

ORDINANCE NO. 2017-04

AN ORDINANCE TO REPEAL AND RE-CREATE PORTIONS OF SECTION 670-2 OF THE VILLAGE OF FOX POINT VILLAGE CODE CONCERNING LOUD AND UNNECESSARY NOISE

WHEREAS, Section 670-2 A. of the Village of Fox Point Village Code regulates loud and an unnecessary noise in a manner that differs from similar ordinances that were upheld in the decision of the Wisconsin Supreme Court in *City of Madison v. Baumann*, 162 Wis. 2d 660 (1991) and its progeny, and *Sharkey's, Inc. v. City of Waukesha*, 265 F. Supp. 2d 984, E.D. Wisconsin (2003); and

WHEREAS, in order to survive vagueness challenges to noise ordinances, courts make an important distinction between regulations that depend upon the sensibilities of any particular person, which is a vague and subjective standard, and regulations that rely upon the reasonable sensibilities of a reasonable person, with the latter being found to be a constitutionally defined objective standard; and

WHEREAS, the Village of Fox Point Chief of Police has recommended that certain revisions be made to objectify the standards that apply to loud and unnecessary noise within the Village of Fox Point; and

WHEREAS, the revisions to Sections 670-2 A. and C.(4) are proposed to incorporate exactly the ordinance that survived constitutional vagueness challenges in the *Madison v. Baumann* decision; and

WHEREAS, the Village Board for the Village of Fox Point hereby intends to amend the Village Code as recommended by Village staff.

NOW, THEREFORE, the Village Board of the Village of Fox Point, Milwaukee County, Wisconsin does hereby ordain as follows:

SECTION I Chapter 670 of the Village of Fox Point Village Code entitled, "Offenses Against Public Peace, Safety and Welfare," Article I entitled "Peace and Good Order," Section 670-2 entitled "Loud and unnecessary noise," is hereby repealed and re-created as follows:

§ 670-2 Loud and unnecessary noise.

- A. Loud and unnecessary noise prohibited. No person shall make or assist in making any noise tending to unreasonably disturb the peace and quiet of persons in the vicinity thereof except as described in subsection C. ~~It shall be unlawful for any person to make or cause to be made any loud, disturbing, or unnecessary sounds or noises which may reasonably be~~

~~expected to annoy or disturb another in or about any street, alley, park, private residence, or any commercial, municipal, or other institutional properties within the corporate limits of Fox Point. In this section, a noise shall be presumed to be unreasonably loud if it is plainly audible within a single family or two-family residence which is not the building, structure, or property from which the sound originates. It shall be prima facie evidence of a violation of these provisions and noise shall be presumed to be unreasonably loud if it is plainly audible within a single family or two-family residence, with the doors and windows closed, or contiguous apartment in a multifamily residence, which is not the building, structure, apartment, or property from which the sound originates. A violation of this section may also occur if the noise is not heard within the aforementioned structure and other aggravating circumstances are present.~~

B. Types of loud and unnecessary noises. The following acts are declared to be loud, disturbing and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive:

- (1) Use of radios, sound systems and similar devices. ~~The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, sound system, meaning a phonograph, tape player, CD player, or other similar system, or other machine or device for the producing or reproducing of sound in a loud and unnecessary manner shall be deemed a prohibited noise under Subsection A. The operation of any such device between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be presumed unreasonably loud under the provisions as set forth in Subsection A above shall be prima facie evidence of a violation of this section~~ Subsection A.
- (2) Construction or repair of buildings and excavations. The erection, demolition, alteration or repair of any building, as well as the operation of any pile driver, motorized tools or equipment, derrick, motorized hoist, or any other similar equipment attended by loud or unusual noise, or the conduct of excavation operations, other than between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and 9:00 a.m. and 5:00 p.m. on Saturday shall be prima facie evidence of a violation of Subsection A; provided, however, that the Village Manager shall have the authority, upon determining that the loss or inconvenience which would result to any party in interest would be extraordinary and of such nature as to warrant special consideration, to grant a permit for a period necessary within which time such work and operation may take place ~~within~~ outside the hours prescribed above.
- (3) Use of lawn equipment. The use of lawn equipment between the hours of 8:00 p.m. and 7:00 a.m. within the corporate limits of Fox Point shall be prima facie evidence of a violation of Subsection A.
- (4) Discharge of exhausts. The discharge into the open air of the exhaust of any stationary internal combustion engine or motorboat except through a muffler or other device which will effectively prevent loud or explosive noises therefrom shall be prima facie evidence of a violation of Subsection A.

(4)(5) Garbage collection. The collection of garbage from dumpsters on nonresidential properties outside the hours of 7:00 a.m. to 7:00 p.m. on weekdays and 9:00 a.m. to 5:00 p.m. on Saturday shall be prima facia evidence of a violation of Subsection A.

C. Exceptions. The provisions of this section shall not apply to:

- (1) Any vehicle or equipment of the Village, county, state or other governmental entity having jurisdiction in the area, or utility, while engaged in necessary public business.
- (2) The reasonable use of amplifiers or loudspeakers in the course of governmental or school activities which are noncommercial in nature.
- (3) Reasonable vocal noise from or caused by persons attending government- or school-sponsored activities, or engaged in recreational use of public parks or pools
- (4) Noise that cannot be prevented and is necessary for the protection or preservation of property or the health, safety, life or limb of some person.

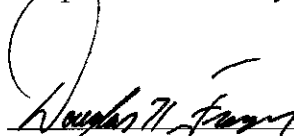
D. Any violation of this section shall be subject to the penalties and remedies as set forth in § 1-4 of the Village Code.

SECTION II SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the charter ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION III EFFECTIVE DATE. This ordinance shall take effect following its passage and publication or posting as provided by law.

Adopted this 14th day of November, 2017.



Douglas Frazer, Village President

Attest:


Kelly Meyer, WCMC, Village Clerk