

# Pennsylvania

## Model Ordinance Instructions

Noise Ordinance

v. 01-2020 v202 Model Ordinance Noise Ordinance 202.docx

- ▶ The Model Ordinance uses standard Microsoft Word formatting.
- ▶ Legal counsel for the Municipality should review the Model Ordinance prior to adoption.
- ▶ To adapt the formatting of the Model Ordinance:
  1. Use Search & Replace to replace instances of the placeholder {Municipality-name} with the legal name of the municipality. For example, if the municipality is Elizabeth Township, then Search & Replace {Municipality-name} with Elizabeth Township.
  2. Use Search & Replace to replace instances of the placeholder {Municipality-type} with the type of municipal structure. For example, if the municipality is Lititz {Municipality-type}, then Search & Replace {Municipality-type} with {Municipality-type}.
  3. Use Search & Replace to replace instances of the placeholder {County} with the name of the county. For example, if the county is York, then Search & Replace {County} with York.
  4. *Section 1 Legislative* refers to regional recreational facilities. If none or if another structure, revise.
  5. Update the year in the Footer.
  6. Update the reference the ordinance's reference number. The default reference numbering scheme is 2020-0X.
  7. Remove the background watermark. In the Word Ribbon Bar, Access Design...Watermark and select Remove Watermark.
  8. Deleted sections result in the automatic renumbering of the remaining sections.
  9. Delete this instruction page by turning on Show/Hide Paragraph Marks and deleting both the Section Break (Next Page) and text above the Section Break.

# Noise Ordinance

2020-\_\_\_\_\_

## 1 Legislative Findings

{Municipality-name} enacts this ordinance under its general powers affecting health, safety, and community welfare.

{Municipality-name} recognizes the fundamental constitutional rights of individuals to the quiet enjoyment of property and recognizes the fundamental constitutional duty of each individual to limit interference with the rights of quiet enjoyment of others. While all have a right to generally enjoy real property, no one possesses a fundamental right to make noise.

Scientific research shows that noise contributes to significant adverse health effects on humans such as heart disease, high blood pressure, stress, sleeplessness, psychological annoyance, psychiatric illness, hearing loss, and premature death. Noise need not be “loud” to manifest adverse health effects.

Entities, such as the U.S. Congress, Environmental Protection Agency (EPA), National Institutes of Health (NIH), and World Health Organization (WHO), recognize the need for limiting noise to minimize adverse health effects and to maintain a positive quality of life.

{Municipality-name} recognizes the overall community benefit of reducing and eliminating noise to maintain peace in the community, reduce neighborhood conflict, enhance the quality of life of residents, and enhance the positive character of the community.

### 1.1 Purpose

The {Municipality-type} intends this Ordinance to establish requirements to prevent and eliminate noise which may affect the health, safety, and welfare of its residents; impair the constitutional rights of residents; or that may degrade the quality of life of community members.

### 1.2 Constitutional Speech Qualification

This Ordinance is not intended, and shall not be interpreted to be, a regulation of the content of protected speech. This Ordinance is intended to be entirely content-neutral. This Ordinance may regulate

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the time, place and manner of protected speech according to constitutional law.

## **2 Definitions**

### **BACKGROUND SOUND LEVEL.**

The measured sound level in an area, exclusive of extraneous sounds and the sound contributing of the specific source in question.

### **CONSTRUCTION.**

Any site preparation, assembly, erection, demolition, substantial repair, maintenance, alteration, or similar action for or of public or private rights-of-way, structures, utilities, or similar property.

### **DECIBEL**

Unit of measure of sound pressure level and used to comparatively define the intensity of sound. A decibel alone does not measure noise. The symbol for decibel is dB.

### **dba**

The symbol designation of a weighted, sound level, reported in decibels, using the A-weighting scale of a sound level meter, as defined in ANSI S1.4-1985—American National Standard, Specification for Sound Level Meters. Visual observation and notation of the sound level meter reading shall be adequate proof for this Ordinance.

### **EMERGENCY VEHICLE**

A vehicle defined in Pennsylvania 75 Pa.C.S. § 102.

### **IMPULSE NOISE**

Impulse noise includes sudden and sharp sounds or repetitive sounds that have tendency to startle, disrupt, or annoy. Impulse sounds may include the elements of both sound and vibration. Non-exhaustive examples of impulse noises include explosions, nail guns, firecrackers, agricultural cannons, hammering, basketball, and tennis.

### **NOISE**

Noise is any unwanted sound or vibration that encroaches upon the real property of another.

Noise may consist of multiple factors. Noise factors may include, but are not limited to, time-of-day or time-of-week; structure of the sound, e.g., impulse sound and sounds defined in ISO 12001 standards; frequency of the sound occurrence (how often); duration; relative sound level compared to background sound level, e.g., “loudness”; the waveform frequency of the sound, e.g., “high” or “low” pitch; and nature of the sound, e.g., screaming or screeching.

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*OPTIONAL: This Ordinance comprehensively controls any noise including, but not limited to, yelling, shouting, hooting, whistling or singing; recreational and sporting activities; construction; vehicle noise; music and musical instruments; lawn care; powered model vehicles; street sales; garage/yard sales; house care; loading and unloading; amplified sounds; vehicle operation; vehicle, motorboat, ATV, or similar motorized vehicle use, repair or testing; and animals.*

#### NOISE DISTURBANCE

In addition to the specific criteria in this Ordinance that constitute noise disturbance, a prohibited, noise disturbance includes any noise that may

- a. endanger or injure the safety or health of humans or animals;
- b. annoy or disturb another person or premises;
- c. impair or degrade the rights of another person or property;
- d. disrupt, limit, or interfere with the peace of premises or with activities of another person; or
- e. endanger or injure personal or real property.

Noise that is plainly audible according to the distance standards contained herein or sound that may annoy, disturb, or interfere with basic living tasks with one or more persons constitutes a *prima facie* noise disturbance.

#### SOUND LEVEL

Sound level measures a relative magnitude of the sound composing the noise. Sound level is measured in decibels Noise may include a sound level measure but a sound level measure alone does not define noise nor does sound level measure alone excuse noise.

#### PERSON.

Includes individual natural persons, firms, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, corporations, companies or organizations of any kind; or any officers, agents, employees, factors or any kind of personal representative of any kind of the above, in any capacity, acting either for her/himself, or for any other person, under either personal appointment or pursuant to law. Whenever used in any provision prescribing or imposing a penalty, the term "person" as applied to partnerships or associations includes the partners or members of the entity, and if applied to corporations, the officers of the entity.

#### PLAINLY AUDIBLE.

Any noise that can be heard by a person of normal hearing. Words, phrases, or specific noise signatures need not be discernible or identifiable. Plainly audible does not implicate issues of subjective "loudness"—the plainly audible standard simply determines whether any noise can be heard regardless of the perceived

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“loudness.” Plainly audible observation alone is sufficient to support and prove a noise disturbance.

**PREMISES.**

Any building, structure, land, including yards, lots, courts, owned or controlled by a person.

**PROFESSIONALLY REASONABLE PERIOD**

A time-frame customary for the applicable profession in the region, considering weather, for completion of a project by a professional engaged in completing such projects.

**PROPERTY LINE.**

The real or imaginary line and its vertical extension which separates real property owned or controlled by a person from contiguous real property owned or controlled by another person and separates real property from the public premises.

Property lines may sometimes be ambiguous or difficult to determine even by professionals. Thus, the use of property line for purposes of this ordinance refers to the relative or apparent property delineations and survey-quality precision is not required, intended, or desired.

**SOUND**

An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium.

### **3 Noise Disturbance Prohibited**

#### **3.1 Noise Disturbance Generally Prohibited**

No person shall make, continue, cause to be made, or cause to be continued, any noise disturbance by any means within the {Municipality-type}. No person shall suffer, allow, or permit any noise disturbance, by any means, to be made or continued from or at any property, whether public or private, real or personal, that is subject to the person’s right to control.

#### **3.2 *Prima Facie* Violations**

The following shall be *prima facie* evidence of violation of this Ordinance.

##### **3.2.1 Two or More Witnesses**

Noise that disturbs two or more residents who are in general agreement as to the times and durations of the noise and who reside in separate residences, including apartments and condominiums,

located across a property line (boundary) from the property on which the source of the noise is generated.

### 3.2.2 Daytime

No person shall make, continue, cause to be made, or cause to be continued any noise, sound, or vibration by any means, nor shall any person suffer, allow, or permit any noise, sound, or vibration, by any means, to be made or continued from or at any property, whether public or private, real or personal, which leaves the premises from which it originates, and enters any premises during the daytime, 8AM to 8PM, that is the greater of:

- a. 53dBA, or 3dB above the background sound level if the background sound level is lesser than 53dBA, or
- b. plainly audible at any property line of the originating source.

### 3.2.3 Nighttime

No person shall make, continue, cause to be made, or cause to be continued any noise, sound, or vibration, by any means, nor shall any person suffer, allow, or permit any noise, sound, or vibration, by any means, to be made or continued from or at any property, whether public or private, real or personal, which leaves the premises from which it originates, and enters any premises during the nighttime, 8:01PM to 7:59AM, that is the greater of:

- a. 45dBA, or 3dB above the background sound level if the background sound level is lesser than 45dBA, or
- b. plainly audible at any property line of the originating source.

### 3.2.4 Apartments and Shared-wall Premises

No person shall transmit or cause to be transmitted any noise that leaves the residential property or premises from which it originates from any apartment or shared-wall residential property and enters any apartment or shared-wall residential property creating noise levels:

- a. more than the background noise level in the complainant's residential unit at the levels specified in Section 3.2 **Error! Reference source not found.**; or
- b. noise that is plainly audible at any place other than the originating premises.

## 4 Special Limitations

### 4.1 Noise from Vehicles & Devices

#### 4.1.1 Vehicle Amplification Devices

No person shall transmit or cause to transmit noise from a vehicle being operated on a public right-of-way, or in a commercial or residential parking facility or premises, by playing any radio, stereo system, tape player, compact disc player, loudspeaker, or any other electronic device used in whole or in part for the amplification of music or other entertainment, or other machine or device designed or intended to produce or reproduce sound, which is plainly audible at 10 feet from the source of the noise.

#### 4.1.2 Motor Vehicle & Motorcycles

No person shall operate or cause to be operated a public or private motor vehicle or motorcycle, or any equipment attached to such a vehicle, on a public right-of-way at any time in such a manner that the noise or sound level emitted by the motor vehicle or motorcycle, or any equipment attached to such a vehicle, violates or exceeds the levels set forth in 67 Pa. Code § 157.11.

All motor vehicles and motorcycles shall always be equipped with an effective muffler or other noise-suppressing system in good working order. No motor vehicle or motorcycle with an exhaust system that has been altered or modified in any way to enable the exhaust system to amplify or increase the sound level exceeding established sound levels set forth in the 67 Pa. Code § 157.11(a), shall be operated on any public rights-of-way.

#### 4.1.3 No Tampering with Sound Dissipation Devices

The following constitute a violation of this Ordinance:

- a. the removal or rendering inoperative by any person, other than for temporary purposes of maintenance, repair or replacement, of any muffler or sound dissipation device or element of design or noise label of any product; or
- b. the use of a product which has had a muffler or sound dissipation device or element of design or noise label removed or rendered inoperative, with knowledge that such action has occurred.

#### 4.1.4 Brake Retarders (“Jake Brakes”)

No person shall use a brake retarder (“jake brake”) or other motor/engine retarding device while operating a truck, truck tractor, motor carrier vehicle, motor vehicle, or any other vehicle within the {Municipality-type}. The prohibition against use of a brake retarder or other motor/engine retarding device shall not apply to an

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emergency vehicle when the emergency vehicle is actually responding to an emergency call and brake retarder use is necessary to assure safety.

#### 4.1.5 Revving or “Racing” Engines

No person, while occupying any public right-of-way in the {Municipality-type} or private property, shall operate any noise-creating device in such a manner that the public’s attention is drawn to the source of the noise. The prohibition of this section shall include rapid throttle advance and/or revving of an internal combustion engine resulting in increase of noise from the engine.

#### 4.1.6 Standing Vehicles

No person shall operate or permit the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle, for a period longer than five (5) minutes in any day while the vehicle is stationary, for reasons other than traffic congestion, anywhere within 150 feet of any residence. This section shall not alter or expand the Diesel-Powered Motor Vehicle Idling Act (35 P.S. 4601 *et seq.*) as amended.

#### 4.1.7 Unnecessary Horn Blowing

No person shall at any time sound the horn or other warning device of a vehicle except when necessary as a warning of imminent, serious harm and while actually driving such vehicle.

#### 4.1.8 Sound Trucks.

No person shall operate sound amplifying equipment mounted on or attached to any motor vehicle at any time in such a manner as to exceed the maximum permissible motor vehicle noise emissions as set forth in Section 4.1.2

#### 4.1.9 Portable Amplification Devices

No person shall transmit or cause to transmit noise from a portable or hand-carried audio amplification or reproduction devices including, but not limited to, hand-carried radios, cassettes, or compact disc players, MP3 players, smartphones, cellular telephones, iPods, or digital devices. which is plainly audible to an officer at 10 feet from the source of the noise.

#### 4.1.10 Leaf Blowers

The {Municipality-type} discourages the use of powered leaf blowers. Leaf blowers are subject to this Ordinance and may constitute a noise disturbance, generally or specifically.



#### 4.1.11 ATVs, Snowmobiles, and Similar Motorized Devices

All-terrain vehicles (ATVs), snowmobiles, dirt bikes, other motorized devices, or other motorized devices governed by the Pennsylvania Snowmobile and All-Terrain Vehicle Law, 75 Pa.Cons.Stat. §§ 7701, et seq., may not be operated in the {Municipality-type} in public rights-of-way, public lands, or private property as to constitute a noise disturbance as defined by this Ordinance.

### 4.2 Impulse Noise & Vibration

#### 4.2.1 Impulse Noise

Unless expressly exempted under this Ordinance or expressly preempted by Pennsylvania or federal law, no person shall make, continue, cause to be made, or cause to be continued any impulse noise, including repetitive noises, by any means, nor shall any person suffer, allow, or permit any impulse noise, by any means, to be made or continued from or at any property, whether public or private, real or personal, which leaves the premises from which it originates.

#### 4.2.2 Excessive Vibration

No person or use shall generate vibration that is perceptible to an ordinary person through his senses, without requiring the use of measuring instruments, on private property beyond the exterior property line of the use generating the vibration.

This requirement shall not apply to occasional, nonroutine blasting or excavation that may be necessary during construction of streets, structures, and utilities.

### 4.3 Emergency Generators

During a power outage, emergency generators may exceed the decibel levels by up to 5 dBA during the daytime and are exempt from the plainly audible standard provided in Section 3.2 if the generator uses a fully-functioning muffling system.

During a power outage, emergency generators may exceed the decibel levels by up to 3 dBA during the night time and are exempt from the plainly audible standard provided in Section 3.2 if the generator uses a fully-functioning muffling system and exceeding the levels in Section 3.2 occurs for no more than one hour per week.

Noise created by emergency generator testing shall be exempt during weekday hours between 10:00 AM and 4:00 PM if the generator uses a fully-functioning muffling system.

## 5 Exemptions

Exemptions shall be narrowly construed. A person shall be exempt from this Ordinance provided that:

- a. The noise is being generated to request assistance for or warn of an imminent hazardous situation; or
- b. The noise emanates from an authorized emergency vehicle or a vehicle operated by a gas, electric, communications, or water utility when responding to an imminent emergency; or
- c. The noise emanates from a bell, chime or similar device used by a school or religious institution but with full consideration of effects on the community and neighboring premises; or
- d. The noise emanates from lawn care and other necessary household maintenance equipment and tools, excluding leaf blowers, used between 8:00AM and 8:00PM on weekdays and Saturdays; or
- e. Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit; or
- f. Any reasonable noise created by a government entity in performance of an official and necessary duty; or
- g. Any activity the regulation of which has been expressly preempted by Pennsylvania statute or regulation; or
- h. Any activity involving aircraft, airports, or railroad operations that are expressly preempted by federal law; or
- i. Any noise connected with a parade, or "special event" that is being conducted by or permitted by the {Municipality-type} provided that the maximum allowable noise level in Section 3.2 is not exceeded for more than one hour; or
- j. The noise is being generated by the crowd at a sporting event or other event being conducted pursuant to a permit issued by the {Municipality-type}, if required, or by a school provided that the maximum allowable noise level in Section 3.2 is not exceeded for more than two hours.

### 5.1.1 Construction Activity

A person shall be exempt from this Ordinance provided that

- a. the construction noise is generated by construction activities properly permitted by the {Municipality-type}, if the {Municipality-type} requires permits;
- b. the construction noise occurs only during the daytime, 8AM to 8PM or dusk, whichever is earlier;
- c. the noise does not occur on legal holidays or Sundays;
- d. the noise exposure complies with regulations or guidelines promulgated by OSHA, the EPA, the Pennsylvania Department of Health, and the Pennsylvania Department of Labor & Industry; and

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- e. the construction is completed within a professionally reasonable period.

Emergency work, required to restore essential services to a premises or to mitigate sudden, serious damage to a premises, shall be exempt provided the work proceeds in a professionally reasonable period and until the bona fide emergency is abated.

## **6 Penalties**

Any law enforcement officer with jurisdiction shall enforce this Ordinance. The {Municipality-type} Code Enforcement Officer shall be empowered to enforce this Ordinance the same as a law enforcement officer.

### **6.1 First Offense**

A first offense by any person or premises for violation of any provision of this Ordinance shall be a summary offense and shall carry at least a \$150.00 fine but no more than \$1,000.00 fine plus court costs and enforcement costs.

### **6.2 Second Offense**

A second offense by any person or premises for violation of any provision of this Ordinance shall be a summary offense and shall carry at least a \$300.00 fine but no more than \$1,000.00 fine plus court costs and enforcement costs.

### **6.3 Third Offense**

A third offense by any person or premises for violation of any provision of this Ordinance shall be a summary offense and shall carry at least a \$750.00 fine but no more than \$1,000.00 fine plus court costs and enforcement costs.

### **6.4 Subsequent Offense**

A subsequent offense, after the third, by any person or premises for violation of any provision of this Ordinance shall be shall be a misdemeanor of the third degree and shall result in at least a \$1000.00 fine plus court costs and enforcement costs per occurrence.

### **6.5 Persistent Noise Offender**

Any person or premises held liable for more than three offenses within three years of the last offense shall be referred to the District Attorney for additional criminal prosecution in addition to any penalties under this Ordinance, statute, or common law.

## **6.6 Continuing Violations**

The {Municipality-type} declares continuing violations of this Ordinance a public nuisance. Where the {Municipality-type} determines that a nuisance exists, the {Municipality-type}, in addition to or in lieu of invoking any other sanction or remedial procedure provided, may certify the existence of a nuisance. The {Municipality-type} shall provide notice of the certification of nuisance to the violator by public posting, letter, or advertisement.

The {Municipality-type}, or by contract, may abate and remove the violation; charge the cost of the abatement or removal to the person responsible for the nuisance or property; charge costs of enforcement, legal fees, and court costs; and with the approval of the {Municipality-type}'s Solicitor, collect the cost by lien or otherwise as may be authorized by law.

## **7 Resolving Ordinance Conflicts**

If an apparent conflict exists between this Ordinance and any other {Municipality-type} Ordinance of this {Municipality-type}, this Ordinance shall take precedence.

## **8 Effective Date**

This ordinance shall become effective 30 days after adoption.

## **9 Severability**

If any provision, section, sentence, clause, or word of this Ordinance shall be held unconstitutional or unenforceable, such invalidity shall not affect or impair any remaining part of this Ordinance.