SAFETY COMMITTEE

October 17, 2022
Council Chambers
5:45 P.M.
Following Service Committee
Committee and Council Meetings can be viewed by accessing YouTube

AGENDA

- 1. Consider **Ordinance No. 22-43** AN ORDINANCE AMENDING CHAPTER 634 OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO RELATIVE TO THE NOISE ORDINANCE OF THE CITY OF NEWARK
- Consider Ordinance No. 22-44 AN ORDINANCE AMENDING CHAPTER 648.04 DISORDERLY CONDUCT OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO RELATIVE TO NOISE CONTROL IN THE CITY OF NEWARK AND DISORDERLY CONDUCT BETWEEN FAMILY OR HOUSEHOLD MEMBERS
- 3. Other items at the discretion of the chair

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ORDINANCE NO

22-43

AN ORDINANCE AMENDING CHAPTER 634 OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO RELATIVE TO THE NOISE ORDINANCE OF THE CITY OF NEWARK

WHEREAS, the Codified Ordinances of the City of Newark currently provide rules and regulations for the control of noise within the City of Newark, Ohio; and,

WHEREAS, due to the changing landscape of the City with several venues holding music events, the noise control ordinance currently in the codified ordinance requires some revisions in order to fit the current needs of the City and its citizens, and:

WHEREAS, Ordinance 84-42 provided the framework for the issuance of variances for music venues and other locations holding events that may be in violation of noise control ordinance to allow such events to be held under guidelines set by the Director of Safety to protect the citizens residing near or affected by the noise; and,

WHEREAS, in order to successfully enforce the noise ordinance, the variance process needs to be completed and approved by council, and;

WHEREAS, this matter was considered by the Safety Committee of this Council who passed this Ordinance on to the full Council for consideration.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING, STATE OF OHIO, THAT:

<u>SECTION ONE</u>: Chapter 634 of the Codified Ordinances of the City of Newark, Ohio is hereby amended to include the following changes to the listed sections below:

CHAPTER 634: NOISE CONTROL ORDINANCE OF THE CITY OF NEWARK

634.04 SPECIFIC PROHIBITIONS

- (a) No person shall do, cause or permit any of the following:
- (2) <u>Places of public entertainment</u>. Operate, play or permit the operation or playing of any radio, television, phonograph, drum or other musical instrument, sound amplifier or similar device that produces, reproduces or amplifies sound in any place of public entertainment at a sound level greater than ninety five dBA 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 place near each public entrance, stating "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT"; IN SUCH A MANNER AS TO CAUSE A NOISE DISTURBANCE ACROSS RESIDENTIAL AREAS BETWEEN THE HOURS OF 10 P.M. AND 7 A.M. OF THE FOLLOWING DAY, SUNDAY THROUGH THURSDAY AND BETWEEN THE HOURS OF 11 P.M. AND 7 A.M. FRIDAY AND SATURDAY INTO THE FOLLOWING DAY, UNLESS ISSUED A SPECIAL VARIANCE BY THE DIRECTOR OF PUBLIC SAFETY.

A. SOUND LEVELS WITHIN THE PLACE OF PUBLIC ENTERTAINMENT GREATER THAN NINETY-FIVE DBA AS READ BY THE SLOW RESPONSE ON A SOUND LEVEL METER AT ANY POINT AT A PLACE THAT IS NORMALLY OCCUPIED BY A CUSTOMER ARE NOT PERMITTED UNLESS A CONSPICUOUS AND LEGIBLE SIGN IS LOCATED OUTSIDE SUCH PLACE NEAR EACH PUBLIC ENTRANCE, STATING "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT"

(5) Motor vehicles

- A. Operate or permit the operation of any motor vehicle with a gross vehicle weight rating in excess of 10,000 pounds or any auxiliary equipment attached to such a vehicle, for a period longer than five minutes in any hour while the vehicle is stationary, in such a manner as to create a noise disturbance, for reasons other than traffic congestion, between the hours of 9:30 p.m. 10:00 P.M. and 7:00 a.m. of the following day; or
- (6) <u>Loading and unloading</u>. Load, unload, open, close or otherwise handle boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 9:30 **10:00 P.M**. and 7:00 a.m. of the following day in such a manner as to cause a noise disturbance across a residential real property boundary;
- (7) <u>Construction</u>. Operate or permit the operation of any tools or equipment used in construction, drilling or demolition work between the hours of 9:30 p.m. **10:00 P.M**. and 7:00 a.m. of the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary, except for emergency work of public service utilities or by special variance. This paragraph does not apply to the use of domestic power tools subject to subdivision (a)(11) of this section.

(8) Emergency signaling devices.

A. Intentionally sound or permit the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this subsection.

Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 7:00 a.m. or after 9:30 p.m. **10:00 P.M.** or the closing time of a commercial establishment, whichever occurs later. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty seconds.

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 before 7:00 a.m. or after 9:30 p.m. 10:00 P.M. In no case shall such test time exceed ten minutes.

- (9) <u>Radios, television sets, musical instruments and similar devices</u>. Operate, play or permit the operation or playing of any radio, television, phonograph, drum or other musical instrument, sound amplifier or similar device that produces, reproduces or amplifies sound:
- A. Between the hours of 9:30 p.m.10:00 P. M. and 7:00 a.m. of the following day in such a manner as to create a noise disturbance across a residential real property boundary; or

(10) Loudspeakers and public address systems.

- A. Use or operate for any noncommercial purpose any loudspeaker, public address system or similar device between the hours of 9:30 p.m. 10:00 P. M. and 7:00 a.m. of the following day, such that the sound therefrom creates a noise disturbance across a residential real property boundary. Mobile sound vehicles amplifying noncommercial spoken language between 9:30 p.m. 10:00 P.M. and 7:00 a.m. of the following day shall be exempt from this subdivision with a special variance issued by the Director of Public Safety.
- B. Use or operate for any commercial purpose any loudspeaker, public address system or similar device such that the sound therefrom between the hours of 9:30 p.m. **10:00 P.M.** and 7:00 a.m. of the following day **THAT** creates a noise disturbance on a public right of way or public space;
- (11) <u>Domestic power tools</u>. Operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawnmower or other similar device used outdoors, other than powered snow removal equipment, in residential areas between the hours of 9:30 p.m. 10:00 P.M. and 7:00 a.m. of the following day, so as to cause a noise disturbance across a residential real property boundary; or
- (12) <u>Powered model vehicles</u>. Operate or permit the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 9:30 p.m. 10:00 P.M. and 7:00 a.m. of the following day. During the permitted period of operation, maximum sound levels in a residential area shall not exceed sixty dBA measured at a distance of fifty feet from any point on the path of the vehicle.

634.05 MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE CATEGORY.

(a) Irrespective and independent of whether or not a source of sound constitutes a violation of any of the provisions of Section 634.04 **AND UNLESS OTHERWISE SPECIFIED**, no person shall operate, cause to be operated or permit on private property any source of sound in such a manner as to create a sound level that exceeds the limits set forth in Table 1 for specific receiving land use categories, when measured at or within the property boundary of the receiving land use.

TABLE 1. SOUND LEVELS BY RECEIVING LAND USE CATEGORY

Receiving Land Use Category	Time	Sound Level Limit (dBA)
Residential	7:00 a.m. to 10:00 P.M .	60
Residential	10:00 P.M . to 7:00 a.m. of the following day	50
Retail Area	At all times	70

634.11 SPECIAL VARIANCES

- (a) The Director of Public Safety may grant special variances in accordance with this section.
- (b) Any person seeking a special variance pursuant to this section shall file an application with the Director of Public Safety- NO LESS THAN 60 DAYS BEFORE THE EVENT FOR WHICH THE VARIANCE IS SOUGHT. IF THE APPLICANT IS A BUSINESS OR VENUE WITH MULTIPLE EVENTS OCCURRING DURING THE YEAR WHICH ARE ANTICIPATED TO REQUIRE A VARIANCE, AN APPLICATION MAY CONTAIN MULTIPLE EVENTS AS LONG AS THE REASON FOR THE REQUEST AND THE NATURE OF THE EVENT ARE THE **SAME FOR EACH EVENT**. The application shall contain information that demonstrates that bringing the source of sound or activity, for which the special variance is sought **REQUESTED** into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. **THE APPLICANT** MUST ALSO CONSENT TO AN ONSITE INSPECTION OF THE VENUE IN WHICH THE EVENT IS TO BE HELD IF REQUESTED BY THE DIRECTOR OF PUBLIC SAFETY OR HIS OR HER DESIGNEE. Notice of an application for a special variance shall be PUBLISHED by the Director OF PUBLIC SAFETY to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance ON THE CITY OF NEWARK WEBSITE. Any individual who claims to be adversely affected by allowance of the special variance may file a WRITTEN statement with the Director containing any information to support his or her claim.

- (c) In determining whether to grant or deny an application for a special variance, the Director shall balance the **RESULTS OF ANY ONSITE INSPECTION**, the hardship to the applicant, the community and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of the persons affected, the adverse impact on property affected and any other adverse impacts of granting the special variance. Applicants for special variances and persons contesting such variances may be required to submit any information the Director may reasonably require. In granting or denying an application, the Director shall maintain a record for public inspection of the decision and the reasons therefor.
- (d) Special variances shall be granted by notice to the applicant, containing all necessary conditions, including a time limit on the permitted activity. A special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any of the conditions of the special variance shall terminate it THE VARIANCE FOR THAT EVENT AND ANY OTHER EVENTS CONTAINED IN THE VARIANCE REQUEST and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special variance was granted.
- (h) Notice of application for a variance or an extension of a variance shall be given by the Director of Public Safety by publishing once in a newspaper of general circulation ON THE CITY OF NEWARK WEBSITE a written notice detailing the substance and content of such application and inviting any interested person to submit WRITTEN statements and other information regarding the application. All costs associated with the publication of such notices shall be assessed and paid by the applicant FEES ASSESSED shall be paid by the applicant at the time of filing the application in accordance with a schedule of fees formulated by the DIRECTOR OF PUBLIC SAFETY and filed with the Clerk of Council.

<u>SECTION TWO:</u> The attached application for the issuance of a variance along with the informational cover sheet are hereby approved.

<u>SECTION THREE</u>: All other sections of 634 of the Codified Ordinance not addressed in the above legislation remain in effect as written.

SECTION FOUR: This Ordinance shall become effective upon the earliest date permitted

Clerk of Council

ATTEST:

Date filed with Mayor:		-
Date approved by Mayor: _		
	, Mayor	
Approved as to form:		
	Tricia M. Moore	
	Director of Law	

Prepared by the Office of the Director of Law

APPLICATION FOR SPECIAL VARIANCE PURSUANT TO SECTION 634 OF THE NEWARK CODIFIED ORDINANCE

Anyone wishing to have an event in the City of Newark for which it is anticipated will be in violation of the Newark Codified Ordinance section 634 for noise control, may apply for a variance through the Director of Public Safety. Any variance requested must state the reasons why complying with the noise control ordinance under the Newark Codified Ordinance would constitute an unreasonable hardship on the applicant, the community, or on other persons. Such application, application fee, and any mandatory documentation must be submitted to the Director of Public Safety no later than sixty (60) days before the event. Applications received within sixty (60) days of the event are not guaranteed to be reviewed or considered prior to the date of the event. Applicant may also be required to submit to an onsite inspection of the venue if requested by the Director of Public Safety or his or her designee.

Upon receipt of the application for a special variance, the Director of Public Safety is required to give notice to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Notice of the application shall be given by the Director of Public Safety by publishing notice of the application on the City of Newark website. Any individual who claims to be adversely affected by allowance of the special variance may file a written statement with the Director of Public Safety containing any information to support his or her claim. In determining whether to grant or deny an application for a special variance, the Director of Public Safety shall balance the hardship to the applicant, the community, and other persons against the adverse impact on the health, safety and welfare of affected persons, the adverse impact on property affected, and other adverse impacts of granting the special variance.

If a variance is granted, notice will be given to the applicant, containing all necessary conditions which may include a limit on decibel levels and a time limit on the permitted activity. A SPECIAL VARIANCE SHALL NOT BECOME EFFECTIVE UNTIL ALL CONDITIONS ARE AGREED TO BY THE APPLICANT. NONCOMPLIANCE WITH ANY OF THE CONDITIONS OF THE SPECIAL VARIANCE SHALL TERMINATE IT AND SUBJECT THE PERSON RESPONSIBLE FOR THE EVENT TO THOSE PROVISIONS OF CHAPTER 634 OR ANY OTHER APPLICABLE SECTION OF THE NEWARK CODIFIED ORDINANCE REGULATING THE SOURCE OF SOUND OR ACTIVITY FOR WHICH THE SPECIAL VARIANCE WAS GRANTED.

If a variance is denied, the decision may be appealed by the applicant to the Newark City Council for review. If a variance is granted, any person claiming to be adversely affected by the allowance of the special variance may also appeal to Newark City Council for review.

CITY OF NEWARK NOISE CONTROL VARIANCE APPLICATION PURSUANT TO NEWARK CODIFIED ORDINANCE SECTION 634

The Application and the application fee should be submitted a minimum of sixty (60) days prior to the event date to allow ample time for required public notification period. Applications submitted within sixty (60) days of the event date may not satisfy the processing timeline requirements.

1.	Organization/person seeking variance:		
2.			
3.	Event name:		
	Address and physical description of noise source location (Event, Worksite):		
5.	Responsible person: Title:		
6.	Telephone:Email:		
7.	. Will this person be continually present at the location during the event? YES/NO (circle one . If no, who will be on-site during the event and should be contacted if the need arises?		
9.	Contact information for on-site responsible party: Cell phone		
10.	0. Dates variance requested:		
	Noise source- Time of operation requested:		
	Time of pre-event sound check:		
12.	Sound level requested:		
	Briefly describe the noise source and equipment involved:		
14.	Describe steps that will be taken to minimize the noise levels in the surrounding residential neighborhoods:		
15.	Current zoning of event location:		
16.	State reason for seeking variance (describe unreasonable hardship on the applicant, on the community or on other persons to comply with noise control ordinance):		

17. A site diagram & map must be attached showing location of the noise source(s), streets, stages, tents, etc. (If there will be amplified sound, indicate location and direction that all

speakers will be facing). MULTIPLE LOCATIONS MAY REQUIRE MORE THAN ONE APPLICATION.

18. Submit completed application, site diagram/map	and application fee to:
City of Newark	
Director of Public Safety	
40 W. Main Street	
Newark, Ohio 43055	
Signature of applicant:	Date:

	ORDINANCE NO	22-44	
			
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AN ORDINANCE AMENDING CHAPTER 648.04 DISORDERLY CONDUCT OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO RELATIVE TO NOISE CONTROL IN THE CITY OF NEWARK AND DISORDERLY CONDUCT BETWEEN FAMILY OR HOUSEHOLD MEMBERS

WHEREAS, the Codified Ordinances of the City of Newark currently prohibits conduct considered to be disorderly within the City limits; and,

WHEREAS, in consideration of the proposed changes to 634 of the Codified Ordinance regarding noise within the City, it is proposed to amend section 648.04 to provide an alternate section for ease of enforcement of said prohibitions, and;

WHEREAS, in reference to disorderly conduct between family or household members, a former section under 648.04 which specifically addressed domestic disorderly conduct was mistakenly taken out of the legislation when prior legislation was passed. The Law Director's Office is requesting that the section be added back into the codified ordinance as it is a valuable asset in addressing non-physical forms of conduct that cause a disturbance within households and families, and;

WHEREAS, this matter was considered by the Safety Committee of this Council who passed this Ordinance on to the full Council for consideration.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING, STATE OF OHIO, THAT:

SECTION 1: The following sections of Chapter 648.04 of the Codified Ordinances of the City of Newark, Ohio are hereby amended to read as follows:

CHAPTER 648.04: DISORDERLY CONDUCT

(6) MAKING, CONTINUING, OR CAUSING TO BE PRODUCED ANY LOUD, UNNECESSARY OR UNUSUAL NOISE OR MUSIC THAT IS LIKELY TO ANNOY, DISTURB OR AGITATE THE COMFORT, REPOSE, HEALTH, OR SAFETY OF OTHERS IN THE MUNICIPAL LIMITS. THE FOLLOWING ACTS, AMONG OTHERS THAT MAY NOT BE LISTED HERE, SHALL BE CONSIDERED TO BE

LOUD, UNNECESSARY AND UNUSUAL NOISE AND AS SUCH SHALL BE IN VIOLATION OF THIS SECTION:

A. RADIOS AND PHONOGRAPHS, ETC. THE USING OR OPERATING OR PERMITTING TO BE OPERATED ANY RADIO, STEREO, AMPLIFIER, PHONOGRAPH, MUSICAL INSTRUMENT, OR OTHER MACHINE OR DEVICE DESIGNED TO PRODUCE OR REPRODUCE ANY SOUND THAT WOULD BE LIKELY TO DISTURB THE COMFORT, PEACE AND QUIET OF NEIGHBORING INHABITANTS OR VEHICLE OPERATORS. ANY SOUND THAT IS PRODUCED OR REPRODUCED FROM DEVICES LISTED ABOVE FROM NON-PUBLIC PLACES OR RESIDENCES AFTER 10:00 P.M. AND BEFORE 7:00 A.M. ON ANY DAY, AND FOR PLACES OF PUBLIC ENTERTAINMENT, AFTER 10:00 P.M. AND BEFORE 7:00 A.M. SUNDAY THROUGH THURSDAY, AND AFTER 11:00 P.M. AND BEFORE 7:00 A.M. FRIDAY AND SATURDAY, THAT MAY BE CLEARLY AND DEFINITELY HEARD BEYOND A DISTANCE OF FIFTY FEET FROM THE STRUCTURE, VEHICLE OR SOURCE OF SOUND SHALL BE PRIMA-FACIE EVIDENCE OF A VIOLATION OF THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE USING, OPERATING, OR PERMITTING TO BE OPERATED A MACHINE OR DEVICE DESIGNED TO PRODUCE OR REPRODUCE SOUND SHALL NOT VIOLATE THIS SECTION IF THE USE IS INCIDENT TO AN EVENT OPEN TO THE PUBLIC AND SPONSORED BY OR PERMITTED BY ANY OF THE FOLLOWING:

- 1) CITY OF NEWARK;
- 2) AN ORGANIZED SCHOOL-RELATED PROGRAM, ACTIVITY OR EVENT;
- 3) AN EVENT APPROVED BY AND IN COMPLIANCE WITH A VARIANCE GRANTED BY THE SAFETY DIRECTOR.

B. LOUDSPEAKERS OR AMPLIFIERS. THE USING OR OPERATING OR PERMITTING TO OPERATE OR TO BE PLAYED, USED OR OPERATED ANY TYPE OF LOUDSPEAKER, AMPLIFIER, HORN OR OTHER NOISE PRODUCING DEVICE FOR THE **PURPOSE** OF COMMERCIAL ENTERTAINMENT, ADVERTISING, OR ATTRACTION OF ATTENTION THAT WOULD BE LIKELY TO DISTURB THE COMFORT, PEACE AND QUIET OF NEIGHBORING INHABITANTS VEHICLE OPERATORS. ANY SOUND THAT IS PRODUCED REPRODUCED FROM DEVICES LISTED ABOVE FROM NON-PUBLIC PLACES OR RESIDENCES AFTER 10:00 P.M. AND BEFORE 7:00 A.M. ON ANY DAY, AND FOR PLACES OF PUBLIC ENTERTAINMENT, AFTER 10:00 P.M. AND BEFORE 7:00 A.M. SUNDAY THROUGH THURSDAY, AND AFTER 11:00 P.M. AND BEFORE 7:00 A.M. FRIDAY AND SATURDAY, THAT MAY BE CLEARLY AND DEFINITELY HEARD BEYOND FIFTY FEET FROM THE SOURCE OF ORIGIN. SHALL BE PRIMA-FACIE EVIDENCE OF A VIOLATION OF THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, USING OR OPERATING A NOISE- PRODUCING DEVICE OR PERMITTING IT TO OPERATE OR TO BE PLAYED, USED OR OPERATED SHALL NOT VIOLATE THIS SECTION IF THE USE OR OPERATION IS INCIDENT TO ACTIVITIES THAT ARE OPEN TO THE PUBLIC AND SPONSORED BY OR PERMITTED BY ANY OF THE FOLLOWING:

- 1) THE CITY OF NEWARK;
- 2) AN ORGANIZED SCHOOL-RELATED PROGRAM, ACITIVITY, OR EVENT;
- 3) ANY EVENT APPROVED AND IN COMPLIANCE WITH A VARIANCE GRANTED BY THE SAFETY DIRECTOR.
- C. LOADING AND UNLOADING. LOAD, UNLOAD, OPEN, CLOSE OR OTHERWISE HANDLE BOXES, CRATES, CONTAINERS, BUILDING MATERIALS, GARBAGE CANS OR SIMILAR OBJECTS BETWEEN THE HOURS OF 10:00 P.M. AND 7:00 A.M. OF THE FOLLOWING DAY IN SUCH A MANNER AS TO CAUSE A NOISE DISTURBANCE ACROSS A RESIDENTIAL REAL PROPERTY BOUNDARY. THIS SECTION DOES NOT APPLY TO REFUSE COLLECTION VEHICLES WHICH ARE GOVERNED BY SECTION 1860.11 OF THE CODIFIED ORDINANCE.
- (c) whoever violates this section is guilty of disorderly conduct.
- (1) Except as otherwise provided in division (c)(2) of this section, disorderly conduct is a minor misdemeanor.
- (2) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:

E. THE VICTIM IS A FAMILY OR HOUSEHOLD MEMBER AS DEFINED IN SECTION 636.17 OF THE NEWARK CODIFIED ORDINANCE AND 2919.25 OF THE OHIO REVISED CODE.

<u>SECTION 2</u>: All other sections of 648.04 of the Codified Ordinance not addressed in the above legislation remain in effect as written.

<u>SECTION 3:</u> This Ordinance shall become effective upon the earliest date permitted by Article 4.07 of the Charter of the City of Newark, Ohio.

ADOPTED this day	, 2022.
President of Council	
ATTEST: Clerk of Council	
Date filed with Mayor:	

Date approved by Mayo	or:	
Mayor		
Approved as to form: _		
	Tricia M. Moore Director of Law	
Prepared by the Office of the	e Director of Law	