

RESOLUTION NO. 18 - 2010

RESOLUTION RESCINDING RESOLUTION NO. 2000-30, ADOPTING NEW REGULATIONS PROHIBITING EXCESSIVE NOISE IN THE TOWNSHIP AND ORDERING NOTICE

WHEREAS, The Board of Trustees of West Chester Township finds that it is in the best interest of West Chester Township to prevent excessive noise and to provide tranquility and public peace in its neighborhood and business communities; and,

WHEREAS, excessive noise from sound generating or amplifying devices is a nuisance and serious hazard to the public health, welfare and safety, and the quality of life; and,

WHEREAS, West Chester Township has the authority to regulate such matters pursuant to R.C. §§ 505.17, 505.172, 4513.221 and 504.04; and,

WHEREAS, West Chester Township previously adopted Resolution No. 2000-30, therein prohibiting excessive noise in the Township's neighborhood and business communities; and,

WHEREAS, West Chester Township desires to rescind and replace Resolution No. 2000-30 with this Resolution, herein making non-substantive changes, updating terminology, and correcting Ohio Revised Code citations contained in Resolution No. 2000-30.

NOW THEREFORE, BE IT RESOLVED, that the West Chester Township Board of Trustees does hereby agree:

SECTION 1. The Previous Noise Regulation Resolution No. 2000-30 is hereby rescinded and replaced by this Resolution.

SECTION 2. The regulation governing all subsequent excessive noise, a copy of which is attached hereto as Exhibit "A" and made a part of this Resolution, is hereby adopted.


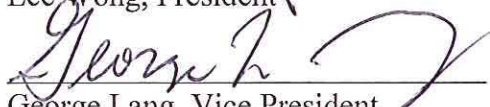
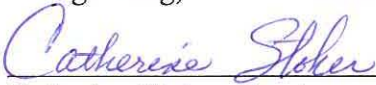
SECTION 3. The Fiscal Officer is directed to keep the regulation available for public inspection and copying at the office of the Board of Trustees.

SECTION 4. The Fiscal Officer is further directed to cause the following notice to be published in a newspaper of general circulation in the Township, within ten (10) days after the date of this Resolution:

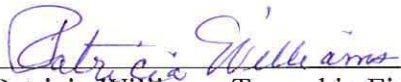
The Board of Trustees of West Chester Township, Butler County, Ohio has adopted a regulation prohibiting excessive noise. Such regulation is available to the public for inspection and copying at the office of the Board at 9113 Cincinnati-Dayton Road, West Chester, Ohio 45069.

SECTION 5. This Resolution shall take effect at the earliest date permitted by law.

Adopted this 10th day of August, 2010.

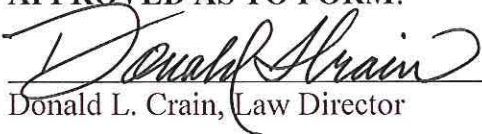
 _____ Lee Wong, President	<u>Yes</u> Yes / No
 _____ George Lang, Vice President	<u>YES</u> Yes / No
 _____ Catherine Stoker, Trustee	<u>YES</u> Yes / No

ATTEST:



Patricia Williams, Township Fiscal Officer

APPROVED AS TO FORM:



Donald L. Crain, Law Director

EXHIBIT A

NOISE CONTROL REGULATIONS

A. REGULATION OF NOISE AT D PERMIT LIQUOR ESTABLISHMENTS OR OTHER PREMISES THAT ARE WITHIN ANY AREAS ZONED FOR RESIDENTIAL USE

- (1) No person shall generate or permit to be generated unreasonable noise or loud sound which is likely to cause inconvenience or annoyance to persons of ordinary sensibilities at any premises to which a D permit has been issued by the division of liquor control or that is within any areas zoned for residential use by means of:
 - (a) Any radio, television, phonograph, tape player, record player, loudspeaker, stereo system speaker, music player, digital tape player, disc player, audio system, musical instrument, any machine or device which produces sound received through or from any form of broadcast, or any form of machine or device which reproduces sound which is recorded on any form of medium.
- (2) No person, being the owner, person in possession, or person in control of such premises by reason of employment, agency or otherwise, whether such ownership, possession or control is exclusive or joint, shall permit a violation of this section.
- (3) This section shall not apply to the following:
 - (a) Any business or industry, with the exception of any business operating at any premises to which a D permit has been issued by the division of liquor control, in existence and operating on or before July 20, 1999. This section shall; however, apply to any new operation or expansion of that business or industry that results in substantially increased noise levels from those generated by that business or industry on July 20, 1999.
 - (b) Any person who engages in any of the activities described in section 1.61 ("Agriculture" defined), if the noise is attributed to an activity described in section 1.61 of the Revised Code.
 - (c) Any person who engages in coal mining and reclamation operations, as defined in division (B) of section 1513.01 of the Revised Code, or surface mining, as defined in division (A) of section 1514.01 of the Revised Code, if the noise is attributed to coal mining and reclamation or surface mining activities.
 - (d) Any person who engages in the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas.

- (4) Whoever violates this section is guilty of a minor misdemeanor, and is subject to civil fine not to exceed one hundred dollars (\$100.00) for the first conviction. For a second or subsequent conviction by the same offender, the offender shall be fined not less than two hundred and fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00). Fines levied and collected under this section shall be paid into the township general revenue fund.
- (5) Any person allegedly aggrieved by another person's violation of this section may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing the act or practice that violates this section. The court involved in the civil action may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed.

B. REGULATION OF VEHICLE AND ENGINE NOISE

- (1) No person shall operate any passenger car, that is subject to registration, on streets and highways subject to the township jurisdiction, if any time the decibel level, based on a distance of not less than fifty (50) feet from the center of the line of travel, emanating from the passenger car exceeds a maximum noise limit of:
 - (a) Seventy (70) decibels while traveling a thirty-five (35) mph or less; or
 - (b) Seventy-nine (79) decibels while traveling at greater than thirty-five (35) mph.
- (2) No person shall operate any motorcycle, that is subject to registration, on streets and highways, if at any time the decibel level, based on a distance of not less than fifty (50) feet from the center of the line of travel, emanating from the motorcycle exceeds a maximum noise limit of:
 - (a) Eighty-two (82) decibels while traveling at thirty-five (35) mph or less; or
 - (b) Eighty-six (86) decibels while traveling at greater than thirty-five (35) mph.
- (3) Divisions (1) and (2) of this section shall not be effective until signs giving notice of divisions (1) and (2) are posted upon or at the entrance to the highway, street, or part thereof affected, as may be most appropriate.
- (4) In the unincorporated area of the township, the following activities, with respect to passenger cars, motorcycles, or other devices using internal combustion engines, are prohibited:
 - (a) Operating or causing to be operated any motor vehicle, agricultural tractor, motorcycle, all-purpose vehicle, or snowmobile not equipped with a factory-installed muffler or equivalent muffler in good working order and in constant operation;

- (b) Removing or rendering inoperative, or causing to be removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement, of any muffler;
 - (c) Discharging the exhaust of any stationary or portable internal combustion engine into the air, except through a factory-installed muffler or equivalent muffler in good working order and in constant operation;
 - (d) Racing the motor of any vehicle described in division 4(a) in such a manner that the exhaust system emits a loud, cracking, or chattering noise unusual to its normal operation.
- (5) Maximum noise limits established pursuant to divisions (1) and (2) of this section shall be measured on the "A" scale of a standard sound level meter meeting the applicable requirements for a type two (2) sound level meter as defined in American National Standards Institute standard S1.4 – 1983, of the most recent revision thereof. Measurement practices shall be in substantial conformity with standards and recommended practice established by the society of automotive engineers, including SAE standard J 986 A NOV81, SAE standard J 366 MAR85, SAE standard J 331 A, such other standards and practices as may be approved by the federal government.
- (6) Whoever violates any maximum noise limit established as provided in divisions (1) and (2) of this section or any of the prohibitions authorized in division (4) of this section is guilty of a minor misdemeanor, and is subject to civil fine not to exceed one hundred dollars (\$100.00) for the first conviction. For a second or subsequent conviction by the same offender, the offender shall be fined not less than two hundred and fifty dollars (\$250.00) and not more than one thousand dollars (\$1000.00). Fines collected under this section by the township shall be paid into the township general fund.
- (7) This section does not apply to commercial racetrack operations.

C. EXCESSIVE NOISE

- (1) Definitions. For purposes of this section, the following terms shall be defined as follows:
- (a) "Sound generating or sound amplifying device" means any radio, television, phonograph, tape player, loudspeaker, stereo system speaker, music player, digital tape player, disc player, CD ROM player, audio system, musical instrument, any machine or device which produces sound received through or from any form of broadcast, or any form of medium.
 - (b) "Motor vehicle" includes not only motor vehicles, but also emergency vehicles, public safety vehicles, school buses, commercial tractor, agricultural tractor, truck, bus, trailer as defined in Ohio R.C. 4511.01.

- (c) "Sound includes any kind of humanly audible stimulus and, with respect to musical sound, includes not only the vocalized work but includes the musical treble and bass components of such music and the audible response the existence of each produces.
- (2) No owner of a motor vehicle, operator of a motor vehicle or person in physical control of a motor vehicle shall recklessly play, cause to be played, or permit to be played any sound-generating or sound-amplifying device located within or upon such motor vehicle at such a level, volume, frequency, or intensity that the sound emitted exceeds the capacity of such motor vehicle to fully absorb, insulate, deaden, shield, or muffle the sound being emitted so that such sound is inaudible to persons located outside of the motor vehicle in which the sound-generating or sound-amplifying device is located.
- (3) Exemptions. This section shall not be applicable to the following:
- (a) Sound generating by automobile alarm devices for and during such a reasonable period as is necessary to permit the owner to silence the device without danger of attack or injury, or to obtain the assistance of public safety officials, whichever period is shorter;
 - (b) Sound caused by motor vehicle collisions, loss of control of a motor vehicle or sudden or severe application of the brakes of a motor vehicle;
 - (c) Sound resulting from damage caused by a motor vehicle collision which cannot be silenced because of damage done in the collision;
 - (d) Sounds created by a motor vehicle or an emergency vehicle, when engaged in responding to an emergency; and while at the scene of an emergency, or when testing their equipment;
 - (e) Sound resulting from any repair or restoration work upon a motor vehicle;
 - (f) Sound resulting from any work required to protect persons or property from an exposure to danger;
 - (g) Sound emanating directly from a motor vehicle engine;
 - (h) Sound caused by contact between any part of a motor vehicle and the traveled portion of the roadway.
- (4) No person shall generate or permit to be generated unreasonable noise or loud sound which is likely to cause inconvenience or annoyance to persons of ordinary sensibilities, by means of:

- (a) Any radio, phonograph, television, tape, record, or disc player, loudspeaker, stereo system speaker, music player, digital tape player, audio system, musical instrument, any machine or device which produces sound received through or from any form of broadcast or any form of machine or device which reproduces sound which is recorded on any form of medium.
 - (b) Any engine or machine necessary for the operation of any passenger car, motorcycle, school bus, commercial tractor, agricultural tractor, truck, bus, or trailer as defined in Ohio Revised Code 4511.01.
- (5) It is prima-facie unlawful for a person to generate or permit to be generated sound by the devices or instruments described in subsection (a) hereof in the following circumstances:
- (a) On private property between the hours of 11:00 p.m. and 8:00 a.m. of the following day in a predominantly residential area, regardless of an existing nonconforming use or variance, where the sound is audible more than eighty feet from the property line of the property on which the source of the sound is located;
 - (b) On a street or highway or in the public right of way where the sound is audible 100 feet from the device generating the sound.
- (6) No person, being the owner of a premises, a person in possession of a premises, or a person in control of a premises by reason of employment, agency or otherwise, whether such ownership, possession or control exclusive or joint, shall permit a violation of this section.
- (7) Persons in possession of a current parade permit issued by or any event sponsored by the West Chester Board of Trustees are exempt from the provisions of this section.
- (8) Whoever violates this section is subject to civil fine not to exceed one hundred dollars (\$100.00). For a second or subsequent violation by the same offender, the offender shall be fined not less than two hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00). Fines collected under this section by the township shall be paid into the general fund.