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AN ORDINANCE OF THE CITY OF ASBURY PARK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER III, ENTITLED "POLICE REGULATIONS," AND CHAPTER XXVIII, ENTITLED "HEALTH," OF THE "REVISED GENERAL ORDINANCES OF THE CITY OF ASBURY PARK, NEW JERSEY," CONCERNING NOISE.

WHEREAS, the City of Asbury Park (also referenced as the "City") is a unique municipality, composed of urban, suburban and beachfront areas located within a radius of approximately 1.5 square miles; and

WHEREAS, the City is in the midst of certain redevelopment efforts involving various areas of the City; and

WHEREAS, in some circumstances, the relevant redevelopment plans associated with such redevelopment efforts promote the existence of mixed-use districts in which entertainment and commercial venues are located in close proximity to residential dwellings and units; and

WHEREAS, the intention of such mixed-use districts is to create and encourage vibrant and walkable "downtown" settings; and

WHEREAS, during the course of the City's redevelopment efforts, it has become apparent to the Mayor and City Council that a delicate balance must be struck in order to promote these entertainment and commercial venues, while at the same time ensuring that the noise associated with such venues does not unreasonably affect the health, safety and welfare of neighboring residents, or the public in general; and

WHEREAS, the existing regulations concerning noise that are contained within the Asbury Park City Code include, among other things, provisions which involve decibel standards measurable by a certified noise control officer; and

WHEREAS, noise regulations containing such measurable decibel standards must be in accordance with the requirements set by the New Jersey Department of Environmental Protection (the "NJDEP"), and NJDEP approval is required for all local Ordinances embodying such regulations; and

WHEREAS, the Mayor and City Council have determined that the NJDEP standards are not appropriate or workable for the unique requirements of the City; and

WHEREAS, the Mayor and City Council therefore wish to repeal those sections of the City Code which contain provisions involving measurable decibel standards; and

WHEREAS, instead of utilizing measurable decibel standards, the Mayor and City Council wish to address noise issues through the adoption of a comprehensive nuisance code, which will provide more discretion and flexibility to the local law enforcement officials than those provided under the NJDEP standards; and

WHEREAS, a nuisance code shall be enforced by the Police and Code Enforcement Departments, as well as by the local Health Officer or enforcing agency; and

WHEREAS, with the above issues in mind, the Mayor and City Council wish to approve and adopt the within Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Asbury Park, in the County of Monmouth and State of New Jersey, as follows:

1. That Chapter III, entitled "Police Regulations," of the "Revised General Ordinances of the City of Asbury Park, New Jersey," is hereby amended in order to repeal Sections 3-25 ("Noise Restrictions"), 3-26 ("Noises Emanating from Mobile

Sources"), and 3-27 ("Regulating Noises From Stationary Sources") in their entirety.

2. That Chapter III, entitled "Police Regulations," of the "Revised General Ordinances of the City of Asbury Park, New Jersey," is hereby further amended and supplemented in order to establish a new Section 3-25 thereof, entitled "Prohibited Noise Nuisances," as follows:

3-25 PROHIBITED NOISE NUISANCES.

3-25.1 Findings. Excessive sound is a serious hazard to the public health, safety and welfare, and to the quality of life of the residents of the City of Asbury Park, and is hereby declared to be a public nuisance. The residents of the City of Asbury Park have a right to and should be insured an environment free from excessive sound. The following regulations are enacted to prevent excessive sound that may jeopardize the health, safety or welfare of the City's citizens or degrade their quality of life.

3-25.2 Definitions. As used in this section:

Emergency work shall mean any work or action necessary to deliver essential services including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, and public transportation, removing fallen trees on public rights-of-way, or abating life threatening conditions.

Motor vehicle shall mean any vehicle that is propelled or drawn on land by an engine or motor, such as, but not limited to, passenger cars/automobiles, buses, trucks, truck-trailers, semi-trailers, campers, go-carts,

snowmobiles, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.

Motorcycle shall mean an unenclosed motor vehicle having a saddle for the use of the operator and two (2) or three (3) wheels in contact with the ground, including, but not limited to, motor scooters, mopeds, mini-bikes, and ATV's.

Muffler shall mean a sound dissipative device or system for abating the sound of escaping gases of an internal combustion engine.

Noise shall mean any sounds of such level and duration which are, or tend to be, injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property.

Person shall mean any individual, firm, corporation, company, association, society, club, partnership, joint stock company, or any other form of association or organization, and shall also include the State or any political subdivision thereof, and any agency or instrumentality of the State.

Public right-of-way shall mean any street, avenue, boulevard, road, highway, sidewalk, alley, or similar place that is leased, owned or controlled by, or otherwise under the jurisdiction of, a governmental entity.

Public space shall mean any real property or structures thereon that are owned or controlled by the City of Asbury Park or other governmental entity.

3-25.3 Prohibited Conduct; General. It shall be unlawful for any person to make, or to cause, suffer or permit to be made or to be continued, any behavior or loud, unnecessary

or unusual noise, or any noise or act which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any other person within the corporate limits of the City of Asbury Park. Such conduct shall be considered a "nuisance."

3-25.4 Nuisance Prohibitions Enumerated. The following acts, among others, are declared to be nuisances in violation of this section, when the noise emanating from such acts is clearly audible to neighboring property owners or inhabitants, or clearly audible from at least 100 feet from the actor, source or device. The following enumeration shall not be deemed exclusive:

a. *Audio, video or musical devices.* The playing or use of any audio, visual or music devices, including but not limited to radios, stereos, I-Pods, televisions, musical instruments or equipment, musical amplifying devices of any kind, or other machines or devices of any kind for the production or reproduction of sound, in such a manner or in such volume as to unreasonably annoy or disturb the quiet, comfort or repose of persons in any dwelling unit or other type of residence, or while otherwise on their property, or to disturb the peace, quiet and comfort of the neighboring inhabitants, or to disturb the peace, quiet and comfort of any person in general, or to play or operate the same with louder volume than is necessary for convenient hearing of the person or persons who are in the room, chamber, venue, place or area in which said machine or device is operated and who are voluntary listeners thereto.

- b. *Yelling, Shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, or yelling, shouting, hooting, whistling or singing at any other place, whether public or private, in such a manner and in such volume and intensity to disturb the peace and quiet of the neighborhood, so as to annoy or disturb the quiet, comfort or repose of persons in any office or dwelling, or any other type of residence, or of any persons in the vicinity.
- c. *Sounds of peddlers, hawkers and vendors.* The sounds or shouting of peddlers, hawkers and/or vendors soliciting business in such a manner and in such volume and intensity to disturb the peace and quiet of the neighborhood, or so as to annoy or disturb the quiet, comfort or repose of persons in any office or dwelling, or any other type of residence, or of any persons in the vicinity.
- d. *Loudspeakers and amplifiers for advertising.* The use, operation, or permitting the playing, use or operation of any radio, television, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the production or reproduction 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, structure, store or establishment, except that noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

- e. *Construction.* The operation of any equipment used in commercial construction, repair, alteration or demolition work on buildings, structures, streets or appurtenances thereto, in residential or commercial zone districts or in mixed-use zone districts which permit residential uses, as identified in the City's Land Development Regulations and Zoning Map or as identified in a duly adopted redevelopment plan, on weekdays between the hours of 6:00 p.m. and 8:00 a.m. the following day, or between 6:00 p.m. Saturday night and 8:00 a.m. Monday morning and on legal holidays, except in the case of emergency work.
- f. *Landscaping Equipment.* The operation of power mowers and power tools used in landscaping outdoors between the hours of 8:00 p.m. and 8:00 a.m. the following day.
- g. *Loading Operations.* Loading, unloading, opening, or otherwise handling boxes, crates, containers, garbage cans or similar objects between the hours of 6:00 p.m. and 6:00 a.m. the following day, in such a manner as to annoy or disturb the quiet, comfort or repose of persons in any office or dwelling, or any other type of residence, or of any persons in the vicinity.
- h. *Refuse Compacting Vehicles.* Operating or permitting the operation of any motor vehicle which can compact refuse, and which creates, during the compacting cycle a disturbing noise between 6:00 p.m. and 6:00 a.m. the following day in residential zone districts or in mixed-use zone districts which permit residential uses, as identified in the City's Land Development Regulations and

Zoning Map or as identified in a duly adopted redevelopment plan.

- i. *Vehicle Repairs or Testing.* Repairing, rebuilding, modifying or testing any motor vehicle, off-road vehicle or motorboat in or near a residential zone district or in or near a mixed-use zone district which permits residential uses, as identified in the City's Land Development Regulations and Zoning Map or as identified in a duly adopted redevelopment plan, in such a manner as to annoy or disturb the quiet, comfort or repose of persons in any office or dwelling, or any other type of residence, or of any persons in the vicinity.
- j. *Standing motor vehicles.* Operating or permitting the operation of a motor vehicle or any attached auxiliary equipment for a period longer than three (3) minutes in any hour while such vehicle is stationary, for reasons other than traffic congestion or emergency work, on a public right-of-way or public space within one hundred fifty (150) feet of a residential zone district or mixed-use zone district which permits residential uses, as identified in the City's Land Development Regulations and Zoning Map or as identified in a duly adopted redevelopment plan, between the hours of 8:00 p.m. and 8:00 a.m. the following day, or while on private property in a residential zone district or mixed-use zone district which permits residential uses, as identified in the City's Land Development Regulations and Zoning Map or as identified in a duly adopted redevelopment plan, while not within a completely enclosed structure.

k. *Bells and Alarms.* The sounding or permitting the sound of any alarm, including but not limited to an alarm on any building or motor vehicle, or the sounding of bells, unless such alarm or bells shall terminate operation within fifteen (15) minutes of being activated.

l. *Horns, signal devices, etc.* The sounding of any horn or signaling device on any motor vehicle, motorcycle or any other vehicle on any street or public space within the City of Asbury Park, except as a danger warning; the creation by means of any horn or signaling device of any unreasonably loud or harsh sound; or the sounding of any said horn or signaling device for any unnecessary or unreasonable period of time; or the use of said horn or signaling device when traffic is for any reason held up; or the use of any horn, whistle or device operated by engine exhaust.

m. *Animals, birds, etc.* The keeping of any animal or bird which emits frequent or long-continued noises, including but not limited to barking, howling, growling or whining, which disturbs the peace or quiet, or interferes with the sleep or rest of any person.

n. *Mufflers.* The use of a motor vehicle, motorcycle or any other vehicle on any street or public space within the City of Asbury Park which does not have a muffler in good working order.

3-25.5 Prevailing Time. The hours referenced in this section shall refer to prevailing time, i.e., either Eastern Standard Time or Eastern Daylight Savings Time.

3-25.6 Persons Affected. This section is intended to apply to and bind all owners, tenants and occupants of real property within the City of Asbury Park, as well as to guests at such real property, and to all visitors and passers-by while within the corporate limits of the City of Asbury Park, and to all other persons as heretofore defined within this section. This section shall not apply to representatives and/or employees of the City of Asbury Park while performing tasks on official business of the City of Asbury Park, or for specific activities authorized by the Mayor and City Council.

3-25.7 Enforcement. It shall be the duty of the Police Department and the Code Enforcement Department of the City of Asbury Park to determine whether or not this section has been and is being complied with and to enforce the provisions of this section against any person violating the same.

3-25.8 Violations and Penalties. Any Police Officer or Code Enforcement Officer of the City of Asbury Park, or any taxpayer or resident of the City of Asbury Park, may make a Complaint in the Municipal Court of the City of Asbury Park for any violations of this section, or any subsection, paragraph or provisions thereof. Upon a conviction in such case, for each and every violation, the person committing, taking part in or assisting in such violation or violations shall be liable to the penalties as set forth in Chapter I, Section 1-5.

3. That Chapter XXVIII, entitled "Health," of the "Revised General Ordinances of the City of Asbury Park, New Jersey," is hereby amended and supplemented at Section 28-1.10 thereof, entitled "Noise," in the following specific respects (additions are shown with underline):

28-1.10 Noise. No person shall make, cause or permit to be made or caused upon any premises owned, occupied or controlled by him/her or it, or upon any public street, alley or thoroughfare, any unnecessary noises or sounds by means of the human voice, or by any other means or methods which are physically annoying to persons, or which are so harsh, or so prolonged or unnatural, or unusual in their use, time and place as to occasion physical discomfort, or which are injurious to the lives, health, peace and comfort of the inhabitants of the City. The provisions contained in Section 3-25 of the City Code are hereby incorporated herein by reference, and any violation of Section 3-25 shall also represent a violation of this Chapter.

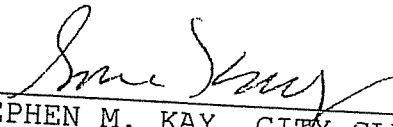
4. That the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.
5. That all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.
6. That this Ordinance shall take effect immediately upon final passage and publication in accordance with the law.

3-25, 4A

NUISANCE PROHIBITIONS

I, STEPHEN M. KAY, City Clerk of the City of Asbury Park,
Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to
be a true and exact copy of an ORDINANCE No. 2932 which
was finally adopted by the Mayor and City Council at a meeting
held on the 7th day of April, 2010

CERTIFIED BY ME THIS 8th DAY OF April, 2010


STEPHEN M. KAY, CITY CLERK

cc: Police Department ✓
Municipal Court
Code Enforcement
City Attorney
Coded Systems

FAUSERS\Commercial Litigation Municipal Law\Asbury Park 2\Ordinances\Noise.Ord.2010.doc

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