

AVONDALE BOROUGH
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 2023-279

AN ORDINANCE OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF BOROUGH OF AVONDALE BY UPDATING AND EXPANDING CHAPTER 281 TO RENAME THE CHAPTER AND INCLUDE PROVISIONS TO CONTROL NOISE WITHIN THE BOROUGH, PROHIBIT LOUD AND UNREASONABLE NOISES, PROVIDE FOR ADDITIONAL PROVISIONS TO PROTECT THE PEACE AND GOOD ORDER OF THE BOROUGH INCLUDING ADDRESSING GRAFFITI AND ITS REMOVAL, PROVIDE VIOLATION AND PENALTY PROVISIONS RELATED TO THE SAME, AND TO AMEND CHAPTER 430. ZONING. AT SECTION 430-75 IN ORDER TO REMOVE NOISE STANDARDS FROM THE ZONING ORDINANCE DUE TO NOISE NOW BEING ADDRESSED IN NEW CHAPTER 281 AND SEVERABILITY, REPEALER, GENERAL CODE AND EFFECTIVE DATE PROVISIONS.

BE IT ENACTED AND ORDAINED by Borough Council of the Borough of Avondale, as follows:

SECTION 1. The Code of the Borough of Avondale is hereby amended to entirely remove Chapter 281 and replace it entirely with a new Chapter 281 which is attached hereto as Exhibit "A".

SECTION 2. Chapter 430. Zoning of the Code of the Borough of Avondale is hereby amended to entirely remove Section 430.75. Noise Standards. and mark such section as "Reserved".

SECTION 3. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Council of the Avondale Borough that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included therein.

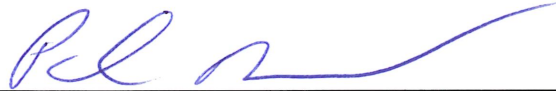
SECTION 4. General Code. General Code is hereby authorized to make whatever numbering and formatting changes are needed in order to properly codify this ordinance and properly incorporate this ordinance into the Borough's online Code.

SECTION 5. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

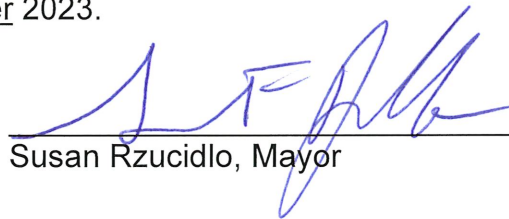
SECTION 6. Effective Date. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS 5th DAY OF December 2023.


PASSED by Borough Council this 5th day of December 2023.

BY: 
Paul Morgan, President

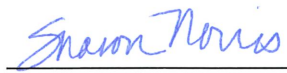
APPROVED this 5th day of December 2023.

BY: 
Susan Rzucidlo, Mayor

ENACTED this 5th day of December 2023.

BY: 
Sharon Norris, Borough Secretary

I HEREBY CERTIFY the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 5th day of December, 2023.

BY: 
Sharon Norris, Borough Secretary

Chapter 281

Noise, Peace and Good Order

Article I

Noise - Engine Brake Retarding Devices

§ 281-1 **Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

ENGINE BRAKE RETARDING DEVICE

Any mechanical, electromechanical, or electronic-mechanical device, or any combination thereof (also commonly called an "engine brake"), used for the purpose of supplementing the braking system of a diesel, gasoline, or propane powered motor vehicle engine.

PA. RT. 41

That road designated by the Commonwealth of Pennsylvania as State Route 41 which, within the municipal limits of Avondale Borough, is called "Pennsylvania Avenue."

§ 281-2 **Prohibited use.**

- A. No operator of any gasoline, diesel, or propane powered motor vehicle shall engage, use, or otherwise operate an engine brake retarding device on Pa. Rt. 41 within the municipal limits of Avondale Borough.
- B. Section **281-2A** above shall not apply to emergency situations requiring the use of an engine brake retarding device, provided the emergency situation presents a clear and present danger to the safety and/or property of persons within the municipal limits of Avondale Borough, other motor vehicle operators, and the operator and/or passengers of the motor vehicle utilizing the engine brake retarder device in the emergency situation.

§ 281-3 **Signage.**

After the enactment of this Article, Avondale Borough shall erect or cause to be erected such signage as authorized and required by the Commonwealth of Pennsylvania Department of Transportation in order to notify the operator of any motor vehicle that the use of engine brake retarding devices is prohibited on Pa. Rt. 41 within the municipal limits of Avondale Borough; the dimensions, colors, etc., of any signs shall be substantially in accordance with applicable Commonwealth of Pennsylvania Department of Transportation regulations pertaining to "engine brake retarder" signs.

§ 281-4 **Authority.**

- A. In accordance with the Act of June 17, 1976, P.L. 162, No. 81, Section 1, as amended (75 Pa.C.S.A. § 6105, as amended), the authority for the Avondale Borough Council to enact this article has been given by letter dated June 6, 2001, from Andrew L. Warren, District Administrator (District 6) of the Commonwealth of Pennsylvania Department of Transportation.
- B. The original letter of authorization from Commonwealth of Pennsylvania Department of Transportation District Administrator Andrew L. Warren June 6, 2001, shall be kept on file at all times in the municipal offices of Avondale Borough.

§ 281-5 Violations and penalties.

Any person who violates or permits a violation of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to the county correctional facility for a period not exceeding 30 days. Each day that such violation exists shall constitute a separate offense, and each section of this article that is violated shall also constitute a separate offense. In addition to or in lieu of enforcement under this section, the Borough may enforce this article in equity in the Court of Common Pleas of Chester County.

**Article II
Neighborhood Noise and Disturbances**

§281-6. Title; Effective Date.

This Article is hereby adopted by the Borough Council as the "Avondale Borough Noise Control Ordinance of 2023." This Article shall take effect upon date of adoption and shall be controlling within the limits of the Borough of Avondale, Chester County, Pennsylvania.

§281-7. Legislative Finding; Purpose.

- A. The making and creation of loud, unnecessary and unusual noises within the limits of the Borough of Avondale is a condition which has existed for some time and the extent and volume of such noises are increasing.
- B. The making, creation and maintenance of loud, unnecessary noises or unusual noises which are prolonged and unnatural in their time, place and use affect and are a detriment to the health, comfort, convenience, safety and welfare of the residents of the Borough of Avondale.
- C. It is declared as a matter of legislative determination and public policy that it is necessary and in the public interest for the enactment of the provisions and prohibitions hereinafter contained; and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the health, comfort, convenience, safety and welfare of the residents of the Borough of Avondale.

§281-8. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

EMERGENCY WORK

Work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from eminent exposure to danger.

PERSON

Any individual, partnership, association, syndicate, company, firm, trust, corporation or other entity recognized by law as the subject of rights and duties, including any governmental agency.

REAL PROPERTY BOUNDARY

An imaginary line along the ground surface and its vertical extension which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

§281-9. Enforcement.

A. In addition to other police powers, this Article shall be enforced by the police officers serving the Borough of Avondale and any other persons as may be designated by the Borough Council of the Borough of Avondale, whose powers shall be as follows:

1. Enforce the provisions of this Article and the rules and regulations contained herein.
2. Receive and initiate complaints of violations of the regulations of this Article.
3. Send written notices of any violations of this Article to the persons responsible for the violation.
4. Institute proceedings for violation of the regulations of this Article.

§ 281-10. Loud or Unreasonable Noises Prohibited.

It shall be unlawful for any person to make or continue or to cause or permit to be made or continued any loud or unreasonable sound of such character, intensity, volume, carrying power or duration as to disturb the comfort, repose, health or safety of any individual unless the sound is made in an activity conducted for community or public purpose or for the protection or preservation of the health, safety or life of some person.

§281-11. Specific Prohibitions.

A. No person shall unreasonably make, continue, permit or cause to be made or continued any noise or disturbance:

1. Across the real property boundary or between adjacent units of a multiple-family dwelling, except for activities open to the public and for which a permit has been issued by the Zoning Officer of the Borough of Avondale.
2. At a distance extending more than 50 feet from a noise-producing device operated in or on a motor vehicle on a public right-of-way or public place.

B. No person shall make, continue, permit or cause to be made or continued any noise or disturbance between the hours of 10:00 p.m. and 7:00 a.m. when the noise produced is associated with the following:

1. The operation of an instrument, sound amplifier or similar device which produces or amplifies sound.
2. The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects, except when such noise or disturbance is necessarily attendant to the authorized, regular collection and removal of refuse, garbage and like municipal solid waste when such collection and removal is conducted between the hours of 5:00 a.m. and 7:00 p.m.
3. Operating or permitting the operation of any tools or equipment used in construction, drilling, demolition work or home maintenance.
4. The operation of powered model vehicles, motorboats, domestic power tools and other motor-driven apparatus; repairing, rebuilding, modifying or testing any motor-operated vehicle, motorcycle, powered model vehicle, motor-driven apparatus or power tool.

C. It shall be unlawful for any person to make, continue, permit or cause to be made or continued any of the following-enumerated unreasonable noises at any time:

1. The sounding of any horn or signaling device on any automobile, truck, motorcycle, motor bicycle or other vehicle on any street or public place except as a danger warning signal.
 2. The operation of a motor vehicle or motorcycle in the Borough, licensed or unlicensed, on public or private premises, whether standing or moving, without an appropriate muffling device on the exhaust system of said vehicle in order to prevent any unnecessary or unreasonably loud or harsh sound.
 3. The use, operation or permitting to be played of any radio, receiving set, musical instrument, television, phonograph, public-address system or other machine or device for producing or reproducing sound in such a manner as to disturb the peace, quiet and comfort of neighboring inhabitants.
 4. The use, operation or permitting to be used or operated of any sound-amplifying machine for producing or reproducing of sound which is cast upon public streets for the purpose of advertising.
 5. The keeping of any animal or bird which causes frequent or long-continued noise which disturbs the comfort or repose of any person in the vicinity.
- D. It shall be unlawful for any person, in the operation of any machinery, commercial motor vehicle unit on a truck, any equipment, pumps, snowplows, snowblowers, lawn mowers, leaf blowers, chain saw or other similar mechanical device, to use such instruments or equipment in such a manner or with such volume as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, apartment or other type of residence on any day of the week. This subsection shall not apply to municipal vehicles or Pennsylvania State vehicles used for emergency work, such as but not limited to snow removal and road work.

§281-12. Violations and Penalties.

Any person who violates or permits a violation of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to the county correctional facility for a period not exceeding 30 days. Each day that such violation exists shall constitute a separate offense, and each section of this article that is violated shall also constitute a separate offense. In addition to or in lieu of enforcement under this section, the Borough may enforce this article in equity in the Court of Common Pleas of Chester County.

Article III

Peace and Good Order

§ 281-13. **Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

GRAFFITI

Every name, identification, description, crude drawing, announcement, display, illustration, insignia or symbol (including any letter, word, numeral, emblem or combination thereof), other than advertising which is otherwise provided for by ordinances, which, without authorization, is marked, written, drawn, painted, scratched or affixed directly to or upon any subject or structure.

PERSON

Any individual, partnership, association, syndicate, company, firm, trust, corporation or other entity recognized by law as the subject of rights and duties, including any governmental agency.

PROPERTY

Includes any real estate, including improvements thereon; and tangible personal property including but not limited to newsboxes, newstands, utility poles, public telephones, tree planters and other items of street furniture; and vehicles located thereon.

§ 281-14. Violent assemblies.

No person or persons shall, at or in any place within the Borough, create, make or engage in any riot or violent assembly including cockfighting and dogfighting.

§ 281-15. Posting of bills upon trees or structures.

No person, except a public officer legally thereunder authorized, shall affix any show bill, placard, poster or other advertising device upon any pole, tree or structure within the Borough without first obtaining the consent of the owner thereof.

§ 281-16. Public intoxication and consumption of alcoholic beverages.

No person shall wrongfully strike another or be engaged in any fight or affray, or be or appear in a drunken or intoxicated condition in any public street, highway or public place within the Borough. No person shall consume any alcoholic beverages on any public street, highway, alley or any public place other than premises licensed to sell such alcoholic beverages for consumption on the premises.

§ 281-17. Obstruction of streets and sidewalks.

No person shall willfully and unnecessarily obstruct or interfere with travel upon any foot pavement, sidewalk or public passageway; nor shall any person lounge, loiter and loaf thereon or therein or upon any street corner or public building, provided that this Article shall not be construed to restrict peaceful picketing, so long as 1/2 of the width of the sidewalk is kept clear for the use of other pedestrians. It shall be unlawful for six or more persons without lawful purpose to congregate on any street, highway, alley, sidewalk or other public place, there to loiter to the impediment or annoyance of orderly persons passing or residing on, at or near the said street, highway, alley, sidewalk or other public place.

§ 281-18. Impersonation of and interference with police.

No person shall falsely impersonate a police officer or any other officer belonging to a police department; nor shall any person, with the intention to deceive, use or imitate any sign, signal or device thereof; nor shall any person obstruct or resist any of said officers in the performance of official duty; nor shall any person in any manner aid any prisoner in custody to escape or attempt to escape.

§ 281-18. Littering.

No person shall cast or discharge any refuse into or upon any of the streets, alleys, public places or upon the property of others within the Borough.

§ 281-19. Graffiti - Defacing buildings and road signs.

- A. No person shall deface, disfigure, write upon or in any manner cause to be placed upon any house or wall or building of any kind whatsoever, or in any part thereof, or upon fences or road signs, any graffiti.
- B. No person owning or occupying any property within the Borough shall permit any graffiti to accumulate or otherwise remain on any property so as to be visible to the public.
- C. Notice to remove. Upon discovery of graffiti, a police officer or other authorized person shall issue written notice to the owner, occupant or other responsible agent of any premises whereon graffiti is

present in violation of the provisions of this Article, directing and requiring such person to remove such graffiti. In the event that graffiti is not removed within 15 days from the date of mailing of this first notice, a second notice to remove and request for consent to allow the Borough to enter upon the property for the purpose of graffiti removal at the owner's expense shall be issued.

- D. If the owner, occupant or other responsible agent of the property fails to remove graffiti or give consent for removal within 15 days after the second notice of violation has been issued, the Borough may proceed to remove the graffiti, itself or by contract.
- E. Except where the legal fees, administrative and filing costs exceed the cost of removal, a bill for costs of removal shall be delivered to the property owner, occupant or other responsible agent and, in the event of nonpayment, the Borough may file a lien against the property in the amount of such costs. Liability for costs of removal shall be in addition to liability for any fine imposed.

§ 281-20. **Enforcement.** In addition to other police powers, this Article shall be enforced by the police officers serving the Borough of Avondale and any other persons as may be designated by the Borough Council of the Borough of Avondale, whose powers shall be as follows:

- A. Enforce the provisions of this Article and the rules and regulations contained herein.
- B. Receive and initiate complaints of violations of the regulations of this Article.
- C. Send written notices of any violations of this Article to the persons responsible for the violation.
- D. Institute proceedings for violation of the regulations of this Article.

§ 281-21. **Violations and penalties.**

- A. Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to the county correctional facility for a period not exceeding 30 days. Each day that such violation exists shall constitute a separate offense, and each section of this chapter that is violated shall also constitute a separate offense. In addition to or in lieu of enforcement under this section, the Borough may enforce this chapter in equity in the Court of Common Pleas of Chester County.