increases the sound level or volume.
 - (2) **"Business Establishment"** means any commercial establishment, including, without limitation, establishments that are required to obtain a liquor permit.
 - (3) **"Residence"** also known as a "dwelling unit," means one or more rooms connected together and containing sleeping facilities, whether or not fit for temporary or overnight rental by one or more persons, and as defined in Ohio Revised Code 2909.01(c) as an "occupied structure."
 - (4) **"Live Music"** means any sound comprised of instrumental music, song, or 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.
 - (5) **"Person(s)"** means any public corporation, private corporation, individual, firm, partnership, association, or other entity.
 - (6) **"Plainly Audible Sound"** means any sound for which the information content of the sound is unambiguously communicated to the listener, including, without limitation, understandable words, comprehensible musical rhythms, beat or cadence, bells, horns, whistles, or other unreasonably loud noises.
 - (7) **"Recorded Music"** means any sound comprised of instrumental music or song, or combination thereof, produced and generated by a speaker, loudspeaker, radio, television, or other sound-producing device.
 - (8) **"Sound Source"** means the place from which amplified sound emanates including, without limitation, a speaker, loudspeaker, or any other sound-producing instrument or person.
- (A) No person shall make, continue, or cause to be made, or continue any unreasonably loud, disturbing, or unnecessary noise, which either annoys, disturbs, injures, or endangers the comfort and repose, health, peace, or safety of others within the municipality.

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- (B) The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of the provisions of this section, but this enumeration shall not be deemed to be exclusive.
- (1) No person shall recklessly cause any amplified sound, live music, recorded music, or other noise to cross real property boundaries at such a volume as to:
- (a) Disrupt the normal daily activities, including, without limitation, sleeping, studying, and dining of persons within a residence or disrupt the normal daily activities, including, without limitation, work of persons within a place of business.
 - (b) Noise shall be presumed “unreasonably loud” if uninvited noise is plainly audible at a residential receiving property, or part thereof, greater than 100 feet away from the property line of the sound source.
- (2) No person shall recklessly cause an uninvited or disruptive level of plainly audible sound, amplified sound, live music, recorded music, or other noise, at a volume that causes actual interference with a person’s peaceful enjoyment of a residence or the peace and good order of the community.
- (a) A disruptive or uninvited level of amplified sound, live or recorded music, or other noise is any unreasonably loud or disturbing noise of a character, intensity, raucousness, or direction as to be detrimental to the health, peace or safety of any person, whether on a steady or intermittent basis. At all times, amplified sound, live music, recorded music, or other noise that is plainly audible and that meets either of the following criteria is prohibited:
 - (i) Noise that is unreasonably loud or disturbing; or
 - (ii) Noise that crosses real property boundaries and interferes with the peace, comfort, or enjoyment of persons residing in a dwelling unit or a residence or a person located at a receiving property.
 - (b) In addition to the criteria set forth in division (B)(2)(a) of this section, additional restrictions shall be placed on business establishments which serve alcoholic beverages for consumption on premises. Because it is reasonable that quieter standards are expected during nighttime hours,

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between the hours of 11:00 p.m. and 7:00 a.m. from Sundays through Thursdays, inclusive, and between the hours of 12:00 a.m. and 7:00 a.m. on Fridays and Saturdays, sound emanating from such businesses must be contained entirely within the real property boundaries of the establishment or within the soundproof area located on the premises of the establishment.

- (c) No person shall recklessly, on any public sidewalk, street, highway, park, or other public property, or in any vehicle located on any public street or property, use, operate, or play any radio, phonograph, stereo, sound amplifier, or any other electronic audio device which produces or reproduces amplified sound, recorded music, or other plainly audible sound, at a level which is plainly audible at a distance of more than 50 feet or more from the sound source.

(C) Responsibility for Compliance; Complaint Procedures.

- (1) For purposes of this section, any person(s) owning or having responsibility for management of a business or who is in control of a residential premise, and/or however temporary; any paid performer or disc jockey producing amplified sound, live music, recorded music, or other plainly audible sound upon any business or residential premises or any person having control of volume knobs or levels, and the business as named on the certificate of occupancy or permit and/or the person controlling the residential premises, shall be jointly and severally liable for compliance with this section and shall be responsible for any violations of this section.
- (2) Under this section the distance from the sound source to a receiving property shall be measured as follows:
 - (a) In a straight line from the property boundary where the sound source is located to the property boundary of the receiving property; or
 - (b) If the sound source is within a walled and roofed structure, the measurement shall be taken in a straight line to the property boundary of the receiving property from one of the following:
 - (i) The exterior of the structure at the point that is closest to the receiving property; or

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- (ii) If one or more doors or windows are present, any of such open doors or windows at the point that is closets to the receiving property.

(D) Exceptions. This section does not apply to any of the following circumstances:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound from warning devices necessary for the protection of public safety;
- (2) Sound emanating from outdoor gatherings, public concerts, shows, and sporting and entertainment events, sponsored, or permitted in accordance with the policies and/or procedures of the City, or by a school district or other school chartered or accredited by the state of Ohio;
- (3) Construction, Emergency work, and other operations conducted by the City;
- (4) Construction, Landscaping or lawn mower operations occurring between the hours of 7:00 a.m. and 9:00 p.m., provided that all equipment is operated in accordance with the manufacture's specifications and/or with all standard manufacture's mufflers and noise reducing equipment in use and in proper operating condition;
- (5) The loading and/or unloading of commercial waste receptacles between the hours of 6:00 a.m. and 9:00 p.m. within 500 yards of any residential zoned property;
- (6) Sound emanating from safety signals, warning devices, emergency pressure relief valves, and church bells.
- (7) Sound emanating from a motor vehicle that is owned and operated by the state, a political subdivision, or a public utility.
- (8) A motor vehicle that is participating in a parade for which all proper permits have been obtained.
- (9) Sound conducted in conjunction with a funeral or memorial service, to include but not limited to, discharging of blank ammunition, the playing of taps or other appropriate music, or musical instruments.
- (10) Vendors of ice cream and related products in accordance with § 111.06 between the hours of 10:00 a.m. and 9:00 p.m.

(E) Whoever violates any provision of this section is guilty of disturbing the peace, a misdemeanor of the fourth degree. (Ord. 2560, passed 10-14-86; amend. Ord. 3060, passed 8-26-97) Penalty, see § 130.99