



TOWNSHIP NOISE RESOLUTIONS

Jennifer Huber & Julie Donnan

For the third night in a row, reverberating noise coming from next door shakes your window panes and crashes into your slumber just as you were falling asleep for the night. Understandably, you fume in frustration and stuff your trusty earplugs into your ears. And... "Who you gonna call?"

Your township officials, of course.

When noise issues arise, whether from barking dogs, thumping music, or late-night motocross racing, one of a township's best tools is a noise resolution, which regulates how and when excessive noise can occur, and establishes penalties for violations. Under Ohio Revised Code ("R.C.") §505.172, townships may adopt noise resolutions in unincorporated areas which are zoned for residential use. These areas include true residential zoning districts, as well as other zoning districts permitting residential use.

The noise resolution, adopted by the board of township trustees with a simple

majority affirmative vote, must include some key components. First, the resolution only applies to the unincorporated area of the township. Even if the noise is heard in the township, if it is generated in a municipality, the noise resolution does not apply to that noise. Second, the maximum level of acceptable noise can be set subjectively or objectively, for either: a) noise that, by reason of volume, pitch, frequency, etc., annoys or disturbs the comfort, peace, or health of a person of ordinary sensibility, or b) noise exceeding a specific decibel level.

There are pros and cons to each of these approaches. Usually, townships adopt the first, subjective ("person of ordinary sensibility") standard, because it more often identifies sound that is actually annoying to the typical hearer, and doesn't require any equipment other than your ears. Applying this standard, the resolution should prohibit a landowner from making or allowing to be made any noise or

sound which, by reason of volume, pitch, and/or frequency, annoys or disturbs the comfort, peace, or health of a person of ordinary sensibility. The sound must be plainly audible at a set distance from the property (one possible rule of thumb is 100 feet or more from the property line), and the resolution should include a definition of "plainly audible." Third, it is useful to include examples of prohibited noise, being careful to emphasize that these examples are not an exhaustive list.

Noise resolutions may be enforced by your township's law enforcement department. Resident complaints of excessive noise typically drive enforcement of the noise resolution by law enforcement. The officer must be present, at least 100 feet from property in which noise is being generated. The noise must be plainly audible (heard without hearing aid or device, but no requirement to make out specific words

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or sounds), and not exempted under one of the statutory exemptions in R.C. §505.172(H)-(N), discussed in more detail later in this article.

There is no requirement as to how long the sound must last and, using the person of ordinary sensibility standard, no decibel level that must be reached or equipment that must be used to measure the sound. When issuing a violation, law enforcement officers should use the standard court affidavit for the applicable court of jurisdiction, and cite R.C. §505.172 and the noise resolution number as the applicable violation sections. Such a violation is

a second-degree misdemeanor, and will require a court appearance.

The alternative to enforcing violations criminally through law enforcement tickets is that a board of trustees may file a civil court case seeking an injunction against the violator, requiring him or her to cease the conduct. In such a civil case, the judge may require the losing party to pay the prevailing party's attorneys' fees expended in the case. In addition to the board of trustees, "[a]ny person allegedly aggrieved" by the violation may seek an injunction through a civil case and, if successful, may also be entitled to recover their attorneys' fees. R.C. §505.172(F).

As previously mentioned, there are some activities, under R.C. §505.172, that must be exempt from a township noise resolution. Those exemptions include:

- Noise attributed to agricultural activities;
- Noise attributed to coal mining, reclamation, and/or surface mining operations; and
- Noise resulting from the operation, distribution, transportation, or storage of crude oil or natural gas wells or pipelines.

However, the board of trustees may want to include some additional exemptions within the noise resolution, depending on the township's needs and foreseeable noise-producing activities. Some additional exemptions could include, for example:

- Noise from hunting and trapping activities;
- Noise attributed to organized school events or programs; or
- Noise resulting from parades, block parties, or other civic and neighborhood events.

Obviously, this list is not comprehensive of all possible exemptions that a board of trustees may include within a noise resolution, but hopefully it provides some helpful examples to consider.

A noise resolution can be a helpful tool to maintain the peace and (literal) quiet of the unincorporated residential areas of a township. By drafting a noise resolution that contains examples of prohibited and exempted activities, and clear instructions on the standard of enforcement, the board of trustees can help to ensure consistent and efficient application of the resolution. All of this will, in turn, hopefully lead to a good night's sleep for the board of trustees, township staff, and the residents. ■

about the authors



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