

DATE: October 13, 2003

RESOLUTION NO. 03-10-10

**IN THE MATTER OF ADOPTING A RESOLUTION TO REGULATE NOISE WITHIN
THE UNINCORPORATED TERRITORY OF Berkshire TOWNSHIP PURSUANT
TO OHIO REVISED CODE SECTION 505.172:**

The Board of Trustees of Berkshire Township, Delaware County, Ohio met in regular session on the 13th day of October, 2003 at Sunbury, Ohio with the following members present: Robert Carpenter, William Holtry,
James Kappenhagen.

James Kappenhagen Moved the adoption of the following Resolution:

PREMABLE

WHEREAS; it is the opinion of this Berkshire Township Board of Trustees that unnecessary noise in residential areas of this township is detrimental to the public health and safety and constitutes a public nuisance, and

WHEREAS; this board of trustees also recognizes that certain levels of noise are unavoidable, and

WHEREAS; it is the opinion of this board of trustees that the elimination of noise beyond that which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS; it is the intent of this Resolution to prohibit noise that is unnecessary in residential areas of this township, and

WHEREAS; Section 505.172 of the Ohio Revised Code 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 division of liquor control or that is generated within any area zoned for residential use.

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.

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(B) CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of Berkshire 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 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.

(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: Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such 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 signaling device as a warning of danger.
2. Radios: Phonographs: Etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume that 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. Yelling: Shouting. 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) 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.

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(E) NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of Berkshire Township within any area zoned for residential use, or at any premises to which a D permit has been issued by the division of liquor control, shall operate or amplify the noise or sound produced by a radio, tape player, or other soundmaking device or instrument 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) The provisions of this resolution shall not apply:

- 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 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 sound that is plainly audible as defined herein, shall be entitled to measure the 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 microphone or hearing aid.
- 2) Regarding division (E) of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he 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 producing the sound. 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 the 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 division of liquor control. Parking lots and driveways are included.

(H) Any person engaging in activities described in section 1.61 of the Revised Code (Titled: "Agriculture defined") is exempt from the provisions of this Resolution if the noise is attributed to an activity described in section 1.61 of the Revised Code.

(I) 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, is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.

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(J) 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.

(K) Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction repairs or maintenance of houses or yards.

(K) PENALTY

Pursuant to division (D) of section 505.172 of the Revised Code, whosoever violates divisions (B) or (E) of this Resolution shall be guilty of a minor misdemeanor. Fines levied and collected pursuant to this Resolution shall be paid into the township general revenue fund.

(L) PRIVATE CIVIL ACTION

Pursuant to division (E) of section 505.172 of the Revised Code, any person aggrieved by another person's violation of this regulation 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.

William Holtry seconded the motion.

VOTING ON THE RESOLUTION:

DATE: October 13, 2003

APPROVED:

Mr./Mrs./Ms. _____

Mr./Mrs./Ms. Robert Caputo

William Holtry

Mr./Mrs./Ms. [Signature]

DISAPPROVED:

Mr./Mrs./Ms. _____

Mr./Mrs./Ms. _____

Mr./Mrs./Ms. _____