

Ordinance No. _____

Introduced May 2, 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AMENDING AND REENACTING SECTION 509.05 OF THE GENERAL OFFENSES CODE UNNECESSARY NOISE AND PEACE DISTUBANCES AT SECTION 509.05 (3) ANIMALS AND FOWL ADDRESSING FREQUENT LONG CONTINUED NOISE BY ANIMALS DISTURBING COMFORT AND REPOSE OF PERSONS IN THE VICINITY TO FURTHER INCLUDE PARTICULAR DELINEATION FOR SUCH DISTURBANCES AND TO NOTE ADDITIONAL SECTIONS OF THE CODIFIED ORDINANCES ADDRESSING SAME

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Council of the City of Wheeling does herby amend and reenact Article 509, of the General Offenses Code of the City of Wheeling, Sections 509.05 (3) as amended and reenacted as follows:

ARTICLE 509
Disorderly Conduct and Peace Disturbance

509.01 Disorderly conduct.

509.02 Loitering.

509.03 Loitering on school property.

509.04 Conduct upon streets, sidewalks and recreation area; possession of beer or intoxicating beverage.

509.05 Unnecessary noise prohibited.

509.06 Special permit; quiet zones.

509.07 Begging.

509.08 Wearing masks, hoods or face coverings.

509.09 Criminal loitering by persons on supervised release.

509.99 Penalty.

CROSS REFERENCES

Authority to maintain order - see W. Va. Code 8-12-5(19), (44)

Crimes against the peace - see W. Va. Code Art. 61-6

Intoxication or drinking in public places - see GEN. OFF. 521.05

Breach of peace with weapon - see GEN. OFF. 545.02

509.01 DISORDERLY CONDUCT.

(a) No person shall, in a public place, any State or Municipal office or office building or any other property owned, leased, occupied or controlled by the State or Municipality, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity: provided, that nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

(1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.

(2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:

A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and

B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

(3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles.

(WVaC 61-6-1b)

509.02 LOITERING.

(a) Definitions.

(1) "Loitering" means remaining idle in essentially one location and includes the concept of spending time idly to be dilatory; to linger; to stay; to saunter; to delay; to stand around and shall also include the colloquial expression "hanging around".

(2) "Public place" means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the use of the public. It also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(b) Police Order to Disperse; Violation.

(1) No person shall loiter, loaf, wander, stand or remain idle either along and/or in consort with others in a public place in such manner so as to:

A. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tend to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

B. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

(2) When any person causes or commits any of the conditions enumerated in subsection (b)(1) hereof, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this subsection (b).

(Ord. 6874. Passed 9-25-79.)

509.03 LOITERING ON SCHOOL PROPERTY.

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal.

(WVaC 61-6-14a)

509.04 CONDUCT UPON STREETS, SIDEWALKS AND RECREATION AREAS;
POSSESSION OF BEER OR INTOXICATING BEVERAGE.

No person on any of the sidewalks or streets shall conduct himself in a manner annoying to persons passing by or occupants or residents of adjoining buildings. No person shall carry or possess any unsealed container or partially filled container of nonintoxicating beer or intoxicating beverage upon any sidewalks, streets, playgrounds or the Wheeling Island Boat Launching Area within the City except when specifically permitted by the City during an organized activity.

(Ord. 6618. Passed 9-19-78.)

509.05 UNNECESSARY NOISE PROHIBITED.

(a) No person shall make, continue or cause to be made, within the City any unreasonably loud, disturbing and unnecessary noise.

(b) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but this enumeration shall not be deemed to be exclusive:

(1) Horns or other signal devices on vehicles. The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or, if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation, by means of any such signal device, of any unreasonably loud or harsh sound; and the sounding of such device for any unnecessary and unreasonable period of time.

(2) Radios and musical instruments. The playing of any radio, television, phonograph or any musical instrument in such a manner or with such volume, particularly during the hours between 12:00 midnight and 7:00 a.m. as to annoy or disturb the quiet, comfort or repose of persons in the same or any other dwelling, hotel or other type of residence.

(3) Animals and fowl. The keeping of any animal or bird which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity. Particulary, but not limited to between the hours of 7:00 a.m. and 10:00 p.m., a dog cannot bark for more than fifteen consecutive minutes , and between the hours of 10:01p.m. and 6:59 a.m., a dog cannot bark for more than ten consecutive minutes during any given twenty four (24) hour period. However, such noise regardless of duration and the time of such may constitute a disturbance of the peace. See also separate and applicable codes at sections 507.07; 507.08; 507.13.

(4) Operation of vehicles. The use of any automobile, motorcycle or vehicle so out of repair, so loaded, or in such manner as to create loud or unnecessary grating, grinding, rattling or other noises.

(5) Steam or other whistles. The blowing of any steam or other whistle or sound-producing instrument attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.

(6) Exhausts without mufflers. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(7) Devices operated by compressed air. The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

(8) Loading or unloading vehicles; 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.

(9) Bells and gongs. The sounding of any bell or gong attached to any building or premises, save and except church bells and curfew, which disturbs the quiet and repose of persons in the vicinity thereof.

(10) Hawking or crying wares. The shouting and crying of peddlers, hawkers and vendors of newspapers or other articles which disturb the quiet and repose of the neighborhood.

(11) Attracting attention to shows, merchandise, etc. The use of any drum, loudspeaker, calliope on a river boat, or other noise-producing instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise, except where a specific permit is received from the City Manager pursuant to Section 509.06 .

(12) Loudspeakers and amplifiers. The use of mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising or other purposes except where a specific permit is received from the City Manager pursuant to Section 509.06

(13) Wedding celebrations; sale of automobiles, etc. The sounding of horns, ringing of bells, or dragging of tin cans or other noise-producing objects over the streets in connection with the celebration of a wedding, the sale of automobiles, or otherwise.

(14) Whistles, bells, etc., on vessels. The sounding of any whistle, horn or other noise-producing instrument on any vessel moored to the shore within the City when not used legitimately as a signal for purposes of navigation.

(15) Loud talking, cries, singing, etc. Any noise by any person by himself by way of loud talking, cries, calls, singing or otherwise disturbing to the rest or repose of persons in the

immediate vicinity, not necessary in the ordinary pursuit of an occupation, calling or trade, and not otherwise covered by other provisions of this article.

(1961 Code Sec. 515.06)

509.06 SPECIAL PERMIT; QUIET ZONES.

(a) Noises Detrimental to Life, Health or Comfort; Special Permit. No person shall make, continue or cause to be made within the City, any noises of such character, intensity and duration as to be detrimental to life, health or comfort of any individual, unless a permit shall be obtained from the City Manager, upon application showing a necessity therefor, limited to a specific occasion. Such permit shall be issued only when the City Manager is satisfied that the issuance of such permit is necessary and will not result in any unnecessary and unseemly noise to the detriment of the health and comfort of any individual.

(1961 Code Sec. 515.07)

(b) Unnecessary Noises in Specific Areas. No person, by himself or by the operation of any instrument, device, agency or vehicle shall make any unnecessary or unseemly noise within 150 feet of any portion of the grounds and premises on which is located a hospital or other institution reserved for the sick, aged or infirm, or within 150 feet of any school, court house, church or building in which religious services are held, during school hours or hours of public worship, or hours of holding court respectively.

(1961 Code Sec. 515.08)

(c) Designation and Marking of Zones of Quiet. The area within 150 feet of a hospital, school, court house or church shall be officially known as a "zone of quiet" and the City Manager shall place signs within such zones of quiet calling attention to the prohibition against unnecessary noises.

(1961 Code Sec. 515.09)

509.07 BEGGING.

No person within the City for personal benefit shall beg alms or solicit charity of any other person on public streets of the City or in any building where public or private business is conducted.

(1961 Code Sec. 535.02)

509.08 WEARING MASKS, HOODS OR FACE COVERINGS.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

(1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;

(2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;

(3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;

(4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or

(5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.

(b) The provisions of this section do not apply to any person:

(1) Under sixteen years of age;

(2) Wearing a traditional holiday costume;

(3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;

(4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;

(5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or

(6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport.

(WVaC 61-6-22)

509.09 CRIMINAL LOITERING BY PERSONS ON SUPERVISED RELEASE.

(a) No person serving a period of supervised release of ten years or more pursuant to the provisions of West Virginia Code 62-12-26, shall loiter within one thousand feet of the property line of the residence or workplace of a victim of a sexually violent offense for which the person was convicted.

(b) No person serving a period of supervised release of ten years or more pursuant to the provisions of West Virginia Code 62-12-26 for an offense where the victim was a minor shall loiter within one thousand feet of the property line of a facility or business the principal purpose of which is the education, entertainment or care of minor children, playground, athletic facility or school bus stop.

(c) A person does not violate the provisions of subsection (a) or (b) of this section unless he or she has previously been asked to leave the proscribed location by an authorized person and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

(d) As used in this section:

(1) "Authorized person" means:

- A. A law-enforcement officer acting in his or her official capacity;
- B. A security officer employed by a business or facility to protect persons or property acting in his or her employment capacity;
- C. An owner, manager or employee of a facility or business having a principal purpose the caring for, education or entertainment of minors;
- D. A victim or parent, guardian or lawful temporary or permanent custodian thereof;
- E. An employee of a county board of education acting in his or her employment capacity.

(2) "Facility or business, the principal purpose of which is the education, entertainment or care of minor children" means:

- A. A pre-school, primary, intermediate, middle or high school, either public or private;
- B. A childcare facility;
- C. A park;

D. An athletic facility used by minors;

E. A school bus stop.

(3) "Loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section shall be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present. (WVaC 61-8-29)

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars (\$100.00).

(Ord. 9130. Passed 7-7-87.)

(b) Whoever violates Section 509.03 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(c) Whoever violates Section 509.09 shall be imprisoned for not more than thirty days. (WVaC 61-8-29)