ORDINANCE 2012–08

AN ORDINANCE TO AMEND THE DISTURBING THE PEACE ORDINANCE AND DECLARING AN EMERGENCY

WHEREAS this Council finds and determines that the Village should be able to provide a Disturbing the Peace Ordinance to preserve the public health, safety, and welfare of the residents of the Village of Ashville,

AND WHEREAS it is desirable to modify the Disturbing the Peace Ordinance from time to time,

AND WHEREAS it is necessary for the preserve the public health, safety, and welfare of the residents of the Village of Ashville that events affecting the peace be properly regulated:

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ASHVILLE, OHIO:

SECTION ONE

THAT Section 509.08(b) of the Codified Ordinances of the Village of Ashville is amended to read:

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

(1) Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle, motor scooter or other vehicle on any street or public place of the Village, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up;

(2) Radios, phonographs, etc. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, television set, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located shall be prima-facie evidence of a violation of this section.

(3) Loudspeakers, amplifiers for advertising. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure;

(4) Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. of the following day or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any person in the vicinity;

(5) Animals, birds, etc. The keeping of any animal or bird which, by causing frequent or long continued noise, disturbs the comfort or repose of any person in the vicinity;

(6) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorcycle, motor scooter or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

(7) Defect in vehicle or load. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise;

(8) Construction or repairing of buildings. The erection (including excavating), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 8:00 p.m. on week days, or 9:00 a.m. and 8:00 p.m. weekend days.

(9) Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street;

(10) Hawkers, peddlers. The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood;

(11) Drums. The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale;

(12) Metal rails, pillars and columns, transportation thereof. The transportation of rails, pillars or columns of iron, steel or other material, over and along streets and other public places upon carts, drays, cars, trucks or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places;

(13) Pile drivers, hammers, etc. The operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance, the use of which is attended by loud or unusual noise, other than between the hours of 7:00 a.m. and 8:00 p.m. on week days, or 9:00 a.m. and 8:00 p.m. weekend days;

(14) Blowers. The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(15) Commercial vehicles. The use or parking, within 175 feet of any residential property, of a vehicle, other than a passenger car, school bus, any mode of public transportation, or emergency or safety vehicle, which emits or results in noise from any source, including, without limitation, an internal combustion engine, generator or refrigeration unit, for any purposes or length of time except for:

A. The expeditious unloading and delivery or pickup and loading of goods and materials including, without limitation, the collection of refuse or recycling, between the hours of 7:00 a.m. and 8:00 p.m. on weekdays or 9:00 a.m. and 8:00 p.m. weekend days; or

B. Operation in connection with construction or demolition activity otherwise permitted by law.

(16) Unpermitted Special Events. Any Special Event, as defined in section 509.09 of the Codified Ordinances, for which a permit has not been issued.

SECTION TWO
THAT Section 509.08(c) of the Codified Ordinances of the Village of Ashville is amended to read:

(c) Exceptions. The provisions of this section shall not apply to the following:

(1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of urgent necessary work in the interest of public health and safety.

(2) For parades and special events, when a permit for such event has been issued by ~~the Chief of Police~~ **pursuant to section 311.02 or section 509.09 of the Codified Ordinances**, during the dates and times specified on the permit.

(3) Organized school-related programs, sporting events, and activities, or other public programs, activities, or events authorized by the Chief of Police or his designated representative.

SECTION THREE
THAT there be added a new section to Chapter 509 of the Codified Ordinances of the Village of Ashville, numbered 509.09, which shall read:

509.09 SPECIAL EVENTS

(a) PURPOSE. The purpose of this Section is to provide the Village of Ashville with a mechanism for regulating the dates, times, location, and conditions under which permittees are authorized to conduct Special Events within the Village of Ashville in a manner which is consistent with maintaining public health, safety, and welfare of the citizens of Ashville and which attracts visitors to Ashville for special recreational, entertainment, or charitable events.

(b) DEFINITIONS.

(1) "Special Event" means any event, sponsored by an individual, business, or other entity or organization intended primarily for recreational, entertainment, or charitable purposes to be held within the jurisdiction of the Village of Ashville which does not block off any street, alley, or highway area without addition approval as part of the Special Event Permit process.

(2) "Applicant" means the individual, corporation, partnership, or other entity or organization sponsoring the proposed Special Event.

(3) "Special Event Permit" means a permit duly issued pursuant to this Section for the conduct of a Special Event containing such terms and conditions which the Chief of Police finds necessary to conduct the Special Event in a manner which is consistent with maintaining public health, safety, and welfare of the citizens of Ashville.

(c) SPECIAL EVENTS PERMIT REQUIRED. All Special Events applications will be reviewed by the Chief of Police or designee. No person may conduct a Special Event without a Special Events Permit issued by the Chief of Police pursuant to this Section.

(d) SPECIAL EVENTS PERMIT APPLICATION. Each Special Events Permit Application shall be submitted to the Chief of Police at least fourteen (14) business days prior to the date of the Special Event. The application shall be on a form provided by the village (Exhibit A), shall be accompanied by an application fee as set by council, and shall include, at a minimum.

(1) Dates and times of the Special Event.

(2) Description of the Special Event.

(3) Address at which the Special Event will take place.

(4) Estimated number of people attending the Special Event.

(5) Evidence of capability to run the Special Event, including financial and personnel, including, but not limited to: the ability to provide security personnel, age verification (if necessary), and first aid.

(6) Evidence of liability insurance.

(7) Plan for dealing with traffic, parking, and crowd control.

(8) Need for village services, utilities, etc. for the Special Event.

(e) CRITERIA FOR ISSUANCE OF SPECIAL EVENTS PERMIT.

(1) In considering whether to issue a Special Event Permit, the Chief of Police shall not issue a permit when:

(A) The proposed Special Event is being held within the period beginning October 30 and ending April 30.

(B) The applicant has received a Special Event Permit for a Special Event to be held within the same calendar month as the proposed Special Event, or a Special Event has been held at the proposed location within the same calendar month as the proposed Special Event..

(C) The applicant has previously received four Special Event Permits within the calendar year as the proposed Special Event, or for Special Events have been held at the proposed location within the same calendar year as the proposed Special Event.

(D) The proposed Special Event is scheduled to end later than 10:30 p.m.

(E) The proposed Special Event is scheduled to begin earlier than 5:00 p.m.

(F) The proposed Special Event is to take place in property zoned other than (GB).
(i) A block party will be an exception to the (GB) zoning requirement.

(2) In considering whether to issue a Special Event Permit, the Chief of Police may not issue a permit when:

(A) The Chief of Police determines the proposed Special Event cannot be conducted in the location proposed without endangering the public safety, disturbing the peace, threatening public health, or damaging private or public property. The Chief of Police may consider the following criteria when making a determination under this section:

(i) Whether the applicant has provided adequate parking and traffic control for the Special Event.

(ii) Whether the applicant has provided adequate crowd control for the Special Event.

(iii) Whether the applicant has adequate liability insurance.

(iv) Whether the proposed Special Event poses a burden on municipal services or utilities.

(v) Whether the proposed Special Event will have an undue adverse effect on neighboring properties due to noise, litter or other negative features.

(a) There is a presumption that a proposed Special Event otherwise compliant with the provisions of this Section will not have an undue adverse effect on neighboring properties. Evidence that prior Special Events conducted by the applicant or on the same premises as the proposed Special Event has had an undue adverse effect on neighboring properties is sufficient to rebut this presumption.

(vi) Whether the applicant has adequate financial ability and staff to conduct the Special Event satisfactorily.

(B) The applicant has previously

(i) violated any provision of this Section;

(ii) failed to comply with the terms of a Special Event Permit issued pursuant to this Section;

(iii) has been convicted of a violating any provision of Chapters 509, 513, 517, 521, or 529 of the Codified Ordinances.[1]

(f) PENALTIES.

(1) Any person who violates any provision of this Section or who fails to comply with the terms of a Special Events Permit commits a civil violation and shall be subject to a monetary penalty equaling the penalty for a minor misdemeanor as defined in section 501.99(a)(2)(E) of the Codified Ordinances.

(2) A penalty levied pursuant to this Section may also include, in addition to the amount listed in the previous subsection, monetary amounts for recovery of police services, trash removal, or property damage of public property.

(3) All penalties collected hereunder shall tenure to the Village of Ashville.

(g) ENFORCEMENT. This Section and the terms of a Special Events Permit shall be enforced by any law enforcement officer or by any other designated Village Official duly authorized to enforce its provisions.

(h) MISCELLANEOUS PROVISIONS

(1) The holder of a Special Events permit shall be solely responsible for conducting the Special Event in compliance with the conditions of the Permit and for maintaining public safety and order during the Special Event. The Village of Ashville assumes no liability or responsibility by issuing the permit.

(2) This Section shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other statute, rule, ordinance, regulation, by-law, permit, or other legal requirements. Where this Section imposes a greater restriction upon the conduct of a Special Event, the provisions of this Section shall prevail.

(3) Should any section or provision of this Section be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not invalidate any other section or provision of this Section.

(4) This Section shall not apply to any event sponsored, organized, or conducted by any department or agency of the Village of Ashville. Scheduling of such municipal events shall be subject to the control of the Village Council or its designee.

SECTION FOUR

THAT this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the Village and its inhabitants for the reason that there exists an imperative necessity to preserve peace and tranquility within the Village, and shall go into full force effective upon its passage by Council.

PASSED THIS the ~~17th~~ 1st DAY OF ~~September,~~ October 2012

ATTEST:

Barbara J. Gilbert **DATE:** 10-01-12

Barbara J. Gilbert, Clerk-Fiscal Officer

APPROVED:

Charles K. Wise **DATE:** 10-02-12

Charles K. Wise, Mayor

Prepared Date: **08/13/2012**
Revised Date:
Review Date: