

ORDINANCE NO. 585

AN ORDINANCE OF THE BOROUGH OF FLEETWOOD, BERKS COUNTY, PENNSYLVANIA, ESTABLISHING SOUND LEVEL LIMITS IN THE BOROUGH AND PROVIDING FOR THE LEGAL EXEMPTIONS THERETO AND PENALTIES FOR VIOLATION

BE IT ORDAINED AND ENACTED by Borough Council of the Borough of Fleetwood, in the County of Berks and Commonwealth of Pennsylvania, and it is hereby ordained and enacted by the authority of the same, in accordance with the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, as follows:

SECTION 1 - PURPOSE, INTENT AND AUTHORITY

Noise is characterized as unwanted sound. Excessive noise can be a serious threat to the comfort, convenience, health, safety, welfare, and overall quality of life of the residents of the Borough of Fleetwood, Berks County, Pennsylvania (ABorough@). It is the intent of this chapter to establish requirements and criteria to prevent excessive noise that may jeopardize the health and welfare of Borough residents or degrade their quality of life. Therefore, the Borough intends hereby to prohibit all excessive and unreasonable noise from all sources subject to its police power in order to preserve, protect, and promote health, safety, welfare and the peace, quiet and comfort of the residents within the Borough limits.

SECTION 2 - DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated:

AMBIENT NOISE - The total noise level in a given acoustical environment. Ambient noise is usually a composite of sounds near and far.

BACKGROUND SOUND LEVEL - The typical total sound pressure level in a given acoustical environment, excluding the sound(s) of interest/concern.

BOROUGH - The Borough of Fleetwood, Berks County, Pennsylvania acting by and through its Borough Council or its authorized designees.

COMMERCIAL - Any property receiving noise where the receiving property is located within any Commercial Zoning District or such successor districts as shall be utilized by the Borough on future zoning maps.

dB(A) (A-WEIGHTED DECIBEL) - The symbol designation of a noise level, reported in decibels, using the A-weighted network of a sound level meter, as defined by ANSI S1.4, Specification for Sound Level Meters.

DECIBEL (dB) - A unit of measure of the sound pressure level at a specific location.

EMERGENCY SERVICES - Any work necessary to deliver essential services, including but not limited to fire suppression and related services, medical care and related services, emergency management services, repairing gas, water, electric, telephone, sewer facilities, or public transportation facilities, removing fallen trees from public rights-of-way, or abating life-threatening conditions.

IMPULSIVE SOUND - A sound having a duration of less than one second with rapid onset and decay rates.

INDUSTRIAL - Any property receiving noise where the receiving property is located within any Industrial Zoning District or such successor districts as shall be utilized by the Borough on future zoning maps.

LEQ(H) - The steady-state, equivalent noise level over a given one-hour period of time that would have the same acoustical energy as the actual varying noise level over that same time period.

MOTOR VEHICLE - Any vehicle propelled or drawn on land by an engine or motor used for power.

MUFFLER - A device for abating the sound of escaping gases of an internal combustion engine or motor.

NOISE - Characterized as unwanted sound. Any sound that annoys or disturbs humans or 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/or any specific acts constituting a noise disturbance identified in this chapter.

PERSON - Any individual, corporation or other legal entity.

POWERED MODEL VEHICLE - Any self-propelled airborne, waterborne, or landborne plane, vessel or vehicle, which is not designed to carry persons, including but not limited to any model airplane, boat, car or rocket.

PROPERTY LINE - The real or imaginary line and its vertical extension which separates real property owned or controlled by one person from that which is owned or controlled by another person.

PROPOSED NOISE LEVEL - The future noise level associated with a proposed subdivision, land development, facility/land use, derived by noise monitoring, noise modeling, and/or other mathematical computation.

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

RESIDENTIAL - Any property where the receiving property is located within any Residential Zoning District or such successor district as shall be utilized by the Borough on future zoning maps.

SOUND LEVEL - The instantaneous sound pressure level measured in decibels with a sound level meter set for A-weighting on slow response speed, unless otherwise noted.

SOUND LEVEL METER - An instrument, including a microphone, an amplifier, an output meter and frequency-weighting networks, used for measurement of sound pressure levels conforming to Type 1 or Type 2 standards as specified in ANSI Standard S1.4, Specifications of Sound Level Meters, 1983 (R1990), or the latest version thereof.

SECTION 3 - SOUND LEVEL LIMITATIONS

The following are sound level limitation noise criteria to be followed when evaluating noise levels within the Borough:

A. Maximum allowable noise increase. No person shall allow, cause, transmit, or propose the operation of any sound source on a particular property, zoning district, public right-of-way, or public space in such a manner as to create a sound level that exceeds average hourly equivalent A-weighted [Leq(h)] background sound levels by 10 dBA or greater during daytime hours (6:00 a.m. until 10:00 p.m.) and by five dBA or greater during nighttime hours (10:00 p.m. until 6:00 a.m.), when measured at or within the property line of the receiving property. Such a sound level increase would constitute a noise disturbance and a violation of this chapter.

B. Maximum permissible noise level. Additionally, noise levels from existing and/or proposed facilities may not exceed the absolute noise level limitations identified in Table 1. Sound levels at or above those shown in Table 1 would constitute a noise disturbance and a violation of this chapter.

TABLE 1 Maximum Permissible 1-Hour Leq(h) Receiving Property		
Residential		Commercial
6:00 am to 10:00 pm	10:00 pm to 6:00 am	All Times
60 dBA	55 dBA	65 dBA

C. Impulsive sounds. Impulsive sounds are sounds that last for short durations (usually less than one second), with an abrupt onset and a rapid decay. Some examples would include explosions from mining operations, the discharge of firearms, discharge of fireworks, test

revving of engines or motors, or other sounds of a similar nature. Sounds of this nature may not equal or exceed a maximum noise level (L_{\max}) of 80 dBA, when measured at or within the property line of the receiving property. Impulsive sounds at or above 80 dBA (L_{\max}) would constitute a noise disturbance and a violation of this chapter. [Note: Noise measurements, estimates, and/or predictions should be performed to represent worst-case conditions or noise hour(s). As such, it may be necessary to evaluate the fluctuations in noise over a typical twenty-four-hour day and identify those periods/hours that would have the greatest potential for noise levels or noise level increases (between existing to future conditions).]

D. Any noise made between the hours of 10:00 p.m. and 6:00 a.m. which can be heard at a distance of a one-mile radius or more from the source of the sound by a reasonable person of normal sensibilities shall be deemed to be at a level which violates this chapter without the necessity of performance of a measurement and is considered a per se violation of this chapter.

SECTION 4 - SPECIFIC ACTS CONSTITUTING A NOISE DISTURBANCE

A. In addition to the violations of noise level limitations set forth above, the following items and the causes thereof are declared to be in violation of this Noise Ordinance and constitute a noise disturbance if the use or activity occurs between the hours of 10:00 p.m. and 6:00 a.m. and causes sound that annoys or disturbs a reasonable person of normal sensibilities on a residential receiving property:

(1) Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound either indoors or outdoors at a place of public entertainment, on private property, public right-of-way, or public space;

(2) The operation of any sound amplification or reproduction device in a vehicle;

(3) The operation of a motor vehicle without an adequate muffler or exhaust system to prevent any unreasonable noise;

(4) The use and operation of any lawn maintenance device, including lawn mowers, edgers, leaf blowers, trimmers, as well as other similar equipment such as snow blowers;

(5) The use of any tools or equipment used in construction, drilling, earthmoving, excavating, or demolition work;

(6) The repairing, rebuilding or testing of any motor vehicle, motorcycle, motorboat, or aircraft (with or without mufflers);

(7) Discharge of firearms or fireworks.

(8) Loading, unloading, opening, closing or other handling of boxes, crates,

containers, building materials, trash dumpsters, garbage cans, or similar objects.

- (9) Operating or permitting the operation of powered model vehicles.

B. In addition to the violations of noise level limitations set forth above, the following items and the causes thereof are declared to be in violation of this Noise Ordinance and constitute a noise disturbance if the use or activity causes sound that annoys or disturbs a reasonable person of normal sensibilities on a residential receiving property at any time of day:

- (1) Owning, possessing, harboring or controlling any animal or bird which howls, barks, meows, squawks, or makes other sounds continuously and/or incessantly for a period of ten (10) minutes or makes such noise intermittently for one-half (2) hour or more, regardless of whether the animal or bird is situated in or on 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 or bird is situated or for any other legitimate cause which teased or provoked the animal or bird.

- (2) Engaging in loud or raucous yelling, hooting, or other disturbing-noise-producing conduct.

SECTION 5 - PROMULGATION OF REGULATIONS BY BOROUGH COUNCIL

The Borough may at any time and from time to time promulgate regulations concerning this chapter and implementing its provisions by resolution adopted at any duly constituted public meeting.

SECTION 6 - EXEMPTIONS

The following noise is exempted from the provisions of this chapter:

- A. Noise generated to request assistance or warn of a hazardous situation, as part of providing emergency services, or is part of responding to natural emergencies;

- B. Noise generated from an authorized warning alarm or siren, emergency vehicle or a vehicle operated by a gas, electric, communications or water/sewer utility;

- C. Noise generated from a bell, chime or similar device used by a church, mosque, synagogue or a school;

- D. Noise generated from lawn care and other household maintenance equipment and tools used between 6:00 a.m. and 10:00 p.m.;

- E. Noise generated from construction activities properly permitted by the Borough between 6:00 a.m. and 10:00 p.m.;

- F. Noise generated from the engine of a motor vehicle on a public highway that is subject to regulation exclusively by the Pennsylvania Department of Transportation;

G. Noise generated from community, school or municipality sponsored or approved celebrations or special events in accordance with a permit completed by the applicant prior to the special event and approved and issued by the Borough;

H. Noise generated from emergency backup generators used during a power failure or other emergency situation, except that no recharge shall occur between the hours of 10:00 p.m. and 6:00 a.m.; and

I. Noise generated from agricultural production activities involving agricultural animals, equipment, and field machinery (used and maintained in accordance with the manufacturer's specifications).

SECTION 7 - PLAN SUBMISSION

A. For subdivision and land development applications where intensification or change of existing uses on the property are being proposed by the applicant, the Borough may require that noise impact studies be submitted for review and approval with preliminary or final subdivision/land development plan application.

B. Where public health, safety and welfare are at issue, the Borough may also, through its Council, require that noise impact studies be submitted with an application for amendment or change of the Zoning Ordinance or Official Zoning Map, building permit applications or conditional use applications; and through its Zoning Hearing Board, require that noise impact studies be submitted for consideration as part of any special exception, variance, or appeal applications.

SECTION 8 - COMPLIANCE MONITORING

A. Borough designees and associated technical advisors shall be afforded the right to enter the originating and receiving properties to monitor and investigate compliance with this chapter.

B. Where property owners cooperate with the Borough designee and associated technical advisors, and corrective action is deemed to be necessary to comply with this chapter, the Borough may provide an initial informal notification to the originating property regarding the appropriate remedial action necessary.

C. Where cooperation and/or corrective action is not provided, or where the nature of the violation does not allow for the initial informal notification, the Borough shall have the right of entry and may also pursue other appropriate legal action.

SECTION 9 - VIOLATIONS AND PENALTIES; ENFORCEMENT

A. Any person who creates any noise disturbance shall be guilty of a violation of this chapter and shall pay a fine not to exceed One Thousand Dollars (\$1,000) for each offense. This chapter shall be enforced by action brought before a Magisterial District Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of

Criminal Procedure. The Municipal Solicitor or the Code Enforcement Officer may assume charge of the prosecution without the consent of the District Attorney as required by Pa. R. Crim. P. No. 83 (relating to trial in summary cases). 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.

B. The Borough may also take any other 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 other remedies, including but not limited to injunctive relief, and other remedies otherwise available and provided by law.

SECTION 10 - REPEAL OF ORDINANCES

Any ordinance or part of any ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with the provisions of this Ordinance.

SECTION 11 - SEVERABILITY

If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is for any reason declared to be illegal, unconstitutional or invalid by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. Borough hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

SECTION 12 - EFFECTIVE DATE

This Ordinance shall become effective at the earliest date permitted by law.

ORDAINED and ENACTED as an Ordinance by the Borough Council of the Borough of Fleetwood, in lawful session duly assembled, this ____10th__ day of ____October____, 2011.