

LITCHFIELD TOWNSHIP, MEDINA, OHIO

The Board of Trustee of Litchfield Township, Ohio, met in regular session on _____, 202__, commencing at __ p.m. with the following members present:

Dennis Horvath Michael Pope Joe Seifert

The Fiscal Officer advised the Board that the notice requirements of Section 121.22 of the Revised Code and the implementing rules adopted by the Board pursuant thereto were complied with for the meeting.

_____ moved the adoption of the following Resolution:

RESOLUTION NO. 202__

A RESOLUTION TO ADOPT REGULATIONS FOR THE CONTROL OF NOISE

WHEREAS, the Board of Trustees of Litchfield Township, Medina County, Ohio has determined the excessively loud noise from certain sound amplification devices and other sources in areas within Litchfield Township zoned for residential use serves no public purpose, constitutes a nuisance and are detrimental to the public health, welfare, safety, and quality of life within Litchfield Township; and

WHEREAS, the Board of Trustees has also determined that excessive noise generated from premises to which a D Permit has been issued by the Division of Liquor Control, serves no public purpose, and constitutes a nuisance and is detrimental to the public health, welfare, safety, and quality of life within Litchfield Township; and

WHEREAS, Ohio Revised Code Section 505.172 authorizes Boards 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 areas of Litchfield Township zoned for residential use; and

WHEREAS, the Board of Trustees has determined that noise and sound emanating from warning and alarm devices; from emergency vehicles when responding to an emergency call or operation in time of emergency; from the normal use of churches, schools, athletic fields, civic and cultural centers, public auditoriums; from parades for which a permit or other permission granted by the government agency with jurisdiction over the same; are typically of such a nature, character, quality duration, and frequency that they are not a nuisance, are not detrimental to the public health, welfare, safety, and quality of life within Litchfield Township, and do serve a public purpose, and therefore, the same should not be subject to the regulations set forth herein below; and

WHEREAS, Ohio Revised Code Section 505.17 authorizes Boards of Township Trustees to make such regulations and orders as are necessary to control passenger car, motorcycle, and internal combustion engine noise, as permitted under Ohio Revised Code Section 4513.221; and

WHEREAS, Ohio Revised Code Section 4513.221 (E) (1), (2), and (3) authorizes Board of Township Trustees to regulate noise from passenger cars, motorcycles, or other devices using

internal combustion engines in the unincorporated area of the township by requiring said engines to be equipped and operated with a factory installed or equivalent muffler; and

WHEREAS, Ohio Revised Code Section 4513.221 (E) (4) authorizes Board of Township Trustees to regulate noise from passenger cars, motorcycles, or other devices using internal combustion engines in the unincorporated area of the township by prohibiting racing the motor of any vehicle using an internal combustion engine in such a manner that the exhaust system emit a loud, cracking, or chattering noise unusual to its normal operation; and

WHEREAS, the Board of Trustees of Litchfield Township, Medina County, Ohio, has received complaints from citizens residing along streets and roadways traveled by trucks with regard to loud noises emitted by trucks using diesel engine retarders known as 'Jake brakes', which reduce the trucks' rate of speed, but cause the trucks' exhaust system to emit loud, cracking, or chattering noises unusual to the normal operations; and

WHEREAS, such residents have complained that these noise emissions have occurred at all times of the day and night, and the Board of Trustees finds that the noise generated by such 'Jake brakes' constitutes a nuisance and is detrimental to the public health, welfare, safety, and quality of life within Litchfield Township.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of Litchfield Township, Medina County, Ohio, that the following regulations are hereby adopted:

1. No person shall generate or permit to be generated unreasonable noise or loud sound that is likely to cause inconvenience or annoyance to persons of ordinary sensibilities by means of a radio, phonograph, television, tape player, loudspeaker, CD player, DVD player, computer, digital tape or disc, bullhorn, musical instrument amplifier, musical instrument, any type of audio system, or any other sound amplifying device.

(A) It is prima facie unlawful for any person to generate or permit to be generated sound by the above-described devices or instruments in the following circumstances:

- i. On private or public property in an area zoned for residential use, where the sound is plainly audible more than 50 feet from the property line of the property on which the source of the sound is located or when the noise can be heard at a distance of 150 feet or more from the noise or sound source;
- ii. On a street, highway, or in the public right of way where sound is plainly audible 50 feet from the device generating the sound;
- iii. From premises located outside of an area zoned for residential use to which a D permit has been issued by the Division of Liquor Control, where the sound is plainly audible more than 50 feet from the property line of the said premises, without regard to whether the said premises is adjacent to a district which is zoned for residential use.

(B) No person, being the owner, or person in possession of a premises, or person in control of the premises by reason of employment, agency, or otherwise, whether such ownership, possession, or control is exclusive or joint, shall permit a violation of Section 1 of these Regulations.

(C) The following uses and activities shall be exempt from the regulations and controls of

Section 1 of these Regulations:

- i. Noise and sound from warning alarm devices, and automobile horns while in lawful use;
- ii. Noise and sound from emergency vehicles when responding to an emergency call or operating in time of emergency, or when the warning devices thereon are being tested;
- iii. Noise and sound from the normal use of churches, schools, athletic fields, civic and cultural centers, and public auditoriums; and
- iv. Noise and sound from parades for which a permit or other permission is granted by the government agency with jurisdiction over the same.

(D) In determining whether a noise is likely to cause inconvenience or annoyance to persons of ordinary sensibilities, a court shall consider the following factors:

- i. Complaints of neighbors regarding the noise;
- ii. The intensity and duration of the noise;
- iii. The type of noise produced; and
- iv. The alternate means available without excessive noise.

(E) It shall be presumed to be a violation of Section 1 of these Regulations if oral or written notice to cease and desist producing a noise has been given to any person and that person continues to make, cause or permit a noise of similar intensity and duration.

2. 'Plainly Audible', as use herein, means any sound that can be clearly heard by a person using his or her normal faculties, even though such person may not be able to discern the title or lyrics of the musical composition which is the subject of the violation.

3. The Board of Trustees further hereby determines that it is necessary to regulate noise from passenger cars, motorcycles, or other devices using internal combustion engines, in the unincorporated area of Litchfield Township in the following ways:

(A) No person shall operate or cause 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) No person shall remove or render inoperative or cause to be removed or rendered inoperative, any muffler, other than for purposes of maintenance, repair, or replacement.

(C) No person shall discharge into the open area the exhaust of any stationary or portable internal combustion engine except through a factory-installed muffler or equivalent muffler in good working order and in constant operation.

(D) No person shall race the motor of any vehicle described in this section in such a manner that the exhaust system emits a loud, cracking, or chattering noise unusual to its normal operation.

Provided, nevertheless, the Regulations adopted under this Section 3 shall not apply to commercial race track operations.

4. This Board further hereby determines that the use of an engine retarder (including but not limited to, so-called 'Jake breaks') on a motor vehicle causes the motor vehicles motor to race in such a manner as to cause its exhaust system to emit a loud cracking or chattering noise

unusual to its normal operation, and by this Regulation hereby prohibits such use within the unincorporated area of the Township.

5. Whoever violates the noise regulations set forth in Section 1 above is guilty of a misdemeanor of the second degree, as set forth in Ohio Revised Code Section 505.172(E), and whoever violates the noise regulations set forth in Sections 3 and 4 above is guilty of a minor misdemeanor, as set forth in Ohio Revised Code Section 505.17(E), and all fines collected hereunder shall be paid into the Litchfield Township General Fund.

6. Signs conforming to Ohio Revised Code Section 4511.09, giving notice of these Regulations, shall be prominently displayed to the extent required by Ohio Revised Code Section 505.17 (B)(1).

7. Any law enforcement officer (as that term is defined by Ohio Revised Code Section 505.172(A)), including but not limited to Medina County Sheriff Deputies, are hereby granted the authority to enforce any Section of these Regulations. Any law enforcement officers, who hear a sound that is plainly audible as defined herein, shall be entitled to enforce any Section of these Regulations pursuant to the following standards:

- (A) 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 (i.e., a hearing aid);
- (B) Regarding Sections 3 and 4 of this Regulations, 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;
- (C) 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; and
- (D) 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 at any premises to which a D permit has been issued by the division of liquor control. Parking lots and driveways are included.

8. Pursuant to Ohio Revised Code Section 505.172(F) of the Ohio Revised Code, any person allegedly aggrieved by another person that commits an act or practice that violates any Section of these Regulations may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing any such act or practice that violates any Section of these Regulations. In addition, the Board of Trustees may also seek in a civil action an injunction against each person that commits an act or practice that violates any Section of these Regulations. A court involved in any civil action concerning a violation of any Section of these Regulations may award to the prevailing party reasonable attorneys' fees limited to the work reasonably performed.

9. All of the provisions of this Resolution are intended to be and shall be treated as "regulations" within the meaning of Ohio Revised Code Section 505.172(B) and the adoption of such regulations are necessary for the preservation of peace and good order of the Litchfield Township community.

10. This Resolution (a) shall be posted by the Township Clerk in five conspicuous public places in the township for thirty (30) days before becoming effective, and (b) shall be published in a newspaper of general circulation in the township for three (3) consecutive weeks, as called for in Ohio Revised Code Section 505.17(B)(1), and this Resolution shall become effective upon the completion of the last of these events.

Adopted in the regular session of this __ day of _____, 202_

_____ seconded the motion.

Upon roll call on the adoption of this Resolution, the vote was as follows:

Horvath-

Pope-

Seifert-

Adopted the _____ day of _____, 2023