

**VILLAGE OF YELLOW SPRINGS, OHIO
ORDINANCE #2006-06**

AN ORDINANCE DELETING CHAPTER 634-NOISE OF PART SIX-GENERAL OFFENSES OF THE CODIFIED ORDINANCES FOR THE VILLAGE OF YELLOW SPRINGS, OHIO AND REPLACING IT WITH A NEW CHAPTER 634

WHEREAS, the Village of Yellow Springs regulates noise pollution within the Village pursuant to Chapter 634 of the Village of Yellow Springs Codified Ordinances; and

WHEREAS, Section 634.04 of the Village of Yellow Springs Codified Ordinances was recently held by the Municipal Court of Xenia to be void for vagueness such that the Village currently lacks a means of enforcing a violation of permissible noise levels as set forth in the Village of Yellow Springs Codified Ordinances; and

WHEREAS, a means of enforcing violations of permissible noise levels is needed to permit the Village to protect, preserve and promote the health, safety, welfare, peace and quiet for the citizens of the Village through the reduction, control and prevention of noise,

NOW, THEREFORE, THE COUNCIL OF THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:

Section 1. Sections 634.01, 634.02 and 634.04 of the Codified Ordinances of the Village of Yellow Springs are hereby deleted in their entirety and replaced as set forth in Exhibit A attached hereto.

Section 2. The Village Manager or his designee is authorized to establish the necessary process and procedures necessary to carry out this ordinance.

Section 3. This Ordinance shall be in effect and in full force on the earliest date allowable by law.

Karen Wintrow, Vice President of Council

Passed: March 20, 2006

Attest: _____
Deborah Benning, Clerk of Council

ROLL CALL:

Hardman Absent Wintrow ___Y___ Rickenbach ___Y___
Hempfling ___Y___ Chase ___Y___

634.01: DEFINITIONS

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All definitions and terminology used in this chapter, not defined below, shall be in conformance with the applicable publications of the American National Standards Institute (ANSI) or its successor body.

- (a) “A-Weighting” is the electronic filtering in sound level meters that models human hearing frequency sensitivity.
- (b) “Business & Education” includes all land classified under Office/Research District, Central Business and General Business Districts, and Educational Institution District.
- (c) “Construction” is any site preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.
- (d) “dBA” is the A-weighted unit of sound pressure level.
- (e) “Decibel (dB)” is the unit of measurement for sound pressure level at a specified location.
- (f) “Emergency Work” is any work or action necessary to deliver essential services including, but not limited to, repairing water, gas, electric, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, or abating life-threatening conditions.
- (g) “Impulsive Sound” is a sound having a duration of less than 1 second with an abrupt onset and rapid decay.
- (h) “Light Industrial” includes any land classified under the Light Industrial District.
- (i) “Measuring Instrument” is an instrument such as a sound level meter, integrating sound level meter or dosimeter used to measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in the latest version of ANSI Standard S1.4-1983.
- (j) “Motor Vehicle” is any vehicle that is propelled or drawn on land by an engine or motor.
- (k) “Muffler” is a sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine.
- (l) “Multi-dwelling Unit Building” is any building wherein there are two or more dwelling units.
- (m) “Noise” is any sound of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the Village or in any portions thereof, but excludes all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment.
- (n) “Noise Control Administrator (NCA)” is the noise control officer designated by the Village Manager to fulfill the training certification and administrative duties described in Sections 634.02 and 634.07.
- (o) “Noise Control Officer (NCO)” is an employee of the Village designated by the Village Manager as the NCO and who fulfills the sound measurement and enforcement responsibilities described in Sections 634.02 and 634.03.

- (p) “Noise Disturbance” is any sound that (1) endangers the safety or health of any person, (2) disturbs a reasonable person of normal sensitivities, or (3) endangers personal or real property.
- (q) “Person” is any individual, corporation, company, association, society, firm partnership, institution, the Village or any political subdivision, agency or instrumentality of the Village or the State of Ohio.
- (r) “Public right-of-way” is any street, avenue, boulevard, road, highway, sidewalk, or alley that is leased, owned, or controlled by a governmental entity.
- (s) “Public Space” is any real property or structures thereon that is owned, leased, or controlled by a governmental entity.
- (t) “Real Property Line” is either (1) the imaginary line, including its vertical extension, that separates one parcel of real property from another, or (2) the vertical and horizontal boundaries of a dwelling unit that is one in a multi-dwelling unit building.
- (u) “Residential & Agricultural” includes all land classified under Residence “A”, Residence “B”, Residence “C”, Planned Unit Development, Agricultural, and Conservation Districts.
- (v) “Sound Level” is the instantaneous sound pressure level measured in decibels with a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.
- (w) “The Village” is the Village of Yellow Springs.

634.02 POWERS, DUTIES AND QUALIFICATIONS OF THE NOISE CONTROL OFFICERS AND ADMINISTRATOR

- (a) The provisions of this Chapter 634 shall be enforced by the noise control officers (NCOs).
- (b) The noise control administrator (NCA) shall have the power to:
 - (1) Cooperate with all other public bodies and agencies to the extent practicable;
 - (2) Grant permits for variances according to the provisions of Section 634.07.
 - (3) Provide for and/or certify appropriate training of NCOs;
- (c) A person shall be qualified to be an NCO if the person has satisfactorily completed any of the following:
 - (1) An instructional program in community noise from a certified noise control engineer, as evidenced by certification from the Institute of Noise Control Engineering (INCE);
 - (2) An instructional program in community noise from another NCO; or
 - (3) Education or experience or a combination thereof certified by the NCA as equivalent to the provisions of (1) or (2) of this section.
- (d) Noise measurements taken by an NCO shall be taken in accordance with the procedures specified in Section 634.03.

634.03 SOUND MEASUREMENT PROCEDURES

- (a) Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum, and fluctuating rates.
- (b) All tests shall be conducted in accordance with the following procedures:
 - (1) The NCO shall, to the extent practicable, identify all sources contributing sound to the point of measurement.
 - (2) Measurements shall be taken at the property line as close as practical to the sound source to get a representative measurement of the affected person.
 - (3) The measuring instrument must be calibrated using a calibrator recommended by the measuring instrument manufacturer before and after each series of readings.
 - (4) The calibrator must be recalibrated at least once each year by the manufacturer or by a person that has been approved by the manufacturer. A copy of written documentation of such recalibration shall be kept with the equipment to which it refers.
- (c) No outdoor measurements shall be taken:
 - (1) During periods when wind speeds (including gusts) exceed 15 mph;
 - (2) Without a windscreen, recommended by the measuring instrument manufacturer, properly attached to the measuring instrument;
 - (3) Under any condition that allows the measuring instrument to become wet (e.g., rain, snow, or condensation); or
 - (4) When the ambient temperature is out of the range of the tolerance of the measuring instrument.
- (d) The NCO shall prepare a written report relating to each measurement session, which report shall include:
 - (1) The date, day of the week, and times at which measurements are taken;
 - (2) The times of calibration of the measuring instrument;
 - (3) The weather conditions; including wind speed and temperature;
 - (4) The identification of the measuring instrument by manufacturer, model number, and serial number;
 - (5) The normal operating cycle of the sound sources in question with a description of the sources;
 - (6) The sound level, in dBA, with the sources in question operating;
 - (7) A sketch of the measurement site, including measurement locations and relevant distances, containing sufficient information for another investigator to repeat the measurements under similar conditions.
 - (8) If the measuring instrument position is other than that recommended in section (f) below, a rationale and description of the more practical and appropriate alternate position chosen.
- (e) Prior to taking noise measurements the investigator shall explore the vicinity of the source in question to identify any other sound sources that could affect measurements, to establish the approximate location and character of the principal sound source, and

to select suitable locations from which to measure the sound from the source in question.

- (f) The measuring instrument shall be positioned three (3) to five (5) feet above the ground and away from reflective surfaces, unless such levels are not practical or unless the nature and location of the complaint and source of the noise suggest a different measurement location is more practical or appropriate, in which event, the NCO shall take measurements at the preferable location that will afford a reliable noise reading.
- (g) If extraneous sound sources, such as aircraft flyovers or barking dogs, that are unrelated to the measurements increase the monitored sound levels, the measurements should be postponed until these extraneous sounds have become of such a level as not to increase the monitored sound levels of interest.
- (h) The monitoring session should last for a period of time sufficient to ensure that the sound levels measured are typical of the source in question.

634.04 SOUND LEVEL LIMITATIONS BY LAND USE CLASS

- (a) No person shall cause, suffer, allow, or permit the operation of any sound source on a particular category of property or any public space or right-of-way in such a manner as to create a sound level that exceeds 65 dBA during daytime (7:00 a.m. to 10:00 p.m.) hours and 45 dBA during nighttime (10:00 p.m. to 7:00 a.m.) hours when measured at or within the real property line of the receiving property, except as provided in Table 1 and Sections 634.04(b) and (c) below. Such a sound source would constitute a noise disturbance.

TABLE 1: Maximum Permissible Sound Levels (in dBA)

Source Property	Receiving Property		
	Residential & Agricultural	Business & Educational	Light Industrial
Residential & Agricultural	65 7:00 am-10:00 pm 45 10:00 pm-7:00 am	65 (all times)	75 (all times)
Business & Education	65 daytime 45 nighttime	65 (all times)	75 (all times)
Light Industrial	65 daytime 45 nighttime	65 (all times)	75 (all times)

- (b) Non-repetitive impulsive sound sources shall not exceed 100 dBA during daytime (7:00 a.m. to 10:00 p.m.) hours and 80 dBA during nighttime (10:00 p.m. to 7:00 a.m.) hours at or within a Residential & Agricultural real property line, 100 dBA at or within a Business & Education real property line, or 110 dBA at or within a Light Industrial real property line.
- (c) The following are exempt from the sound level limits of Section 634.04(a):
 - (1) Noise from emergency signaling devices;
 - (2) Noise from an exterior burglar alarm of any building provided such burglar alarm shall terminate its operation within 5 min of its activation;

- (3) Noise from domestic power tools, lawn mowers, and agricultural equipment when operated between 7:00 a.m. and 9:00 p.m. Monday - Saturday and between 10:00 a.m. and 9:00 p.m. on Sundays and legal holidays, provided they generate less than 85 dBA at or within any real property line of a Residential & Agricultural property;
- (4) Sound from church bells and chimes when a part of a religious observance or service;
- (5) Noise from construction activity provided all motorized equipment used in such activity is equipped with functioning mufflers, except as provided in Section 634.06;
- (6) Noise from snow blowers, snow throwers, and snowplows when operated with a muffler for the purpose of snow removal.

634.05 SPECIFIC PROHIBITED ACTS

- (a) No person shall cause, suffer, allow, or permit to be made verbally or mechanically any noise disturbance [as defined in Section 634.04(a)].
- (b) No person shall cause, suffer, allow, or permit the following acts:
 - (1) Operating, playing, or permitting the operation or playing of any radio, television, phonograph, or similar device that reproduces or amplifies sound in such a manner as to create a noise disturbance [as defined in Section 634.04(a)] for any person other than the operator of the device;
 - (2) Using or operating any loudspeaker, public address system, or similar device during nighttime (10:00 p.m. to 7:00 a.m.) hours, such that the sound emanating from creates a noise disturbance [as defined in Section 634.04(a)] across a residential real property line;
 - (3) Owning, possessing, or harboring any animal or bird that, frequently or for continued duration, generates sounds that create a noise disturbance [as defined in Section 634.04(a)] across a residential real property line;
 - (4) Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, liquids, garbage cans, refuse, or similar objects, or the pneumatic or pumped loading or unloading of bulk materials in liquid, gaseous, powder, or pellet form, or the compacting of refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, during nighttime (10:00 p.m. to 7:00 a.m.) hours Monday - Saturday and between 9:00 p.m. and 10:00 a.m. the following day on Sundays or legal holidays except by permit, when the sound emanating from creates a noise disturbance [as defined in Section 634.04(a)] across a residential property line;
 - (5) Operating or permitting the operation of any motor vehicle whose manufacturer's gross weight rating is in excess of 10,000 lbs, or any auxiliary equipment attached to such a vehicle, for a period of longer than 5 min in any hour while the vehicle is stationary, for reasons other than traffic congestion or emergency work, on a public right-of-way or public space within 150 ft of a residential area during nighttime (10:00 p.m. to 7:00 a.m.) hours;

- (6) Operating or permitting the operation of any tools or equipment used in construction, drilling, earthmoving, excavating, or demolition work during nighttime (10:00 p.m. to 7:00 a.m.) hours Monday - Saturday and between 9:00 p.m. and 10:00 a.m. on Sundays or legal holidays, except for emergency work, by variance issued pursuant to Section 634.07, or when the sound level does not exceed any applicable limit specified in Section 634.04(a).

634.06 EXEMPTIONS

The provisions of this ordinance shall not apply to:

- (a) Emergency work to provide electricity, water or other public utility when public health or safety is involved,
- (b) Emergency and/or defense sirens or bells;
- (c) Bells, chimes, or carillons while being used in conjunction with a religious service;
- (d) Sounds created by sporting events;
- (c) Lawn, garden, or tree care when used between the hours of 7:00 am and 9:00 pm, except Sundays or legal holidays when the hours shall be 10:00 am to 9:00 pm.
- (d) The generation of sound in situations within the jurisdiction of the Federal Occupational Safety and Health Administration.
- (e) Noise generated from municipally sponsored or approved celebrations or events.

634.07 VARIANCE CONDITIONS

- (a) Any person who owns or operates any stationary noise source may apply to the NCA for a variance from one or more of the provisions of this ordinance. Applications for a permit of variance shall supply information including, but not limited to:

The nature and location of the noise source for which such application is made;

- (1) The reason for which the permit of variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of variance is not granted;
 - (2) The approximate or anticipated level of noise that will occur during the period of the variance;
 - (3) The section or sections of this ordinance for which the permit of variance shall apply;
 - (4) A description of interim noise control measures to be taken for the applicant to minimize noise and the impacts occurring emanating from; and
 - (5) A specific schedule of the noise control measures that shall be taken to bring the source into compliance with this ordinance within a reasonable time.
- (b) Failure to supply the information required by the NCA shall be cause for rejection of the application.
 - (c) The Village for public inspection must keep a copy of the permit of variance on file.
 - (d) The NCA may charge the applicant a fee to cover expenses resulting from the processing of the permit of variance application.

- (e) The NCA may, at his/her discretion, limit the duration of the permit of variance, which shall be no longer than 6 months. Any person holding a permit of variance and requesting an extension of time shall apply for a new permit of variance under the provisions of this section.
- (f) No variance shall be approved unless the applicant presents adequate proof that:
 - (1) Noise levels occurring during the period of the variance will not constitute a danger to public health; and
 - (2) Compliance with the ordinance would impose an unreasonable hardship on the applicant without equal or greater benefits to the public.
- (g) In making the determination of granting a variance, the NCA shall consider:
 - (1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;
 - (2) Input from potentially affected property owners within a 300-foot radius from the noise source; notification costs shall be borne by the variance applicant and completed by the NCA.
 - (3) The ability of the applicant to apply the best practical noise control measures.
- (h) The permit of variance may be revoked by the NCA if the terms of the permit of variance are violated. A variance may be revoked by the NCA if there is:
 - (1) Violation of one or more conditions of the variance;
 - (2) Material misrepresentation of fact in the variance application; or
 - (3) Material change in any of the circumstances relied on by the NCA in granting the variance.
- (i) Denial or Revocation Appeal. Any person whose application for a noise permit is denied or whose noise permit is revoked by the NCA may request a review by the Board of Zoning Appeals.

634.08 ENFORCEMENT PROCEDURES

- (a) Whoever violates or fails to comply with any of the provisions of this ordinance is guilty of a minor misdemeanor.
- (b) If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.
- (c) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy emanating from, of any person for injury or damage arising from any violation of this ordinance or from other law.
- (d) In addition to the penalties provided in this chapter, injunctive relief for enforcement of the provisions of this chapter may be sought by the Solicitor after authorization by Council.

634.09 SEVERABILITY

If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

**Village Council Agenda Item
Village of Yellow Springs, Ohio**

Agenda Title: Consideration of Ordinance 2006-06: An Ordinance Amending Codified Ordinances of Yellow Springs Chapter 634 Noise.

Presenter: Eric C. Swansen, Village Manager

Problem/Issue Statement

The Village's Noise Ordinance is unenforceable due to recent court decisions.

Financial Impact

There is a \$1,400 one-time cost associated with obtaining certified quantitative equipment, training and associated travel to be able to enforce this ordinance. Staff will endeavor to find funds from existing resources to pay for these expenses and return to Council if any budget modifications are needed. Ongoing costs will include personnel costs for enforcement and adjudication (which may include overtime), annual calibration by a certified laboratory of quantitative instruments and periodic replacement of equipment. These costs will be dependant upon the number of complaints that the Village may experience, and can't be quantified at this time. There is also a risk that litigation may result in a case, which would also result in costs that can't be quantified at this time.

Recommendation

Staff has no recommendation on this ordinance.

Introduction

The Village created an ordinance in 1975 to restrict the noise emissions from a variety of sources in the community. The ordinance was based on a quantitative standard, which is to say that the noise was to be measured to gauge compliance. This differs from a qualitative or subjective standard, which uses the reasonable judgment of enforcement personnel to determine what is compliant. Generally speaking, subjective standards are the preferred method of gauging compliance, as they are easier to enforce in a court setting. There are many subjective standards that are successfully employed by municipalities to ensure health and welfare of the community – including noise ordinances.

Background

Antioch College recently installed an air handling unit for the student union building in a manner that resulted in excessive noise being created and adversely impacting neighboring properties. The Village received a complaint from Mr. Jerry Papania, a resident who was concerned about the noise levels and wanted the Village to enforce the noise ordinance.

Upon review of the complaint and subsequent investigation, the Village issued a citation to Antioch College for creating excessive noise as defined by our ordinance. The Village's citation was contested by Antioch, resulting in a case that questioned the validity of our ordinance.

The court ruled in favor of Antioch on the case, largely because the ordinance adopted quantitative measures that did not have any basis in scientific fact. Since 1975, the science of acoustics is now better understood and there are instruments that are better suited to measuring sound. In 1983, the American National Standards Institute (ANSI), a non-profit organization that seeks voluntary standards compliance on a variety of topics, adopted a standard specification for sound level meters. This standard was later updated in 2001, and is subject to revision, as ANSI deems appropriate.

Based on the findings of the court, the Environmental Commission (EC) took ownership of the issue and proceeded to revise the ordinance. The ordinance was drafted by the EC and reviewed by the Village Solicitor. The Village Solicitor returned the ordinance with some suggested improvements, which were incorporated, into the draft you see attached.

Staff has made an effort to try to bring the stakeholders from the initial incident that has resulted in the need to update our noise ordinance together to find some mutual understanding in the matter. Past efforts have not been successful, as Antioch has not been willing to discuss the matter in such a setting. The Village Manager recently sent a letter (attached) to Dr. Lawry the new Antioch President, asking for resolution on this issue. Meetings are being set up in response to this letter, although no resolution has been made on this issue yet. Nevertheless, this is an encouraging development that is related to this issue.

The Village will need time to obtain the necessary training and equipment to enforce this standard. This is very similar to those of other quantitative measurement tools, such as RADAR speed meters used in traffic enforcement.

- A noise dosimeter (\$500) that meets the specification of ANSI S1.4-1983 needs to be purchased. This instrument will need to be calibrated annually by a certified lab. The certification and operating manual needs to be available for discovery proceeding by alleged offenders.
- A wind meter (anemometer) and thermometer (\$150) is needed to record the temperature of the measurement location. The wind speed and temperature have an impact on noise levels, and each dosimeter manufacturer has established operating temperatures and wind speeds for the equipment. Failure to record the temperature and wind speed on a quantitative basis may pose a threat to successful prosecution of any noise case.
- Training for a noise control administrator to attend a two-day training session, with travel and wages included (\$750). The Noise Control Administrator responsibilities will most likely be assigned to existing part-time non-salaried staff, as a result wages would be a cost incurred in attending the training.

Alternatives Analysis

Council has three options to consider. Council can elect to not change the existing ordinance (do nothing option), consider and revise based on Council preferences the proposed ordinance (adopt ordinance

option) or direct staff to return with an ordinance that reflects a subjective standard (request a subjective standard ordinance).

The do nothing option is not a practical option. Since the courts have ruled against this ordinance, it should be revised, deleted or replaced. Any citations made using the existing ordinance can successfully be challenged. The Village can refer to state nuisance and industrial hygiene standards set in state law and administrative regulations as the basis for any noise related actions. This option has no cost.

The adopt the ordinance option, either with or without changes based on Council preferences, will bring the Village into compliance with more recent advances in acoustic measurement technology. This option will most likely stand the rigors of any legal challenges, assuming the collection and documentation is accomplished consistent with the ordinance, but there is always the possibility of litigation. This option has a one-time cost of \$1,400 and an undetermined ongoing cost, based on the number of cases that will be cited on an annual basis.

The request a subject standard option directs staff to return with an ordinance based on a reasonable person standard that will likely stand up to litigation. This option could accomplish the same effect, at less cost than the proposed ordinance. Under this alternative any noise, which unreasonably disturbs or interferes with the peace and comfort of owners or possessors of real property, can be cited for the violation. This option has a low one-time cost of approximately \$140 in legal review of a simple one page ordinance, plus an undetermined ongoing legal cost.

Recommendation

Staff has no recommendation on this ordinance.

Approved by: