

ORDINANCE 10 OF 2024

BOROUGH OF AVOCA  
LUZERNE COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF AVOCA,  
LUZERNE COUNTY, PENNSYLVANIA, ADOPTING NOISE LIMITATIONS.

*WHEREAS*, the Borough of Avoca declares that the peace, health, safety and welfare of its citizens requires protection from excessive, unnecessary and unreasonable noises from any and all sources in the community. It is the intention of the Borough Council to control the adverse effect of such noise sources on the citizens under any condition of use, especially conditions of use that have the most severe impact on any person.

NOW THEREFORE, be it ordained as follows:

SECTION 1 – TITLE

This Ordinance shall be known as the Avoca Borough Noise Ordinance.

SECTION 2 – PURPOSE

It is the purpose of this Ordinance and the policy of the Borough to protect the peace, health, and welfare of its citizens and residents by protecting them from excessive, unnecessary and unreasonable noises from any and all sources in the community. It is the intention of the Borough Council to control the adverse effect of such noise sources on the citizens under any condition of use, especially conditions of use that have the most severe impact on any person.

SECTION 3 – DEFINITIONS.

For the Purposes of this ordinance, certain terms are defined as follows:

**Borough** – The Borough of Avoca

**Construction Operation** – Any erection, repair, renovation, demolition or removal of any building or structure and the excavation, filing, grading and regulation of lots in connection therewith.

**Department** – Any department, agency or authority of the Borough of Avoca

**Emergencies** – Essential activities necessary to restore, preserve, protect and save lives or property from imminent danger of loss or harm.

**Noise** – Any sound which is unwanted or which causes adverse psychological or physiological effects on human beings.

**Noise Disturbance** – A sound which:

- (1) Disrupts or injures the comfort, repose, health, hearing, peace or safety of persons or animals;
- (2) Annoys, disturbs or perturbs a reasonable person with normal sensitivities;
- (3) Endangers or injures personal or real property; or

(4) Is in excess of the sound levels by zoning districts established by this chapter.

**Persons:** Any individual, association, partnership or corporation, user, owner, or operator, and includes any officer, employee, department, agency, or instrument of a state or any political subdivision of a state. Whenever used in any clause prescribing and imposing a penalty, "person" includes the individual members, partners, officers, and managers of any of them of partnerships and associations and, as for corporations, the officers and managers thereof or any of them and, in their absence, the shareholders.

**Power Model Vehicles** – Any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons, such as but not limited to model airplanes, boats, cars, tractor trailers, dump trucks, and rockets, and which can be propelled by mechanical means.

**Property Boundary** – An imaginary line, exterior to any enclosed structure, at the ground surface, which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person and its vertical extension.

**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 devoted to public rights-of-way.

**Sound** – 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" may include any characteristics of such sound, including duration, intensity and frequency.

**Sound Level Meter** – An instrument, which includes but is not limited to a microphone, amplifier, rms detector, integrator or time average or output meter, what measures sound-pressure fluctuations. The output meter reads sound-pressure level when properly calibrated and the instrument is of Type 2 or better as specified in American National Standards Institute Publication S1.4-1971 or its successor publication. The manufacturer's published indication of compliance with such specifications shall comply.

#### **SECTION 4 - ADMINISTRATION AND ENFORCEMENT**

The power and authority to enforce the provisions of this Ordinance shall be vested with the Borough of Avoca Police Department.

#### **SECTION 5 - CONSULTATION WITH POLICE DEPARTMENT PRIOR TO PROJECT APPROVAL**

Each department whose duty it is to review and approve new projects or changes to existing projects that result or may result in the emission of noise shall consult with the Bureau of Police prior to such approval for its recommendations.

## SECTION 6 - REQUIREMENTS PRIOR TO ENTERING INTO AGREEMENTS

Any written agreement, purchase order or instrument whereby the Borough is committed to an expenditure of funds in return for work, services, equipment, materials or any combination of the foregoing shall not be entered into unless such agreement, purchase order or instrument contains provisions requiring that any equipment or activities which are subject to the provisions of this Ordinance will be operated, constructed or conducted without causing violation of this Ordinance.

## SECTION 7 - PROHIBITED ACTS

No person shall make, continue or cause to be made or continued any noise disturbance. Noncommercial public speaking and public assembly activities shall be exempt. The following acts are specifically declared to be a noise disturbance and in violation of this Ordinance:

(1) Radios, television sets and similar devices. Operating or permitting the use or operation of any radio set, musical instrument, television, phonograph, sound amplifier, automobile radio, automobile stereo, high-fidelity equipment, portable stereo or other device, including but not limited to devices utilizing digital technology, for the production or reproduction of sound:

(a) At any time of day in such a manner from any source so as to create a noise disturbance across a real property boundary.

(b) In such a manner as to create a noise disturbance across any real property boundary when operated in or on a motor vehicle on a public right-of-way or public space.

(c) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier; or

(d) At such a sound intensity that the sound is audible from a distance of 40 feet in any public area, street or sidewalk of the Borough; when the sound source is in any public area, street or sidewalk of the Borough.

(2) Stationary nonemergency signaling devices. Sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place, for more than one minute in any hourly period.

(3) Emergency Signaling Devices

(a) The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency purposes signaling device, except for emergency purposes or for testing; or

(b) Testing:

(1) Testing of a stationary emergency signaling device shall occur at the same time of the day each time such test is performed, but not before 7:00 a.m. or after 10:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed 60 seconds.

(2) 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 more than once in each calendar month. Such testing shall not occur before 8:00 a.m. or after 6:00 p.m.

(c) Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within six minutes.

(4) Loudspeakers/Public Address Systems. The use of or operation of any loudspeaker, public address system device or similar device such that sound therefrom creates a noise disturbance across a real property boundary.

(5) Vehicle, motorboat or aircraft repairs and testing. Repairing, rebuilding or testing any motor vehicle, motorcycle, motorboat or aircraft in such a manner as to cause a noise disturbance across a residential real property boundary.

(6) Powered model vehicles. Operating or permitting the operating of powered model vehicles in such a manner as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 9:00 p.m. and 7:00 a.m. the following day.

(7) Domestic Power Tools

(a) Operating or permitting the operation of any mechanically powered mower, saw, drill, sander, grinder, lawn or garden tool, snowblower or similar device used outdoors in residential areas so as to cause a noise disturbance across a residential property boundary between the hours of 8:00 p.m. and 7:00 a.m. the following day.

(b) Snow removal devices such as snowblowers are exempt from this section under one or more of the following conditions:

(1) A municipal snow emergency declared by the city; and emergency declaration by the Governor of the Commonwealth, state emergency agency or their designees;

(2) When an accumulation of one inch or more is forecast by the National Weather Service; or

(3) In case of personal emergency or need to reach a place of employment.

(8) Street Sales. Offering for sale by shouting or outcry or by any other amplified or unamplified sound within any residential or commercial area of the Borough except between the hours of 7:00 a.m. and 9:00 p.m.

(9) Motor Vehicle Prohibitions.

(a) Exhaust system. Every motor vehicle shall be equipped with a muffler or other effective noise suppressing system in good working order and in constant operation, and no muffler or exhaust system shall be equipped with a cutout, bypass or similar device so as to cause a noise disturbance.

(b) Maximum permissible motor vehicle sound-pressure levels on public rights-of-way. No person shall operate or cause to be operated a public or private motor vehicle or motorcycle or any equipment attached to such a vehicle on a public right-of-way at any time in such a manner that the sound emitted by the motor vehicle or motorcycle or any equipment attached to such a vehicle exceeds the level set forth in Pennsylvania Department of Transportation Regulations Title 67, Chapter 157, Subchapter b, 67 Pa. Code § 157.11, and all amendments thereto.

(c) Standing motor vehicles. No person shall operate or permit the operation of any motor vehicle, or any auxiliary equipment attached to such a vehicle while the vehicle is stationary, for reasons other than traffic congestion, anywhere within 250 feet of any residence in such a manner as to cause a noise disturbance across a residential property boundary for a period longer than 15 minutes in any hour.

(d) Unnecessary hornblowing. 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 vehicle.

(e) Sound trucks. No person shall operate sound-amplifying equipment mounted on or attached to any motor vehicle:

(1) Such that sound therefrom creates a noise disturbance across a real property boundary; or

(2) Such that sound therefrom creates a noise disturbance on a public right-of-way or public space between hours of 8:00pm and 7:00pm the following day.

(10) Concerts, block parties and other outdoor performances. Band concerts, block parties, church carnivals or other performances, or similar activities publicly or privately sponsored and presented in any public or private space outdoors, shall not produce noise disturbance unless in receipt of a noise control exception as issued by the Borough of Avoca.

(11) Loading and unloading operations. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building or construction materials, industrial waste or cast-off parts, garbage cans or other similar objects, without attenuation of sound through mufflers, suppressors, exterior barriers or the like, of manufacturing or industrial equipment between the hours of 9:00 p.m. and 7:00 a.m. of the day following in such a manner as to cause a noise disturbance across a residential real property boundary. This subsection shall not apply to municipal or utility services in or about the public right-of-way.

(12) Explosives, firearms and similar devices. The use or firing of explosives, firearms, or similar devices which create impulsive sound as to cause a noise disturbance across a real property boundary or on a public right-of-way.

(13) Construction. Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work:

(a) Between the hours of 9:00 p.m. and 6:30 a.m. the following day on weekdays and Saturdays or between the hours of 8:00 p.m. and 9:00 a.m. on Sundays and holidays, such that the sound therefrom creates a noise disturbance across a

residential real property line, except for public safety emergency work or unless a variance is obtained.

(b) At any other time such that the sound level exceeds 85 dB(A) at or across a real property boundary unless a variance has been obtained.

(14) Places of public entertainment. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, electronic or mechanical sound-producing device now or to be developed which produces, reproduces or amplifies sound within any place of public entertainment at a sound level greater than 90 dB(A) as read by the slow response on a sound level meter at any point that is normally occupied by a customer unless a conspicuous and legible sign is located outside such a place, near each public entrance stating: WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT!

(15) Animals and birds. Owning or possessing, harboring or controlling any animal or bird that barks, bays, cries, squawks or makes any other noise continuously and/or incessantly for a period of ten minutes or makes such noise intermittently for 1/2 hour or more to the disturbance of any person any time of the day or night regardless of whether the animal or bird is physically situated in or upon private property; provided, however, that at the time the animal or bird is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or for any other legitimate cause which teased or provoked the animal or bird.

(16) Vibration. Unless a variance is obtained, operating or permitting the operation of any device that causes vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at 50 feet from the source if the source is on a public space or public right-of-way. For the purpose of this section, "vibration perception threshold" means the minimum ground or structure-borne vibrational motion necessary to cause a person of normal sensitivities to be aware of the vibration by such direct means, but not limited to, sensation by touch or visual observation of moving objects.

#### **SECTION 8 - TAMPERING**

The following acts or the causing thereof is prohibited:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement of any muffler or sound-dissipative device or element of design or noise label of any product.

(2) The intentional moving or rendering inaccurate or inoperative of any sound-monitoring instrument or device positioned by or for the Borough Police, provided that such device is clearly labeled in accordance with noise-control regulations to warn of the potential illegality.

(3) The use of a product which has had a muffler or sound-dissipative device, or element of design or noise label removed or rendered inoperative, with knowledge that such action has occurred.

### **SECTION 9 - PRIMA FACIE VIOLATION**

The noise from any of the aforesaid prohibited acts that disturbs two or more residents who are in general agreement as to times and duration of the noise and who reside in separate residences, including apartments and condominiums located across a property line (boundary) from the property on which the source of the noise is generated, shall be prima facie evidence of a noise disturbance.

### **SECTION 10 - EXEMPT SOUNDS**

- (1) Place of religious worship – The sounding or permitting the sounding of any stationary bell or chime used in conjunction with places of worship.
- (2) Public buildings outdoor sound system – The sounding or permitting the sounding of any stationary bell, chime or public address system for any public purpose used by any structure located on public space.
- (3) Noise caused in the performance of emergency work for the immediate safety, health or welfare of the community or individuals of the community or to restore property to a safe condition following a public calamity.

### **SECTION 11 - ISSUANCE OF A NOTICE OF VIOLATION AND/OR CITATION; EXEMPTION FOR TIME TO COMPLY**

A violation of the foregoing provisions of this ordinance shall be cause for a citation to be issued forthwith. In lieu of a citation, enforcement personnel may issue an order requiring abatement of any source of noise disturbance or vibration alleged to be in violation of this Ordinance within a reasonable time period which may not exceed 30 days.

Except where a person is acting in good faith to comply with a notice of violation, violation of any section of this ordinance shall be cause for a citation to be issued by the Borough Police.

### **SECTION 12 - VIOLATIONS AND PENALTIES**

Any person, firm or corporation who shall violate any provision of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600 for each violation or shall be imprisoned for a term not to exceed 30 days, or both. Every day that a violation of this ordinance continues shall constitute a separate offense.

This ordinance and the foregoing penalties shall not be construed to limit or deny the right of the Borough or any other person to such equitable or other remedies as may otherwise be available with or without process of law.

### **SECTION 13 – REPEALER**

Any past ordinance, or part or parts thereof, conflicting with any part or parts of this Ordinance are hereby repealed to the extent that they are inconsistent herewith. In all other respects, the ordinances of the Borough shall remain as previously enacted and ordained.

### **SECTION 14 – SEVERABILITY**

The provisions of this Ordinance are severable. If any Section, sentence, clause, phrase of this

Ordinance shall be held illegal, invalid, unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such invalid or unconstitutional section, sentence, clause or phrase not been included. Furthermore, it is the intent of this Ordinance to be supplementary to, and not contrary to, any laws of the Commonwealth of Pennsylvania or regulations of any of its executive agencies.


SECTION 15 – EFFECTIVE DATE

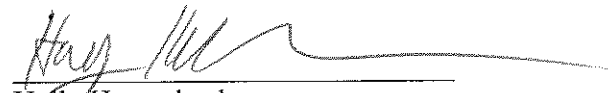
This Ordinance shall become effective immediately upon enactment as provided by law.

PASSED and ENACTED on this 10th day of October, 2024, at the regular meeting of the Avoca Borough Council.

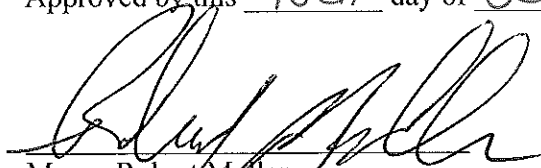
ATTEST:

AVOCA BOROUGH COUNCIL

  
Sandy Van Luvender  
Borough Manager/Secretary

  
Holly Homscheck  
President, Avoca Borough Council

Approved by this 10th day of October, 2024.

  
Mayor Robert Mallen