

DATE: May 8, 2017

RESOLUTION NO. 17-05-02

**IN THE MATTER OF REPEALING RESOLUTION 04-01 AND ADOPTING A NEW
RESOLUTION TO REGULATE NOISE WITHIN THE UNINCORPORATED
TERRITORY OF BERLIN TOWNSHIP, DELAWARE COUNTY, OHIO,
PURSUANT TO R.C. § 505.172**

The Board of Trustees of Berlin Township, Delaware County, Ohio (“Board”) met in regular session on the 8th day of May, 2017 at Berlin Township Hall with the following members present:

Steve Flaherty

Adam Fleischer

Ron Bullard.

Ron Bullard Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, R.C. § 505.172 authorizes a board of township trustees to adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the Ohio Division of Liquor Control or that is generated within any areas zoned for residential use; and,

WHEREAS, the Board previously adopted such regulations and orders in Resolution 04-01 adopted on January 19, 2004; and,

WHEREAS; the Board desires to repeal Resolution 04-01 and approve new noise regulations consistent with R.C. § 505.172 and the amendments thereto and to supersede any prior noise regulations.

RESOLUTION

NOW THEREFORE BE IT RESOLVED:

A. DEFINITIONS

Plainly Audible. As used in this Resolution, Plainly Audible means any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties or ordinary auditory senses not enhanced by any mechanical device, such as a hearing amplification device or hearing aid.

B. CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of Berlin Township, Delaware County, Ohio (“Township”) shall make and no landowner or lawful occupant of land shall permit at any premises to which a D permit has been issued by the Ohio Division of Liquor Control or that is zoned for residential use, the making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be Plainly Audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

There shall be in the Township observed quiet hours between the hours of 10:00 P.M. and 6:00 A.M. every day of the week. During this quiet hour period there shall be no making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be Plainly Audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

C. EXAMPLES OF NOISES

The following noises or sounds, which constitute a **non-exclusive list**, may be considered a violation of this Resolution if they violate division (B) of this Resolution:

1. **Horns or Signaling Devices.** The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle; a creation by means of any such sounding or signaling unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such sounding or signaling device as a call for help or warning of danger.
2. **Reproduction and/or Amplification of Sound.** The use or operation of any radio, phonograph, television, tape player, speaker, loudspeaker, cassette, compact disc player, MP3 player, computer, synthesizer, or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.
3. **Vocalizations.** Yelling, shouting, hooting, whistling, or singing.
4. **Musical Instruments.** The use of any drum or other musical instrument or device with or without electronic amplification.
5. **Internal Combustion Engines or Other Power Equipment.** The operation of any internal combustion engine or other piece of power equipment, excluding power mowers, trimmers, chain saws, or tillers.

6. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

D. EVIDENCE

It shall be a *prima facie* violation of division (B) of this Resolution when the noise can be heard at a distance of one hundred (100) feet or more from the property where the noise or sound emanates.

E. NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of the Township within any area zoned for residential use or at any premises to which a D permit has been issued by the Ohio Division of Liquor Control shall operate or amplify the noise or sound produced by a radio, tape player, speaker, cassette, compact disc player, MP3 player, computer, synthesizer, instrument, or any other machine or device for the producing or reproducing of sound or amplifying sound from within the motor vehicle so that the noise or sound is Plainly Audible at a distance of one hundred (100) feet or more from the motor vehicle.

F. OFFICIAL USE EXEMPTIONS

The regulations contained in this Resolution shall not apply in the following circumstances:

1. To any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.
2. To the noise or sound made by a horn, siren, or other warning device required or permitted by state law, when used in accordance with state law.

G. LAW ENFORCEMENT DETERMINATION OF SOURCE

Any law enforcement personnel who hears a noise or sound that is Plainly Audible, shall measure the noise or sound according to the following standards:

1. The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a hearing amplification device or hearing aid.
2. Regarding division (E) of this Resolution, the officer must have a direct line of sight to the motor vehicle producing the noise or sound so that the officer can readily identify the offending motor vehicle and the distance involved.
3. The officer need not determine any particular words or phrases being produced or the name of any song or artist. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a Plainly Audible sound.

4. Any motor vehicle from which sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the Township in an area zoned for residential use or on any premises to which a D permit has been issued by the Ohio Division of Liquor Control. Parking lots and driveways are included.

H. EXEMPTIONS

The regulations contained in this Resolution shall not apply in the following circumstances:

1. Any person engaged in activities described in R.C. § 1.61 (Titled: "Agriculture Defined") is exempt from the provisions of this Resolution if the noise is attributed to an activity described in R.C. § 1.61.
2. Any person engaged in coal mining and reclamation operations, as defined in R.C. 1513.01(B), or surface mining, as defined in R.C. § 1514.01(A), is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.
3. Noise resulting from 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 is exempt from the provisions of this Resolution.
4. Nothing in this Resolution shall be deemed to prohibit noise that is made by construction, repair, or maintenance of structures or yards between the hours of 6:00 a.m. and 10:00 p.m.
5. Refuse collection operations conducted between the hours of 7:00 a.m. and 9:00 p.m. shall be exempted from the provisions of this Resolution provided that all equipment used in such operations is operated in accordance with the manufacturer's specifications and/or with all standard manufacturers' mufflers and/or other noise reducing equipment in use and in proper operating condition. Refuse collection personnel are to avoid loud voices and noises generated by striking cans or dumpsters against hard surfaces, including, but not limited to, the ground, vehicles, or other cans or dumpsters.

I. PENALTY

Whosoever violates divisions (B) or (E) of this Resolution shall be guilty of the level of offense as provided in the most current version of R.C. § 505.172 for violating any regulation or order, such as this Resolution, adopted pursuant to R.C. § 505.172. Fines levied and collected pursuant to this Resolution shall be paid into the Township general revenue fund.

J. PRIVATE CIVIL ACTION

Pursuant to R.C. § 505.172, any person allegedly aggrieved by another person's violation of this Resolution may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

K. REPEAL OF PRIOR RESOLUTIONS ADOPTED PURSUANT TO R.C. § 505.172

Resolution 04-01 adopted on January 19, 2004 is hereby repealed and is null and void. This Resolution shall supersede and take precedence over any and all other resolutions approved by this Board adopted pursuant to R.C. § 505.172 and all such resolutions are hereby repealed and are null and void.

L. ADOPTION

All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this 8th day of May, 2017 in Berlin Township, Delaware County, Ohio.