

7:2 NOISE

7:2-1 LEGISLATIVE FINDINGS AND DETERMINATIONS

It has been found and determined that:

- The making and creation of excessive or unusually loud noises within the limits of the borough is a condition which has existed for some time and the extent and volume of such noises are increasing.
- The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect, and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the borough.
- The necessity in the public interest, for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy. It is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing the promotion of the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the borough and its inhabitants.

7:2-2 GENERAL PROHIBITION

It shall be unlawful for any person to make, continue to make, permit, or cause to be made or continued, any loud, excessive, unnecessary or unusually loud noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, or any noise which any police officer in the exercise of good judgment and discretion, reasonably determines to be unreasonable due to the nature of the noise, the circumstances under which the noise is made or maintained and the time of day, within the Borough of Avalon. Furthermore, it shall be unlawful for any person who has custody and control of the premises to allow or permit another person to make, continue, or cause to be made or continued, any loud, excessive, unnecessary or unusually loud noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, or any noise which any police officer in the exercise of good judgment and discretion, reasonably determines to be unreasonable due to the nature of the noise, the circumstances under which the noise is made or maintained and the time of day, within the Borough of Avalon. [Amended 6-27-90 by Ord. No. 304-90]

7:2-2(a) ENHANCED PENALTIES FOR CERTAIN VIOLATIONS [Added 6-28-06 by Ord. No. 572-06]

- **Legislative Intent:** It is the intent of the Borough of Avalon to encourage residents and visitors to fully enjoy the natural and man-made recreational opportunities within the Borough of Avalon and to maintain Avalon as a premier resort destination. This intention is tempered, however, by the need of the Borough to protect the health, safety and welfare of its citizens and

visitors. The Borough has no tolerance for noise which disturbs peace and good order or otherwise disrupts the reasonable expectation of the people of the Borough to the quiet enjoyment of their property. The Borough Council has identified a pattern of conduct whereby persons disrupt such quiet enjoyment, especially but not limited to, in residential or hybrid residential and commercial areas between the hours of 2:00 a.m. and 5:00 a.m. It is the stated policy of the Borough that such persons should be subject to an enhanced penalty for such conduct. The Borough Council recognizes the independence of the Judiciary and the discretion placed in the Municipal Court Judge. This section states the standing policy of the Borough Council on behalf of its citizens and in protection of the health, safety and welfare of same, to seek enhanced monetary penalties for such offenses, as detailed herein below, and requires the imposition of community service for such offenders.

For any person or business entity convicted in a Court of competent jurisdiction of a violation of this section 7:2-2, which violation shall have occurred between the hours of 2:00 a.m. and 5:00 a.m., prevailing time, inclusive of those hours, it is the recommendation of the Borough Council, recognizing the Court's discretion, that such person or entity be fined not less than \$500.00 and not more than the maximum allowable fine for violation of a local ordinance for a first offense. Additionally, such person or entity shall be required to perform 15 hours of community service. For a second or subsequent offense it is the recommendation of the Borough Council, recognizing the Court's discretion, that such person or entity be subject to the maximum fine allowable for violation of a local ordinance. Additionally, such person or entity shall be required to perform 30 hours of community service.”

7:2-3 PRESUMPTIONS

For the purpose of this section, the following persons shall be presumed to be in custody and control:

- An individual owner or owners where the premises are owner occupied.
- The tenant where the premises are leased.
- A manager of a rooming house or boarding house.
- An individual reasonably determined to be in the care, custody or control of the premises in the absence of the owner, tenant(s) or manager.

7:2-4 DEFINITION OF PREMISES

For the purpose of this section, premises shall mean a specific dwelling unit. Accordingly, by way of example: An owner of a duplex who occupies one unit shall not be presumed to be in custody and control of the remaining unit.

7:2-5 NOISES PROHIBITED

Prohibited noises include, but are not limited to, the following:

7:2-5.1 HORNS; SIGNALING DEVICES

The sounding of any horn or signaling device on any automobile, motorcycle, streetcar or other vehicle which is unreasonably loud or harsh; sounds for an unnecessary and/or unreasonable period of time; is not operated by hand or electricity; is operated by engine exhaust or is used when traffic is stopped or slowed for any reason, on any street or public place of the borough, or upon private property is such sounding is likely to disturb the public at large, except as a danger warning.

7:2-5.2 RADIOS; PHONOGRAPHS

Using, operating or permitting to be played, used or operated any device or musical instrument or any other device that emits any music or voice sounds which is capable of receiving, transmitting, producing or reproducing sound, in such manner which is likely to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in control of the device or instrument and/or the voluntary listeners thereto.

The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section. [Amended 8-25-83 by Ord. No. 133-83]

7:2-5.3 LOUD SPEAKERS; AMPLIFIERS FOR ADVERTISING

The using, operating or permitting to be played, used, or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

7:2-5.4 YELLING; SHOUTING

Yelling, shouting, hooting, whistling, or singing on the public streets at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity. [Amended 8-25-83 by Ord. No. 133-83]

7:2-5.5 ANIMALS; BIRDS

The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.

7:2-5.6 STEAM WHISTLES

The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper borough authorities.

7:2-5.7 EXHAUST

The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle except through a muffler or other device which shall effectively prevent loud or explosive noises therefrom.

7:2-5.8 DEFECT IN VEHICLE

The use of any automobile, motorcycle, or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

7:2-5.9 LOADING; UNLOADING; OPENING BOXES

The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

7:2-5.10 CONSTRUCTION AND REPAIRING OF BUILDINGS; PROHIBITED ON CERTAIN SUNDAYS; DEMOLITION OF STRUCTURES SEASONALLY PROHIBITED; EXCEPTIONS. [Amended 5-9-12 by Ord. No. 655-12]

(a) The erection, including excavation, demolition(subject to the further restrictions of paragraph (b) below), alteration or repair of any building or other construction is prohibited other than between the hours of 7:00 a.m. and 7:00 p.m. daily, from September 15th to June 14th of any calendar year. From June 15th to September 14th of any calendar year, such activities may occur between the hours of 8 a.m. and 7 p.m. Monday through Friday and 9 a.m. and 7 p.m. on Saturday and Sunday. No such activity shall take place on Sunday during the period commencing with the Friday of Memorial Day Weekend and ending with the Friday immediately following the Labor Day Weekend. In case of urgent necessity in the interest of public health and safety, and then only with a permit from the Construction Official, an exception to the above restrictions may be made. Such permit shall be granted for a period not to exceed (3) days or less while the emergency continues and may be renewed for a period of three (3) days or less while the emergency continues. This paragraph shall not apply to limited projects of the Borough of Avalon.

b) Demolition of structures is prohibited between and inclusive of July 1st and Labor Day within any year. All such demolitions must be completed before July 1st and none may commence thereafter prior to the day after Labor Day within any year. Demolitions shall also be prohibited from and inclusive of the Friday before Memorial Day through and inclusive of Memorial Day in any year. The emergency provisions of paragraph “(a)” of this section shall apply only in the case of a structure that represents a clear and immediate danger to persons or property and then only for the minimum time necessary to eliminate such danger. This paragraph shall not apply to limited projects of the Borough of Avalon.

(c) Temporary Exception for 2012: The limitations of paragraph (b), above, shall not apply to 2012, but such work shall be allowed only on Tuesday, Wednesday and/or Thursday. This provision shall automatically expire and be of no force or effect at 12:01 a.m. on the day after Labor Day, 2012.

7:2-5.11 SCHOOLS; COURTS; CHURCHES; HOSPITALS

The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.