

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO
ROBERTA C. ANGERMAN, et al., **Case No. 01-CV-0117**

Plaintiffs
vs.
THOMAS A. BURICK, et al.,
Defendants

Judge R.G. Lile (Assigned)
FINDINGS OF FACT,
CONCLUSIONS OF LAW and
JUDGMENT

This civil action was originally brought by 109 individual Plaintiffs, residents of Wooster and Franklin Townships in Wayne County, Ohio. The lawsuit was filed against Thomas A. Burick and his wife, Elizabeth A. Burick, and LoConn Motocross, Ltd., an Ohio limited liability company owned by the Buricks which operates a motocross track facility on their Franklin Township property. This lawsuit was filed on March 16, 2001, prior to the opening of the racing facility which occurred on June 1, 2001.

The Plaintiffs claimed that the operation of the race track would constitute a nuisance, and would substantially and unreasonably interfere with the use and enjoyment of their property and will cause a diminution of their property values. The Plaintiffs seek a preliminary and permanent injunction prohibiting the Defendant's from operating the motocross facility, and have requested attendant and incidental money damages, including attorney fees.

The Plaintiffs, who numbered 104 individuals at the start of trial on December 18, 2001, by reason of voluntary withdrawal from the lawsuit, did not amend or supplement their complaint prior to the start of trial. The Court does not find any limitation to its jurisdiction, however, by reason of the operation of CP Rule 15(B).

Further, while the Plaintiffs requested a trial by jury in this action, the Court sustained the Defendant's motion to strike such request on authority of State, *ex rel. Miller v. Anthony* (1995), 72 Ohio St. 3d 132. This lawsuit was tried to the Court.

On August 24, 2001, during the early evening hours, the Court, at the invitation of counsel for the parties, viewed the areas which are the subject of this lawsuit, including the motocross track and all of the neighborhoods where Plaintiffs resided. At the time, motorcycles were running on the track.

Now, being advised in the premises, the Court makes the following Findings of Fact and Conclusions of Law, and renders Judgment thereon:

Findings of Fact

1. Franklin Township in Wayne County is located to the east and south of the City of Wooster which is the County seat. The land involved in this lawsuit is generally rural in nature, level to hilly, wooded, farm land, with a combination of roadside residences, residential developments, and, adjacent to the west of the Defendant's property, a sand and gravel business. The parties stipulated that at all times pertinent to this lawsuit, there

was no zoning law in place for Franklin Township.

2. By general Warranty Deed, dated December 29, 2000, filed for record with the Wayne County Recorder on January 8, 2001, the Defendants, Thomas A. Burick and Elizabeth A. Burick acquired title to 82.190 acres, more or less, in Franklin Township. Upon transfer of title, the Defendants began developing the property for commercial use as a motocross raceway. The term "motocross" is a contraction of the words motorcycle and cross country and refers to a motorcycle race over a course of very rough terrain. The raceway was opened to the public on June 1, 2001 and continued operation to on or about November 14 when the facility was closed. During the time the facility was open, practice racing was first offered on Thursdays and Fridays from 4:00 p.m. to dusk (8:30 to 9:00 p.m. depending on visibility), and then on Fridays from 4:00 p.m. to 7:00 p.m., and Saturdays 11:00 a.m. to 3:00 p.m. The Defendants stated that they wanted to reopen the raceway in late March or early April, 2002 with practice on Fridays and Saturdays from 4:00 p.m. to dusk, and motocross racing on Sundays from 11:00 a.m. to 5:00 p.m. The raceway, as presently constructed, can accommodate up to 25 or more motocross bikes at a time, depending on conditions, with motorcycles ranging in size from 40 cc to 400 cc. Thomas Burick testified that nothing could be done to the cycles to reduce the noise they produce. Burick is presently a member of the American Motorcycle Association and plans to become a member of the Competition Riders Association (CRA) which is a motorcycle racing sanctioning body. Burick testified that he wants to work full time at the track during the race season and hopes to make his living from operation of the motocross raceway. He stated his desire to have 10 sanctioned races at the track during the racing season. Elizabeth Burick testified that she expected to have more races on more days in 2002, with more people in attendance.

3. Of the 104 Plaintiffs who remained in this case at the time of trial, twenty (20) testified concerning the nature and extent of the sound emanating from the Defendants' racetrack during the times that it was used for practice or racing. Those who testified were residents in the area during the 2001 practice/race season and have homes between 1,000 feet to one mile from the track. Their descriptions of the sounds they heard at their residences during the running of motorcycles at the motocross course included:

"high pitched", "nerve wracking", "annoying", "not pleasing",
"intolerable", "irritating", "noisy", "sharp", "unrelenting and
high pitched", "obnoxious", "ear-piercing", "aggravating",
"angering", "same high-pitched noise 20 minutes at a time with
few gaps".

Those Plaintiffs who lived closer to the track testified that they could hear the motorcycles on the race course from inside their homes even with all the windows shut. Several of the plaintiffs testified that the noise interfered with family gatherings planned outdoors and interrupted conversations. Others stated that during the use of motocross bikes on the course they limited their use of outside space and stayed indoors.

a. Plaintiff Brenda Blackburn, who is an eleven-year resident of 3758 Todd Lane (Lot 24) testified that the sound coming from the track cannot be

compared to the sound of lawn mowers in the neighborhood or the sound of traffic from State Route 83, which she did not find annoying. Blackburn stated that the noise created by the track causes her to dread every weekend. Blackburn video taped the racing from her back yard and from an upstairs window in her house on August 17, and October 19 and 20, 2001 (Plaintiffs' Exhibits 5 and 6).

b. Plaintiff Elizabeth Richey is a six-year resident at 1901 Sherck Boulevard (Lot 58). She and her husband Paul purchased the property because it was outside of town and had an open atmosphere. Richey testified that the noise from the track drove her and her family off their screened outside porch and into the house. She stated that she has considered moving from the residence and would definitely move if the track continues in operation.

c. Plaintiff Lori Faught who has lived at 1964 Sherck Boulevard for three years testified that she and her husband, Michael, who is also a Plaintiff, live on a tree-covered 50 acre lot about 4,000 feet from the race course. They selected the site because of its proximity to the city of Wooster and the quietness the area provided. Richey testified that her use and enjoyment of her home has been affected by the use of the track. She stated that there was a great deal of noise from the race way in August (2001) and that the sound of the motorcycles was disappointing and irritating and could be heard from inside her home even though all windows were shut.

d. Plaintiff Wendy McKee, a resident of 1719 Sherck Boulevard (Lot 14) resides at the property with her husband, Todd, and four children. McKee testified that use of the race track since late spring of 2001 has created noise which has interrupted normal conversation and interferes with family gatherings. McKee stated that she can hear track noise from inside the home and at times can feel the noise. She said that the use of the motocross course has decreased her enjoyment of her home and that she misses the peace and quiet she enjoyed before the track was opened.

e. Plaintiff Steve Bernardy, a resident of 2073 Sherck Boulevard (Lot 39), is an eleven-year resident and testified that he chose the area as a residence site because of the country setting. He stated that his use and enjoyment of his home, and particularly grilling on the outside deck facing north, has been limited during the use of the motocross raceway. Bernardy testified that on one occasion in late July or early August 2001, he experienced the sound of a neighborhood lawn mower being drowned out by the motocross noise which he compared to the sound of chain saws.

f. Plaintiff Bonnie Cherilla, 3838 Todd Lane (Lot 32), testified about the differences between pre and post track use. Pre track conditions were quiet and comfortable; post track conditions included piercing noise and annoying sound. Cherilla testified that she didn't garden in the Spring of 2001 because of the noise. She said she wasn't bothered at first, but that the noise grew in volume. Cherilla said she considered moving because of noise from the track.

g. Plaintiff Ernest Smith, a one-year resident at 1745 Sherck Boulevard (Lot 15), testified that he moved into his home in December 2000. He

describes the noise from the track as sounding like a "mechanical bee". Smith said that he was not going to let the noise bother him and that the sound from the track didn't affect his use of the property. Smith did testify that he could hear the sound from the track during its use on Thursdays, Fridays, and Saturdays.

h. Plaintiff Brenda Litt is a ten-year resident of the area, and a three and one-half year resident at the 3975 Millersburg Road location, along with her husband, Joel Litt, also a party to this action. The Litts are the closest plaintiffs to the motocross track at about 1000 feet. Both testified as to the annoying high-pitched noise created by the motorcycles racing on the track and that their use and enjoyment of their property has been affected by the noise. Brenda Litt stated that since the track has been in use, the dirt and dust created by the track required her to clean the family pool weekly instead of biweekly.

i. Ermon French, a 24-year resident of 4137 Millersburg Road testified that the problem with the motocross track is noise. He described the sound of the racing dirt bikes as sharp, irritating, and annoying. French testified that he can hear the bikes in his house during the times the course is open even with his windows closed.

4. Expert witnesses testified on behalf of the parties regarding noise measurements taken in the vicinity of the motocross track. Ronald Huff, called by the Plaintiffs, has a 32-year prior employment history as a NASA aerospace technologist, and has worked over the past 14 years as a self-employed consultant in the field of acoustics and noise. William Hannon, called by the Defendants, has been the owner of The D.H. Kaiser Co. for about 17 years. D.H. Kaiser is a business which is involved in community noise assessment, zoning issues, and conducts community noise analyses.

Huff conducted noise measurements on three separate days at five locations around the track during the summer and early fall of 2001: on July 20 at the southern boundary of the Defendants property near the motocross course, on July 26 on the pool deck of Joel and Brenda Litt who live at 3975 Millersburg Road, and on September 29 at three sites, the property of Lois and Harry Wright, 1742 Tolbert Road, the property of Brenda and Todd Blackburn, 3758 Todd Lane, and again on the pool deck at the Litt residence.

Hannon conducted sound tests on June 8, 2001 at three sites: at the track entrance onto Millersburg Road, in a swale just off Millersburg Road 250 feet south of the track entrance, and 90 feet south of a mailbox located 3699 Todd Lane, formerly the residence of Plaintiff Scott Burgess; the latter property is now owned by Gerald Vedan, a person who testified during Plaintiffs' rebuttal. Hannon conducted additional sound surveys on September 22, 2001 at 3830 Batdorf Road, 8 Warring Cross Drive, and 1756 Tolbert Road, and on November 16, 2001 near State Route 83.

Based upon their noise studies, Huff and Hannon testified respectively that:

- Huff
- a. On July 20, 2001, at the Defendants' southerly property line, noise levels during motocross practice reached a maximum of 92 dBA (decibels measured by use of the A scale) with an average level over a 300-second measurement period at 76.6 dBA.

Hannon

- b. On July 26, 2001, on the pool deck at the Joel and Brenda Litt residence on Millersburg Road, track noise levels during motocross practice reached a maximum of 72 dBA with the level being above 65 dBA on many occasions.
- c. During the morning hours of September 29, 2001, on the pool deck at the Litt residence, noise levels over a two hour testing period measured a maximum of 44.5 dBA for large bikes and 71.9 dBA for small bikes. At the same time, measured traffic noise from Route 83, reached a maximum of 61.4 dBA.
- d. On September 29, 2001, a two-hour sample of noise at the residence of Harry and Lois Wright on Tolbert Road reached a maximum of 52.4 dBA for small bikes and 56.4 dBA for large bikes.
- e. On September 29, 2001, at an oil well site near the Brenda and Todd Blackburn residence on Todd Lane, traffic noise from Route 83 measured 61 dBA, while track noise was measured at 67 dBA for small bikes and 71.1 dBA for large bikes.
- f. The human ear perceives noise differences of 1 dB; a difference of 6 dB is large because of the exponential nature of noise as measured by the use of decibels.
- a. At the test sites near Route 83 where noise was measured on June 8, and November 16, 2001, a greater amount of noise was found to be produced by road traffic than by motocross track usage.
- b. On September 22, 2001, at a combination of sites (3830 Batdorf Road, 8 Warring Cross Drive, and 1756 Tolbert Road), existing background noise levels would be found "on the adjusted yearly average day/night average to 55 decibels because of their location away from heavy traffic areas..."
- c. "That given the limited duration of the motocross operation in time during the day over a long period of time over a year, assessing that into the community noise that already exists out there, it [the motocross operation] will have no effect upon the long term community noise levels that are existing at this point and that they would comply or fall within the categories of the first two residential categories of the ANSI [American National Standards Institute] standards."
- d. That over a period of time the sound emanating from the motocross track falls below the background traffic noises measured at the testing positions used by Huff.
- e. That over a long period of time there will be times when the traffic noise in the vicinity of the Litt residence is at or greater than the sound emanating from the motocross track. Huff ordered, with regard to this opinion however, that his opinion would be based upon use of transposed measurements as he did not measure the Litt site during actual motocross operation.

Another expert witness called by the Plaintiffs, Eric Zwerling, testified that at a sound level of 65 dB it would be difficult for two people to converse over the sound at a distance of one meter. Zwerling also testified that a sound level of 35 dB and above interferes with sleep and, therefore, noise ordinances typically establish nighttime noise limit caps of 50 dBA.

The Court, as the trier of facts, finds the testimony of expert witnesses, Ronald Huff and Eric Zwerling, to be more credible in this matter than that of William Hannon.

Conclusions of Law

6. Black's Law Dictionary defines nuisance as:

"That which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him." **Black's Law Dictionary (Rev. Fourth Ed. 1968) 1214.**

A private nuisance is defined as:

"..anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. (Citations omitted). As distinguished from public nuisance, it includes any wrongful act which destroys or deteriorates the property of an individual or of a few persons or interferes with their lawful use or enjoyment thereof, or any act which unlawfully hinders them in the enjoyment of a common or public right and causes them a special injury different from that sustained by the general public." **Black's Law Dictionary (Rev. Fourth Ed. 1968) 1215.**

7. The leading case in Ohio dealing with the law of nuisance is **Taylor v. Cincinnati** (1944), 143 Ohio State 426. In support of its holding that liability for nuisance does not depend upon the question of negligence and may exist although there is no negligence, the Court in **Taylor** cited cases from outside Ohio in support of such premise:

- a. *Bowman v. Humphrey*, 132 Iowa 234, 109 N.W. 714 (dumping refuse from creamery into creek);
- b. *Kafka v. Bozio*, 191 Cal., 746, 218 P., 753 (negligence irrelevant in action to abate nuisance resulting from sinking building causing wall to overhang, trespass upon and damage plaintiff's property);
- c. *Bartel v. Ridgefield Lumber Co.*, 131 Wash., 183, 229 P., 306 (substantial damage to plaintiff's farm caused from smoke and sawdust from operation of sawmill);
- d. *Truehart v. Parker* (Tex. Civ. App.), 257 S.W., 640 (action to restrain operation of dance hall across street from plaintiff's residence because of din and noise). *Id.*, 143 Ohio St. at 437, 438

The Court in **Taylor**, regarding absolute nuisance for which strict liability or liability without fault is imposed by law, summarized that absolute nuisance may be defined as a distinct civil wrong, arising or resulting from the invasion of a legally protected interest, and consisting of an unreasonable interference with the use and enjoyment of the property of another; **the doing of anything, or the permitting of anything under one's control or direction to be done without just cause or excuse, the necessary consequence of which interferes with or annoys another in the enjoyment of his legal rights; the unlawfully doing of anything, or the permitting of anything under one's control or direction to be done, which results in injury to another; or the collecting and keeping on one's premises of anything inherently dangerous or likely to do mischief, if it escapes, which, escaping, injures another in the enjoyment of his legal rights. (Emphasis added). *Id.*, 143 Ohio St. 440.**

The Court also acknowledged a fourth situation where nuisance may be dependent upon negligence, the failure to exercise due care. In such cases, the Court stated, negligence must be averred and proven in order to warrant recovery. *Id.*, 143 Ohio St. 441.

8. A finding of common law nuisance is not dependent upon the existence of zoning laws.

9. The law of Ohio has established that the test as to the amount of annoyance necessary to constitute a nuisance is measured by the degree of discomfort that a person of ordinary sensibilities would experience. The Court must look at what persons of ordinary tastes and sensibilities would regard as an inconvenience or interference materially affecting their physical comfort to a degree which would constitute a nuisance. **O'Neil v. Atwell** (1991), 73 Ohio App. 631.

10. The Court concludes, in view of the evidence presented in this lawsuit, that the Defendant's use of the property in Franklin Township, Wayne County, Ohio constitutes an absolute nuisance for the reason that the Defendant's operation of the commercial

following Plaintiffs' use and enjoyment of their property, all of which would be offensive or inconvenient to any person of ordinary tastes and sensibilities:

Roberta C. Angerman	Lothar Beke	Steve J. Bernardy
Brenda K. Blackburn	Bonnie Cherilla	Lori A. Faught
Michael W. Faught	Ermon French	Ruth Kaplan
Brenda Litt	Joel Litt	Malcolm MacRaid
Wendy McKee	J.C. Morgan III	Jean Oplinger
	Elizabeth Richey	

11. In seeking to abate a nuisance, a Court of Equity may restrict the activity "no more than is required to eliminate the nuisance." 5 Powell, Real Property (1985), 64-69, ¶704[4]. See **Christensen v. Hilltop Sportsman Club, Inc.** (Feb. 17, 1993) Pickaway App. No. 91 CA 33, unreported, LEXIS 1112. Therefore, the Court concludes that the permanent injunction which should be ordered here regarding the commercial use of the 82.190 acres for motocross practice and racing, cannot be extended to prohibit the use of the property by the Defendants Thomas and Elizabeth and their family for reasonable purposes, including the operation of their personal motocross equipment thereon.

12. The general rule in Ohio is that, absent a statutory provision allowing attorney fees as costs, the prevailing party is not entitled to an award of attorney fees unless the party against whom the fees are taxed was found to have acted in bad faith. **State, ex rel. Crockett v. Robinson** (1981), 67 Ohio St. 2d 363.

Judgment

It is Ordered, Adjudged, and Decreed, that a permanent injunction shall be and hereby is granted to the Plaintiffs named herein above at **Conclusions of Law** ¶10, and that the Defendants, Thomas A. Burick, Elizabeth A. Burick, and Lo-Conn Motocross, LTD. shall be and hereby are permanently enjoined from using and operating, or permitting any other person, corporation, or business entity to use and operate a commercial motocross or commercial "dirt bike" track or course on their property as is fully described in the General Warranty Deed, filed for record on January 8, 2001, and recorded in the Wayne County Deed Record at Volume 315, Pages 497-498, which description is fully incorporated in this Judgment.

It is further Ordered that a marginal reference to this Judgment shall be made by the Wayne County Recorder on the Deed Record noted in the above paragraph and that the fee therefor shall be taxed as court costs herein.

No attorney fees are Ordered in this action.

Court costs are taxed to the Defendants.

ORDERED.

April 12, 2002
Date

Roger G. Lile
Judge Roger G. Lile
(Sitting by Assignment)

cc: J. Douglas Drushal, Esq.
John V. Boggins, Esq.

JOURNALIZED

APR 15 2002

CAROL W. MILLHOAN, CLERK
WAYNE COUNTY CLERK

STEWART E. STADLER
District Court Judge, Department 3
Flathead County Justice Center
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Kalispell, MT 59901
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IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

LEONARD MOYER, ET AL.,
Plaintiffs,

vs.

LORRAINE MORIN, ET AL.,
Defendants.

Cause No. DV-02-091A

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

This matter came on for trial on Wednesday and Thursday, August 20, 2003. Plaintiffs were present and represented by their counsel, Lee C. Henning; the Defendant Lorraine Morin was present personally and on behalf of the Morin Family Trust; the remaining Defendants were not present. The Court, having considered the pleadings and exhibits, the testimony of the parties and their witnesses, and being fully advised, now makes the following:

FINDINGS OF FACT

1. The Morin Family Trust is the title holder to certain property located in Flathead

County, State of Montana, upon which Defendants have operated and/or allowed to operate the Badrock Motocross Track. The remaining Defendants are the beneficiaries of the Trust and jointly control the real property in question.

2. Plaintiffs own real property near the Badrock Motocross Track.
3. Lorraine Morin occupies and controls the property on which the Badrock Motocross Track is located by the consent of and in conjunction with the other two beneficiaries of the Morin Family Trust, Cheryl Brunson and Janice Morin.
4. In or about the fall of 2001, the Defendants allowed the aforementioned motocross track to be built on their property.
5. Since that time the Defendants have operated and/or allowed to operate a motocross track on the property, at times by themselves, and at other times in conjunction with other persons.
6. During the spring, summer and fall months of 2002 the track has been operated as frequently as on a daily basis.
7. On a number of occasions during the summer of 2002, large race meets were held at the track.
8. The track produces a tremendous amount of noise and dust which unreasonably interferes with the Plaintiffs' ability to use and enjoy their property.
9. The noise level of the motocross bikes is so great on some occasions that it interferes with the Plaintiffs' ability to hold normal conversations on their property, to listen to television and radio, and to study.
10. The Plaintiffs, on a number of occasions, requested that Defendants stop or limit the use of the motocross track, which requests were ignored by Defendants.
11. The continued operation of the track would dramatically decrease the Plaintiffs' use and enjoyment of their property and would negatively impact the value of the Plaintiffs' properties.
12. Some of the Plaintiffs have chosen to abandon their homes during the days of heavy operation of the track due to the noise.
13. The Defendants continue to operate the track on a limited basis and even this limited operation interferes with Plaintiffs' ability to use and enjoy their property.
14. In an attempt to reduce the impact to surrounding property owners by the operation of the track, Defendants continued to reduce and limit the operation of the track. The Court does not find that the Defendants acted with actual malice and an award of punitive damages would not be appropriate.
15. Defendants have shown an inability to regulate the use and operation of the

track in a manner which does not obstruct Plaintiffs' free and comfortable use and enjoyment of their adjoining properties. For that reason it is necessary for Defendants to be compelled to remove the track completely from the property.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

CONCLUSIONS OF LAW

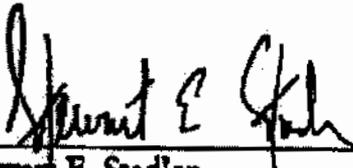
1. The operation of the Badrock Motocross Track is determined to be a public nuisance and Defendants are permanently enjoined from the continued operation of any type of motocross track in this vicinity.
2. Defendants are to abate this nuisance by removing the track from the property. This removal is by restoring the original contours of the property in question by removal of the hills and jumps which were constructed as part of the track.
3. Plaintiffs are not entitled to an award of punitive damages.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

ORDER

1. That Defendants permanently terminate the operation of the Badrock Motocross Track.
2. That Defendants, as weather and time allow, are to cause the removal of the track by removing hills and jumps that were constructed for its operation. This removal and restoration to original contours is to be accomplished as weather and time allow but no later than July 1, 2004.

Dated this 28th day of October, 2003.



Stewart E. Stadler
District Court Judge

pc: Lee C. Henning
Lorraine Morin
Cheryl Brunson
Janice Morin

"Good Neighbors Keep Their Noise to Themselves"

North Plainfield, NJ Nuisance Ordinance

(NPC posted this June 2004)

BOROUGH OF NORTH PLAINFIELD CODE

3-7 DISORDERLY CONDUCT

3-7.1 Loud Playing of Radios, Musical Instruments or Other Devices Prohibited.

No person shall play, use, operate or permit to be played, used or operated, a radio receiving set, vehicle radio, musical instrument, phonograph or other machine or device for the production or the reproduction of sound with louder volume than is necessary for convenient hearing of the person so playing, using or operating such instrument or device and such persons who are voluntary listeners thereto, nor shall such radio receiving set, vehicle radio, musical instrument, phonograph or other machine or device for the production or the reproduction of sound be operated in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants or the public. The use or operation of any such instrument, radio, phonograph, machine or device in such a manner as to be plainly audible at a distance of one hundred (100') feet from the building, structure, vehicle or place in which it is used or operated, shall be prima facie evidence of a violation of this subsection.

Nothing herein contained shall be construed to prohibit playing by a band or orchestra in a hall, building or in the open air by any Board of Education or Borough organized or sponsored program, activity or event, or by any other public program, activity or event, provided, however, that prior approval therefor has been obtained from the Borough. (Ord. #382, S 8.7; Ord. #96-16, S 1)

3-7.2 Disturbing Rest.

a. No person shall, within the limits of the Borough, permit, make or continue, or cause to be permitted, made, or continued any unnecessary noise which shall disturb the comfort, rest or repose of any person, or annoy any person being in his place of abode.

b. *Definitions.* As used in this Section:

Noise shall mean any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological effect on humans.

Sound shall mean 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. The description of sound may include any characteristic of such sound, including duration, intensity or frequency.

(Ord. #382, S 8.; Ord. #740, S 1)

3-7.3 Throwing of Dangerous Substances. No person shall throw any stones, sticks, glass, metal or any hard, dangerous or offensive substance into any street, by-way or public place, or at any car, vehicle, house, building, fence or person within the Borough limits. (Ord. #382, S 8.12)

3-7.4 Ringing of Bells, Blowing of Horns, Etc. for Public Sales. No person shall, on any street, road, avenue, park or other public place within the limits of the Borough, ring any bell or blow any horn or make any public outcry at or for any public sale, auction or

venue, or to advertise any goods, wares or merchandise for sale, or to attract any attention to or gain passengers for any cab, taxi-cab, hack or omnibus. (Ord. #382, S 8.18)

3-7.5 Sound Trucks. It shall be unlawful for any person to use a mobile loud speaker or sound vehicle, commonly known as a sound truck or sound wagon, on the public streets within the corporate limits of the Borough; except, that this prohibition shall not apply to the Police Department, Fire Department and the Red Cross, or any association incorporated or unincorporated, organized for the benefit of the public welfare and relief, during the course of an emergency or when the use of such loud speaker or sound vehicle is directly connected with such public work or relief, nor to the use of loud speakers or sound trucks to amplify and project music from records or amplify and project other musical productions in connection with any public parade or event, when such public parade or event is sponsored by the Borough of North Plainfield and then only on the legal holidays of May 30, July 4 and November 11. The exceptions shall not be deemed to permit any commercial advertising or commercial use of such sound trucks at any time. (Ord. #382, S 8.19)

3-7.6 Fireworks. No person shall, within the limits of the Borough, fire or discharge any fire cracker, torpedo or firwork of any kind, provided, however, that at any time the Fire Official may upon written application give permission for the display and discharge of fireworks at a time and place to be specified and under the direction of a person to be named in the written permit issued by the Fire Official. (Ord. #382, S 8.24; New)

3-7.7 Animals on Public Streets. No person shall tether any horse or any other domestic animal on or upon any street, alley, or other public place within the Borough limits, nor shall any person permit his horse or other domestic animal to feed upon any public place in the Borough, either in charge of any person or not, nor shall any person lead or drive any such animal through or along any street or public place in the Borough unless securely held in leash or lead or driven with a halter to it as a secure means to keep such animal from straying. (Ord. #382, S 8.29)

North Plainfield, NJ Land Development Ordinance

Relevant Excerpts

22-115.15 Lights and Noise

- a. The use of searchlights, flares, balloons, or other aerial objects, or noisemakers of any type, for the advertisement or promotion of a business; or the conduct of performances or demonstrations upon the exterior grounds of a business property is prohibited.
- b. The use of loudspeakers or sound amplifying devices of any type on a business property is prohibited, except where such loudspeaker or device is inside a fully enclosed building and not audible beyond the outside walls of the building.

- c. No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the following limits set forth for the receiving land use:
 - 1. Receiving land use Zone, R-1 through R-5 between 7:00 a.m. and 10:00 p.m. and B-1 through B-6 anytime maximum sound level limit of sixty-five (65) dBA.
 - 2. Receiving land use Zone R-1 through R-5 between 10:00 p.m. and 7:00 a.m. maximum sound level limit of fifty (50) dBA.
- d. Sound level measurements shall be measured in accordance with the applicable State Statute.
- e.
 - 1. Lighting to be designed and/or shielded to prevent beam encroachment or glare onto dwellings in any Residential Zone R-1 through R-5; or onto roadways, creating a hazardous condition to motorists.
 - 2. Care is to be taken to minimize beam encroachment or glare onto dwellings in business zones.

Roselle Park, NJ Nuisance Ordinance

(NPC posted this May 2004)

Chapter 159

PEACE AND GOOD ORDER

§ 159-1. Prohibitions

§ 159-2. Violations and penalties

[HISTORY: Adopted by the Mayor and Council of the Borough of Roselle Park 10-11-79 as Ord. No. 1083.¹ Amendments noted where applicable.]

¹ **Editors's Note: Section 1 of this ordinance provided that "Ordinance No. 437, entitled 'An Ordinance to Promote Peace, Quiet and Good Order in the Borough of Roselle Park, New Jersey,' and the amendments thereto, are hereby repealed."**

§ 159-1. Prohibitions

No person shall, within the limits of the Borough of Roselle Park:

A. Play, operate or use any television, radio, phonograph or tape equipment or other

sound-producing instrument, device or apparatus in such a manner that the sound thereof shall annoy any person or persons or disturb the comfort, rest or repose of any person or persons.

B. Permit, make or continue or cause to be permitted, made or continued any unnecessary noise, produced by human or mechanical means, which shall disturb the comfort, rest and repose of any person or persons being in his or their place of abode or at any public or private meeting or at church services.

C. Keep or harbor any dog or other animal which shall disturb the neighborhood by excessive barking, whining or howling.

D. Throw or discard any cans, bottles, refuse or garbage of any kind whatsoever into the waters of any pond, stream, lake or river, or upon a public street or public place, or discharge any sewage or waste into said waters or places, or any of them, or pollute said waters in any manner whatsoever.

E. Throw any papers, sticks, glass, metal or any hard, dangerous or offensive substances upon any sidewalk, street, highway or public place or at any automobile, vehicle, house, building, fence or person.

F. Participate in any practice, sport or exercise in such a manner so as to annoy, disturb or frighten any person or persons on any sidewalk, street, road, park or other private or public place.

G. Disrupt or disturb the exercises of any public school or any lawful assembly therein, or interfere with or annoy any child attending such school or any teacher therein.

H. Intentionally, willfully or maliciously destroy or injure any of the wires, posts, machines, bells, signs, boxes, box or any other apparatus of any fire alarm system or intentionally, willfully or maliciously interfere with the same or any part thereof or hinder or impede any of the operations intended to be accomplished thereby.

I. Hinder, prevent or deter by any device whatsoever any fireman or any person from rendering lawful assistance in abating or quenching a fire, or hinder or interfere with any fireman going to or returning from any fire or place from which a fire alarm proceeds, or hinder or obstruct any fire engine, hook and ladder truck, hose cart or other fire apparatus going to or from any place from which a fire alarm proceeds or where any building or property may be burning.

J. Interfere with or obstruct a police officer (whether a regular police officer or special police officer), a member of the auxiliary police of the Civil Defense - Disaster Control Bureau or a member of the First Aid Squad of the Borough of Roselle Park, whether in uniform or not, in the carrying out of his duties or functions. **[Amended 11-8-79 by Ord. No. 1096]**

K. Enter or remain upon the land or property of any person without lawful permission to do so.

§ 159-2. Violations and Penalties.

Any person who shall violate any provision of this chapter shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars (\$500.) or by imprisonment for a term in the county jail not to exceed ninety (90) days, or both.

Brighton, NY Noise Ordinance

as of March, 2004

Chapter 102, NOISE

[HISTORY: Adopted by the Town Board of the Town of Brighton at time of adoption of Code 1-24-1996 by L.L. No. 1-1996; see Ch. 1, General Provisions, Art. 1. Amendments noted where applicable.]

GENERAL REFERENCES

Howling dogs -- See Ch. 40, Art. I.

Peace and good order -- See Ch. 117.

§ 102-1. Declaration of policy; construal.

A. It is hereby declared to be the policy of the Town to prevent excessive, unnecessary or unusually loud noises. It is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of preserving, protecting and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the Town of Brighton and its inhabitants.

B. This chapter shall be liberally construed so as to effectuate the purposes described in this section. Nothing herein shall be construed to abridge the emergency powers of any Town department or the right of such department to engage in any necessary or proper activities. Nothing herein shall abridge the powers and responsibilities of any Police Department or law enforcement agency to enforce the provisions of this chapter.

§ 102-2. Exemptions.

This chapter shall not apply to the operation or use of any organ, radio, bell, chimes or other instrument, apparatus or device by any church, synagogue or school or to emergency services.

§ 102-3. Prohibited noises enumerated.

A. The creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Said noise shall be prohibited when it is of such character, intensity and duration or of any type or volume that a reasonable person would not tolerate under the circumstances and that is detrimental to the life, health or welfare of any individual or would cause or create a risk of public inconvenience, annoyance or alarm.

B. The following acts and the causing thereof are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the enumeration herein shall not be deemed to be exclusive.

(1) Horns and signaling devices: the sounding of any horn or other signaling device on any automobile, motorcycle, bus or other vehicle while stationary, except as a danger signal when an approaching vehicle is apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is

intended; the creation by means of any such signal device of any unreasonably loud or harsh sound or the sounding of any such device for an unnecessary period of time.

(2) Noisy vehicles. No person shall:

- (a) Use an automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud, unnecessary grating; grinding, rattling or other noise.
- (b) Operate any vehicle in such a manner as to cause unnecessary noise by spinning or squealing the tires or revving the motor of such vehicle.
- (c) Modify or cause to be modified the muffler, exhaust system or other noise-control device of any vehicle in a manner that will increase the noise emitted by such vehicle above that emitted by the vehicle when newly manufactured, regardless of the date of manufacture. The noise-control devices of any vehicle operated in the Town shall be maintained and in good working order. No person shall operate or permit to be operated a vehicle where the muffler, exhaust system or other noise-control device has been so modified or has not been maintained.

(3) Recreational vehicles, including snowmobiles. No person shall operate or permit to be operated any motor-powered recreational vehicle not licensed for operation on public streets pursuant to the Vehicle and Traffic Law:

- (a) On private property of another without the express prior written consent of the owner and the occupancy of said property. Such consent may be revoked at any time by the grantor thereof. Where such express prior written consent has been obtained, the operator or person at the site responsible for such operation shall keep said consent on his or her person and available for immediate display at all times during the period of such operation.
- (b) On any public grounds or property, including Town- or school-owned land, which shall include but not be limited to parks, ballparks and recreation areas.
- (c) In such a manner as to create unnecessary noise so as to unreasonably disturb or interfere with persons in the peaceful and quiet enjoyment of their property.
- (d) In a careless, reckless or negligent manner so as to endanger the safety or property of any person.

(4) Discharge of exhaust: the discharge into the open air of the exhaust of any steam engine, stationary internal-combustion engine, motor vehicle or boat engine or motor, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(5) Construction, demolition and excavation: the erection, including excavating, demolition, alteration or repair of any building, land clearing, land grading or road and utility construction other than between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 9:00 a.m. and 6:00 p.m., Saturday and Sunday, except in case of an urgent necessity in the interest of public safety.

(6) Construction, demolition and excavation within one thousand (1,000) feet of a residential property: the erection, including excavating, demolition, alteration or repair of any building, land clearing, land grading or road and utility construction within one thousand (1,000) feet of a residential property other than between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 9:00 a.m. and 6:00 p.m., Saturday and Sunday, except in case of an urgent necessity in the interest of public safety.

(7) Noise near schools and other institutions: the creation of any excessive noise on any street adjacent to any school, institution of learning, church or court, while the same is in session, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, provided that conspicuous signs are displayed in such streets indicating that the same is a school, hospital, church or court street.

(8) Refuse collecting equipment. No person shall create unreasonable noise through the operation of refuse collecting equipment between the hours of 10:00 p.m. to 6:00 a.m.

(9) Sound reproduction. No person shall operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound so as to produce unreasonable or unnecessary noise at any time, except for activities open to the public or for the public benefit and for which permission has been granted by the Town.

(10) Animals. No person shall keep, permit or maintain any animal under his or her control that causes unnecessary noise by continued barking, howling or other animal noises.

(11) Shouting. No person shall shout, yell, call, whistle or sing on public streets or in public places in such a manner and for a period of time as to be unreasonable under the circumstances.

(12) Noise from tools, machinery and heavy equipment in the construction, repair or alteration of property. The use of domestic or industrial tools, machinery and equipment of any kind in construction, repair or alteration of property resulting in loud grinding, hammering, sawing and similar noise shall be prohibited if said noise is unnecessary or unreasonable under the circumstances.

(13) Noise in the conduct of any business: the creation of unreasonable or unnecessary noise in the operation, conduct and/or maintenance of any business, factory, plant yard or manufacturing establishment (except as otherwise provided in this chapter), including but not limited to excavating, blasting, grinding, breaking, crushing or processing of any substance (where permitted).

(14) The operation of restaurants, taverns, bars and discos.

- (a) No restaurant, tavern, bar, nightclub, disco or other similar use, whether public or private, shall be conducted so that unreasonable or unnecessary music or other noise is caused by and/or emanates from said use.

- (b) Any owner, operator or proprietor of such a business use or the owner, licensee or person in control of any private premises shall so limit the level of noise emanating from the premises.
- (c) Further, it shall be the duty of any such person to disperse any assembly of persons loitering, drinking alcoholic beverages or otherwise engaging in lewd or disorderly conduct adjacent to or near the premises or to immediately notify the police of such conduct.

(15) Private residences. No noise from parties, entertainment, music or social gatherings of any kind, whether public or private, shall be such that noise caused by and/or emanating from said use can be heard between the hours of 11:00 p.m. and 7:00 a.m. the following day inside any residence, regardless of whether the windows of such residence are open, or at any other time if said noise is unnecessary or unreasonable under the circumstances.

(16) To operate, or to permit the continued operation of malfunctioning air-handling equipment, including but not limited to fans, compressors and heat pumps. [Added 1-8-2003 by L.L. No. 1-2003]

§ 102-4. Warning of violation; penalties for offenses.

A. In those cases of unreasonable noise, other than violations of § 102-3B(1), (2), (3) and (4), the person or persons responsible shall be advised of any conduct prohibited herein by the police or any Town officer authorized to enforce the provisions of this chapter. After such warning, if any party shall continue or repeat said conduct or similar conduct, the party shall be in violation of this chapter and shall be punishable as provided in Chapter 1, General Provisions.

B. It shall be sufficient if said warning is oral and/or in person or over the telephone.

C. No such warning shall be required in any case of a violation of § 102-3B(1), (2), (3), (4) and (8).

CODE City of CHARLOTTE, NORTH CAROLINA Final Legislation Ord. No. 844, adopted May 20, 1997. (Supplement No. 45)

PART II CODE OF THE CITY

Chapter 15 OFFENSES AND MISCELLANEOUS PROVISIONS*

ARTICLE III. NOISE

Sec. 15-70. Permits for additional amplification

(d) *Not permitted in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than seventy (70) db(A) anywhere within the boundary line of the nearest residentially occupied property.

(d) *Not permitted in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than seventy (70) db(A)

anywhere within the boundary line of the nearest residentially occupied property.

Newport, OR Noise Ordinance

(NPC posted this March 2004)

Newport Ordinances

ORDINANCE NO. 1251

The city of Newport ordains as follows:

Section 1. No persons shall cause, allow, permit or suffer to be made any noise that unreasonably causes inconvenience, annoyance or alarm to others.

Section 2. The following acts, although not an exclusive enumeration, are declared to be in violation of this ordinance:

- (a) Horns and signaling devices. The use at any time on any automobile, bicycle, motorcycle, bus, boat, vessel or other vehicle of any horn or signaling device otherwise than as a reasonable warning signal.
- (b) Radios, phonographs, musical instruments and similar devices. The operation of any radio, musical instrument, phonograph, television, tape recorder or similar device which produces or reproduces sound in such a manner as to cause inconvenience, annoyance or alarm to others. The operation of any such machine or device in such a manner as to be plainly audible to any person in an adjacent dwelling unit or at a distance of at least 50 feet from the location of said machine or device shall be prima facie evidence of a violation of this section.
- (c) Public address systems. The operation of any public address system upon public streets, public property or private property in such a manner as to produce or reproduce unreasonably loud or raucous noise that causes inconvenience, annoyance or alarm to another.
- (d) Yelling, shouting and similar conduct. Yelling, shouting, hooting, whistling, singing or similar conduct in such a manner as to cause inconvenience, annoyance or alarm to another.
- (e) Animals and pets. The keeping of any animal which by frequent or long continued noise causes inconvenience, annoyance or alarm to another.
- (f) Exhaust systems. The operation of any steam engine, stationary internal combustion engine, vessel, boat or motor vehicle so as to cause any greater noise or sound than reasonably necessary for its proper operation.
- (g) Schools, libraries and similar institutions. The making of any unreasonable noise that causes inconvenience, annoyance or alarm to any person within any educational institution, church, court, library or similar institution.
- (h) Pile drivers and similar machinery. The operation between the hours of 10 p.m. and 7 a.m. of any pile drivers, pneumatic hammer, derrick, mechanical shovel, hoist, or similar machinery so as to cause inconvenience, annoyance or alarm to another.
- (i) Blowers and similar devices. The operation of any blower, power fan, compressor, internal combustion engine, or electric motor so as to create unreasonable noise which causes inconvenience, annoyance or alarm to another.
- (j) Refrigerated trucks and similar vehicles. The parking of any vehicle or trailer between the hours of 10 p.m. and 7 a.m. while any motor, engine or auxiliary motor engine, including but not limited to those for refrigeration or electrical generation purposes, is in

operation so as to create unreasonable noise which causes inconvenience, annoyance or alarm to another.

Section 3. Construction Permits Required. The construction, erection, excavation, demolition, alteration or repair of any building, structure, street, sidewalk, driveway, parking area, sewer, utilities or other improvements shall be prohibited as the same shall cause any sound or noise which is audible to any person upon a public way or street or upon private property other than that upon which the activity shall take place, except in cases where the same is required in the interest of the public health, safety, convenience or welfare. In case such activities shall be required between the hours of 10 p.m. and 7 a.m., by reason of such public health, safety, convenience or welfare, a permit shall be required in advance from the city building official or city manager, except in case of emergency, in which case such permit may be issued by the police department or the city of Newport. No governmental body shall be required to obtain such a permit in case of emergency.

Section 4. Penalties. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction of any such violation shall be punishable by a fine of not more than \$500, or by imprisonment for not more than 30 days, or by both such fine and imprisonment.

Section 5. Severability. The provisions of this ordinance shall be deemed severable, and if any part, portion or provisions hereof shall be found to be invalid or unenforceable, all the remaining portions, terms and provisions of this ordinance shall, nonetheless, remain in full force and effect.

Passed by the council and approved by the mayor April 6, 1981

Nashville Tennessee
City Noise Ordinance

Title 11 PUBLIC PEACE, MORALS AND WELFARE

Chapter 11.12 OFFENSES AGAINST PUBLIC PEACE

11.12.070 Excessive noise--Use of televisions and radios restricted.

A. No person or persons owning, employing or having the care, custody or possession of any musical instrument, radio set, television set, phonograph, Victrola or other instrument, machine or device for amplifying, producing or reproducing sound, shall operate, use or permit to be operated or used such instrument, machine or device in such a manner as to disturb the peace and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the persons who are in the room or chamber in which or who are on the premises from which such instrument, machine or device is operated and who are voluntary listeners thereto.

B. The operation of any such instrument, machine or device in such a manner as to be plainly audible on any adjacent or adjoining property shall be prima facie evidence of a violation of this section unless specifically permitted by ordinance or law or by an agency or department of metropolitan government.

C. No person operating or occupying a motor vehicle on any street, highway, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible

at a distance of fifty or more feet from the vehicle or, in the case of a motor vehicle on private property, beyond the property line. For the purpose of this subsection, "plainly audible" means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty or more feet, however, words or phrases need not be discernible and said sound shall include bass reverberation. Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the metropolitan government or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of the metropolitan government. (Amdt. 1 to Ord. 93-724, 8/3/93; Ord. 93-724 § 1, 1993; Ord. 88-508 § 1, 1988: prior code § 29-1-54)

CITY OF DALLAS, TEXAS

CHAPTER 30

NOISE

- Sec. 30-1. Noises interfering with enjoyment of property or public peace and comfort.
- Sec. 30-2. Same - Enumerated.
- Sec. 30-2.1. Presumption.
- Sec. 30-3. Use of bell siren, compression, or exhaust whistle on vehicles.
- Sec. 30-4. Loudspeakers and amplifiers.

SEC. 30-1. NOISES INTERFERING WITH ENJOYMENT OF PROPERTY OR PUBLIC PEACE AND COMFORT.

No person shall make or cause to be made any loud and raucous noise in the city which is offensive to the ordinary sensibilities of the inhabitants of the city, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort. (Ord. 13744)

SEC. 30-2. SAME - ENUMERATED.

The following acts, among others, are declared to create loud and raucous noises, and shall be deemed a violation of this chapter, but such enumeration shall not be deemed to be exclusive:

- (a) The sounding of any horn or signal device on any automobile, motorcycle, bus, streetcar, or other vehicle, except as a danger signal as required by state law.
- (b) The playing of any radio, phonograph, or musical instrument in such a manner, or with such volume as to disturb the peace, quiet, comfort, or repose of persons in any dwelling apartment, hotel or other type of residence.
- (c) The keeping of any animal or fowl which emits or makes a loud and raucous noise.
- (d) The use of any automobile, motorcycle, bus, streetcar, bus, or vehicle so out of repair or so loaded, which emits or creates loud grating, grinding, or rattling noise.
- (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
- (f) The discharge into the open air of the exhaust of any stationary steam engine, stationary internal combustion engine, or motor boat engine, except through a muffler or other device which will effectively and efficiently prevent loud noises.
- (g) The discharge into the open air of the exhaust from any motor vehicle except through

a muffler, or other device, which will effectively and efficiently prevent loud and raucous noises.

(h) The erection, including excavation, demolition, alteration, or repair of any building in or adjacent to a residential area other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the director of public works and transportation of the city.

(i) The creation of loud and raucous noise on any street adjacent to any school or court which is in session or adjacent to any hospital; provided, that conspicuous signs are located in such streets indicating that schools, hospitals, and courts are adjacent thereto.

(j) The shouting and crying of peddlers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.

(k) The use of any drum or other instrument or sound amplifying equipment for the purpose of attracting attention by the creation of noise, to any performance, show, sale, or display of merchandise as to attract customers to any place of business.

(l) The use of mechanical loudspeakers or sound amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale, or display of merchandise. (Ord. Nos. 13744; 220261)

SEC. 30-2.1. PRESUMPTION.

Whenever a violation of section 30-2(1) of this chapter occurs, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued. (Ord. 22094)

SEC. 30-3 USE OF BELL, SIREN, COMPRESSION, OR EXHAUST WHISTLE ON VEHICLES.

No vehicle shall be equipped with and no person shall use upon a vehicle any bell, siren, compression or exhaust whistle, except that vehicles operated in the performance of duty by law enforcement officers, fire department, and ambulances may attach and use a bell, siren, compression or exhaust whistle. Ord. 13744)

SEC. 30-4 LOUDSPEAKERS AND AMPLIFIERS.

(a) A person commits an offense if he operates or causes to be operated any mechanical loudspeaker or sound amplifier in a public place or upon any public sidewalk, street, alley, or highway of the city in violation of any of the following limitations and requirements:

(1) No mechanical loudspeaker or sound amplifier may be operated within 150 feet of the property line of the premises of a residence, except between the hours of 8:00 a.m. and sunset, as designated by publication in a local newspaper of general circulation.

(2) A mechanical loudspeaker or sound amplifier may not emit loud and raucous noise so as to interfere with the enjoyment of life or property or to interfere with public peace and comfort.

(3) A mechanical loudspeaker or sound amplifier must be operated so as

not to cause traffic congestion or congregation of crowds that obstructs any public sidewalk street, alley, or highway.

(4) A mechanical loudspeaker or sound amplifier may not be operated within 150 feet of any:

- (A) hospital;
- (B) school that is in session;
- (C) nursing home; or
- (D) facility that provides surgical services to patients who do not require overnight hospital care during the hours of operation of the facility.

b) In this section:

(1) RESIDENCE means a single-family, duplex, or multifamily dwelling.

(2) SURGICAL SERVICES means therapy of a mechanical or operative kind, including, but not limited to, operations involving cutting, the setting of fractures, and dislocations, and similar manual forms of treatment.

(c) If conduct that would otherwise violate this section consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social economic, political or religious questions, the person must be ordered to move, disperse, or otherwise remedy the violation prior to arrest or citation.

(d) The order required by Subsection (c) may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(e) It is a defense to prosecution under Subsection (a) that:

(1) in circumstances in which this section requires an order, no order was given;

(2) an order, if given, was manifestly unreasonable in scope;

(3) an order, if given, was promptly obeyed;

(4) the mechanical loudspeaker or sound amplifier was operated in a public place within an enclosed structure and was not audible beyond the property line of the premises on which it was located;

(5) the person operating the mechanical loud speaker or sound amplifier was a law enforcement officer or member of the fire department in the performance of official duties;

(6) the mechanical loudspeaker or sound amplifier was operated for the purpose of alerting persons to the existence of an emergency or danger; or

(7) the mechanical loudspeaker or sound amplifier was operated in the performance of emergency work necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident, or natural disaster. (Ord. Nos. 13744; 18798; 19455; 21878)

CODE OF ORDINANCES City of MINNEAPOLIS, MINNESOTA Codified through Ord. No. 97-Or-102 adopted December 12, 1997. (Supplement No. 14, Update 9)

CODE OF ORDINANCES

Title 15 OFFENSES--MISCELLANEOUS*

CHAPTER 389. NOISE

ARTICLE I. GENERALLY

389.05. Declaration. There have come into being within the city certain loud, avoidable, unnatural and unnecessary noises, which under certain circumstances and conditions, constitute a serious threat to the health, the welfare, the contentment and the feeling of well-being of our people. Therefore, the city council does declare that the doing of such things in a manner prohibited by, or not in conformity with, the terms of this article constitutes an undesirable noise and shall be punished as hereinafter provided. (Code 1960, As Amend., § 948.010; 97-Or-063, § 1, 7-11-97)

389.10. Findings. (a) Excessive noise degrades the environment of the city and the city has a substantial and, in some cases, compelling interest in controlling such noise.

(b) Excessive noise degrades the environment to a degree that:

(1) is harmful to the health, welfare and safety of its inhabitants.

(2) interferes with the comfortable enjoyment of life and property.

(3) interferes with the well being, tranquility, and privacy of the home.

(4) causes and/or aggravates health problems.

(c) Individuals are not required to welcome unwanted noise into their own homes and there simply is no right to force unwanted noise into the home of an unwilling listener and there is a compelling interest in prohibiting such noise on a content neutral basis.

(d) Effective control and elimination of excessive noise is essential to the health and welfare of the city's inhabitants and to the conduct of the normal pursuits of life, including recreation and communication.

(e) It is the intent of the city council to prevent excessive noise without unreasonably infringing upon the rights of the city's inhabitants and visitors.

(f) It is the intent of the city council to prevent excessive noise, whenever possible, without substantially burdening the free exercise of religion and in every case within the constraints set by the Minnesota and U.S. Constitutions and applicable statutes and this ordinance is intended to be interpreted as consistent with all such constraints.

(g) The city's interest in regulating noise should and does take into account the time, place, and manner of such noise.

(h) Certain short term easing of noise restrictions is essential to allow the construction, maintenance and continuation of structures, infrastructure, and other elements necessary

for the physical and commercial vitality of the city.

(i) A substantial body of science and technology exists by which excessive sound may be substantially abated.

(j) Uses of sound amplifying equipment in certain ways and at certain times and places unreasonably invades the personal privacy, peace, and personal freedom of citizens and visitors of the city.

(k) The city council feels obligated to reasonably regulate on a content neutral basis the time, place, and manner of using sound amplifying equipment in order to protect the correlative constitutional rights of the citizens and visitors of this community to personal privacy, peace, and personal freedom from diminishment by invasive and unwanted noise which is unnecessary or for which there are ample alternative channels. (97-Or-063, § 2, 7-11-97)

389.15. Incorporation by reference. Minnesota Rules, Chapter 7030, is hereby incorporated by reference, except to the extent specifically inconsistent with this chapter, and made a part hereof as if fully set forth herein. The provisions thereof shall be supplemental to provisions of the Minneapolis Code of Ordinances and shall not preempt such provisions unless such preemption is required by law. (97-Or-063, § 3, 7-11-97)

389.20. Other remedies preserved. The provisions of this article shall be in addition to and shall not disturb either the right of the city, if such, or the right of individuals affected by the violation, to pursue any other remedy for the abatement of a nuisance, or any other remedy which might or could be available under the law. (Code 1960, As Amend., § 948.070)

389.30. Definitions. The following terms whenever used in this article shall have the following respective meanings:

Ambient noise level: The sound level which exists at a point of measurement in the absence of the sound the noise emission of which is measured, being the total effect of all other sounds coming from near and far. The total of all noise in the environment, other than the noise from the source of interest. This term is used interchangeably with background noise.

ANSI: The American National Standards Institute.

Attenuation: The reduction of sound intensity by various means (e.g., air, humidity porous materials).

A-weighted sound level: A measure of sound pressure level designed to reflect the acuity of the human ear, which does not respond equally to all frequencies. The ear is less efficient at low and high frequencies than at medium or speech-range frequencies. To describe a sound containing a wide range of frequencies in a manner representative of the ear's response, it is necessary to reduce the effects of the low and high frequencies with respect to the medium frequencies. The resultant sound level is said to be A-weighted,

and the units are dB(A). The A-weighted sound level is also called the noise level. Sound level meters have an A-weighting network for measuring A-weighted sound level.

Audible: Heard or perceived by the human ear.

Background noise: The total of all noise in a system or situation, independent of the presence of the desired signal. In acoustical measurements, strictly speaking, the term "background noise" means electrical noise in the measurement system. The term background noise is often used to mean the noise in the environment, other than the noise from the source of interest.

Band: Any segment of the frequency spectrum.

Calibrator (acoustical): A device which produces a known sound pressure on the microphone of a sound level measurement system, and is used to adjust the system to standard specifications.

Continuous: Continuing without intermission and seemingly without end.

Construction equipment: Any vehicle or device such as a jackhammer, hammerdrill, bulldozer, dump truck, front end loader, bobcat, crane or backhoe used in a construction project which has a defined beginning and end.

Cycles per second: A measure of frequency numerically equivalent to hertz.

Daytime: 6:00 a.m. to 6:00 p.m. of the same day.

dB(A): Composite abbreviation for decibel and A-weighted sound level. The weighted sound pressure level by the use of the A metering characteristic and weighting specified in ANSI Specification of Sound Level Meters, S1.4-1983. dB(A) is used as a measure of human response to sound.

Disturbing, excessive or offensive noise: Any sound or noise conflicting with the criteria or levels set forth in this article.

Equivalent A-weighted sound level (Leq): The constant sound level that, in a given time period, would convey the same sound energy as the actual time-varying A-weighted sound level.

Hearing: The subjective human response to sound.

Hearing level: A measured threshold of hearing at a specified frequency, expressed in decibels relative to a specified standard of normal hearing. The deviation in decibels of an individual's threshold from the zero reference of the audiometer.

Hertz (Hz): Unit of measurement of frequency, numerically equal to cycles per second.

Impact sound: The sound produced by the collision of two (2) solid objects. Typical sources are footsteps, dropped objects, etc., on an interior surface (wall, floor, or ceiling)

of a building.

Impulsive noise: Impulsive noise means a sound of short duration, usually one second or less with abrupt onset and rapid decay. Impulsive noises include but are not limited to metal impacts, hammers, gunshots, explosions, and drop forge impacts.

Intensity: The sound energy flow through a unit area in a unit time.

L10: The sound level, expressed in dB(A), which is exceeded ten (10) percent of the time for a one hour survey, as measured by test procedures approved by the commissioner of the Minnesota Pollution Control Agency.

L50: The sound level, expressed in dB(A), which is exceeded fifty (50) percent of the time for a one hour survey, as measured by test procedures approved by the commissioner of the Minnesota Pollution Control Agency.

Level: The logarithm of the ratio of a quantity to a reference quantity of the same kind. The base of the logarithm, the reference quantity, and the kind of level must be specified.

Logarithm: The exponent that indicates the power to which a number must be raised to produce a given number. For example, for the base ten (10) logarithm, used in acoustics, two (2) is the logarithm of one hundred (100).

Loudness: The subjective judgment of intensity of a sound by humans. Loudness depends upon the sound pressure and frequency of the stimulus. Over much of the frequency range it takes about a threefold increase in sound pressure, a tenfold increase in acoustical energy, or, ten (10) dB(A) to produce a doubling of loudness.

Loudness level: Measured in phones it is numerically equal to the median sound pressure level (dB) of a free progressive one thousand (1,000) Hz wave presented to listeners facing the source, which in a number of trials is judged by the listeners to be equally loud.

Masking:

1. The process by which the threshold of audibility for a sound is raised by the presence of another (masking) sound.
2. The amount by which the threshold of audibility of a sound is raised by the presence of another (masking) sound.

Masking noise: A noise that is intense enough to render inaudible or unintelligible another sound that is also present.

Medium: A substance carrying a sound wave.

Noise: Any sound which is unwanted, or does not occur in the natural environment (e.g., aircraft, highways, industrial, commercial, residential), or has an erratic, intermittent, or statistically random oscillation.

Noise area classification or noise classification area: The noise area classifications and activities included in Minnesota Rules, Chapter 7030, administered by the Minnesota Pollution Control Agency, except where specifically altered herein.

Noise level: The sound level. For airborne sound, unless specified to the contrary, it is the A-weighted sound level.

Noisy assembly: For the purposes of section 389.65 (c) (1), the term "noisy assembly" shall mean a gathering of more than one person in a residentially zoned or used area or building between the hours of 10:00 p.m. and 6:00 a.m. that would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area considering the time of day and the residential character of the area.

Non-impulsive noise: All noise not included in the definition of impulsive noise.

Octave: The interval between two sounds having a frequency ratio of two (2). There are eight (8) octaves on the keyboard of a standard piano.

Peak sound pressure: The maximum absolute value of the instantaneous sound pressure in a specific time interval. Note: In the case of a periodic wave, if the time interval considered is a complete period, the peak sound pressure becomes identical with the maximum sound pressure.

Points of habitation: Any point inside a dwelling and any deck, patio, or other outdoor area that contains seating or cooking areas designed for the use of the occupants and within thirty (30) feet of the adjoining dwelling. Outdoor areas are a point of habitation only during the period between April 15 and November 15.

Property line: The real or imaginary line and its vertical extension which separates real property owned or controlled by any person from contiguous real property owned or controlled by another person and separates real property from the public premise.

Premise: Any building, structure, land, utility or portion thereof, including all appurtenances, and shall include yards, lots, courts, inner yards and real properties without buildings or improvements, owned or controlled by a person.

Pure tone: A sound for which the sound pressure is a simple sinusoidal function of the time, and characterized by its singleness of pitch.

Reverberation: The persistence of sound in an enclosed space, as a result of multiple reflections, after the sound source has stopped.

Shielding: The attenuation of a sound, achieved by placing barriers between a sound source and the receiver.

Sound:

1. An oscillation in pressure, stress, particle displacement, particle velocity, etc., in an

elastic or partially elastic medium, or the superposition of such propagated alterations.

2. An auditory sensation evoked by the oscillation described above. Not all sound waves can evoke an auditory sensation (e.g., ultrasound).

Sound level: A quantity measured with a sound level meter and expressed in decibels. The weighted sound level meter and frequency weighting network, such as A, B, C as specified in ANSI specifications for sound level meters (ANSI S1.4-1983, or the latest approved revision). If the frequency weighting employed is not indicated, the A-weighting is implied.

Sound level meter: An instrument or combination of instruments, which meets or exceeds the requirements for a type S1A or S2A sound level meter as specified in American National Standards Institute specification for sound level meters S1.4-1983, or its latest revision. It is comprised of a microphone, amplified, output meter, and frequency-weighting networks which is used for the measurement of noise and sound levels.

Spectrum: The description of a sound wave's resolution into its components of frequency and amplitude.

Steady-state sound: Sounds whose average characteristics remain relatively constant in time. A practical example of a steady-state sound source is an air conditioning unit.

Threshold of audibility: The minimum sound pressure level at which a person can hear or detect a specified frequency of sound over a specified number of trials.

Threshold of pain: The minimum sound pressure level of a sound outside the ear that will produce a transition from discomfort to definite pain.

Tone: A sound of definite pitch. A pure tone has a sinusoidal wave form which changes from discomfort to pain.

Vibration: An oscillatory motion of solid bodies described by displacement, velocity, of acceleration with respect to a given reference point.

Wave: A disturbance that travels through a medium by virtue of the elastic properties of that medium.

Wavelength: For a periodic wave (such as sound in air), the distance between analogous points on any two (2) successive waves. The wavelength of sound in air or in water is inversely proportional to the frequency of the sound.

Weighting. Prescribed frequency filtering provided in a sound level meter.

Windscreen. A porous device used to cover the microphone of a sound level measurement system which is designed to minimize the effects of winds and wind gusts on the sound levels being measured. Typically made of open cell polyurethane foam and spherically shaped. (Code 1960, As Amend., § 948.090; 82-Or-163, § 1, 8-13-82;

86-Or-105, § 1, 5-9-86; 97-Or-063, § 4, 7-11-97)

389.40. Enforcement. The director of inspections and the chief of police are authorized and directed to administer and enforce the provisions of this article. (Code 1960, As Amend., § 948.100; Ord. of 5-11-73, § 1; 97-Or-063, § 5, 7-11-97)

389.50. Noise prohibited. It shall be unlawful to make, continue or cause to be made or continued any noise in excess of the noise levels set forth in section 389.60 unless such noise is reasonably necessary to the preservation of life, health, safety or property. (Code 1960, As Amend., § 948.020)

389.60. What constitutes violation. (a) Any activity, not expressly exempted by section 389.50 or this section which generates sound regardless of frequency that is more than ten (10) decibels (A scale) above the ambient noise level when measured within any dwelling unit (other than the one of sound source) in a condominium, townhouse, apartment house, multi-unit dwelling, single-family dwelling, or similar dwelling between the hours of 6:00 a.m. and 10:00 p.m. All measurements applying to the above shall be made indoors with the doors closed, and within the dwelling.

(b) Any activity not expressly exempted by section 389.50 or this section which generates sound regardless of frequency that is more than five (5) decibels (A) scale above the ambient noise level when measured within any dwelling unit (other than the one of sound source) in a condominium, townhouse, apartment house, multi-unit dwelling, single-family dwelling or similar dwelling between the hours of 10:00 p.m. and 6:00 a.m. All measurements applying to the above shall be made indoors with the doors closed, and within the dwelling.

(c) Any sound in excess of the limits as set forth in Minnesota Rules, Chapter 7030 (1995) provided that such sound is five (5) decibels or more above ambient noise levels for sounds measured between 10:00 p.m. and 6:00 a.m. or ten (10) decibels or more above ambient noise levels for sounds measured between 6:00 a.m. and 10:00 p.m.

(d) Sound in excess of the limitations for any noise classification area as measured in that noise classification area are violative of this section, whether the sound originates in that noise classification area or any other noise classification area. The noise area classification of the receiving noise classification area rather than that of the generating noise classification area determines the appropriate noise area classification for the purposes of this section.

(e) Sounds emanating from the operation of the following are exempt from the provisions of this section and section 389.65(a):

(1) Motor vehicles on traffic ways of the city.

(2) Aircraft in flight.

(3) Outdoor implements, such as power lawn mowers, leaf blowers, snowblowers, power hedge clippers and power saws.

(4) Pile drivers, jackhammers, cranes, scrapers, dump trucks, backhoes, bulldozers and other construction equipment.

(5) Lawful and properly permitted organized athletic activities on school grounds, and officially designated playgrounds used for recreation by children under supervision, and parks or places wherein athletic contests take place between the hours of 8:00 a.m. and 9:00 p.m.

(6) Rail traffic.

(7) Repairs and maintenance of utility structures when the utility structures pose a clear and immediate danger to life or health or significant loss of property, and the repairs and maintenance are necessary for the safety and commercial vitality of the city.

(f) Sounds emanating from amplifying equipment that is in full compliance with a permit issued pursuant to section 389.105 are exempt from the provisions of this section.

(g) At no point on the boundary of a residence or business district shall the sound pressure level of any operation within the M1, M2, M3 districts, or any use regardless of present zoning which is first a permitted use in the M1, M2, M3 districts, exceed the decibel limits in the octave bands designated below:

Maximum Permitted Sound Level (decibels)

Octave Band Frequency (cycles per second)	Along Business District Boundaries	Along Residence District Boundaries
0--75	72	79
75--150	67	64
150--300	59	66
150--300	59	66
300--600	52	59
600--1200	46	53
1200--2400	40	47
2400--4800	34	41
Over 4800	32	39

(h) No noise shall be prohibited or restricted under the authority of this section which substantially burdens a person's exercise of religion unless it is demonstrated that application of the burden to the person is:

(1) in furtherance of a compelling governmental interest.

(2) the least restrictive means of furthering that compelling governmental interest.

(3) consistent with Article I, Section 16 of the Minnesota Constitution.

(i) No noise shall be prohibited or restricted under the authority of this section which substantially limits speech unless such a prohibition or restriction:

(1) serves a significant governmental interest as applied in a particular case.

(2) as applied in the particular case there are other ample alternative channels for communication of the information.

(3) application of the regulation in the particular case promotes a substantial government interest that would be achieved less effectively absent application of the regulation.

(Code 1960, As Amend., § 948.030; Ord. of 9-27-74, § 1; 79-Or-036, § 1, 2-23-79; 82-Or-163, §§ 2, 3, 8-13-82; 83-Or-205, § 1, 8-26-83; 86-Or-105, § 2, 5-9-86; 97-Or-063, § 6, 7-11-97; 97-Or-067, § 1, 7-25-97)

Cross reference(s)--Noisy parties, liability of person in charge of property, § 385.110.

389.65. Public nuisance noise. (a) It shall be unlawful for any person to make, continue, permit, or cause to be made or continued within the city, any loud, disturbing or excessive noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(b) The characteristics and conditions which shall be considered in determining whether a noise is loud, disturbing, or excessive for the purposes of paragraph (a) of this section, shall include, but not be limited to the following:

(1) Whether the nature of the noise is usual or unusual.

(2) Whether the origin of the noise is natural or unnatural.

(3) The proximity of the noise to sleeping facilities.

(4) The land use, nature, and zoning of the area from which the noise emanates and the area where it is received.

(5) The time of day or night when the noise occurs.

(6) The duration of the noise.

(7) Whether the noise is recurrent, intermittent, or constant.

(8) Whether the noise is produced by a commercial or noncommercial activity.

(9) Whether or not noise abatement measures are possible and whether or not they are used to reduce the sound level.

(10) The number of people and their activities that are affected by the noise.

(11) The sound peak pressure level of the noise on the A scale, if known.

(12) The A scale level of ambient noise, if known.

(13) The nature of any communicative content of the noise shall not be considered, for the purpose of this section, except:

a. No noise shall be prohibited or restricted by this section which substantially burdens a person's exercise of religion unless it is demonstrated that application of the burden to the person is:

1. in furtherance of a compelling governmental interest.
2. the least restrictive means of furthering that compelling governmental interest.
3. consistent with Article I, Section 16 of the Minnesota Constitution.

b. No noise shall be prohibited or restricted by this section which substantially limits speech unless such a prohibition or restriction:

1. serves a significant governmental interest as applied in a particular case.
2. as applied in the particular case there are other ample alternative channels for communication of the information.
3. application of the regulation in the particular case promotes a substantial government interest that would be achieved less effectively absent application of the regulation.

(c) Activities which constitute a public nuisance. The following acts are violations of this section without reference to the standards of paragraphs (a) and (b) of this section, with the exception of section 389.65 (b) (13), namely:

(1) *Noisy assembly.* Participating in, visiting, or remaining at a gathering knowing or having reason to know that the gathering is a noisy assembly, as defined in section 389.30, except person(s) who have come to the gathering for the sole purpose of abating the disturbance.

(2) *Permitting noisy assembly.* Knowingly permitting real estate under one's care or control to be used for a noisy assembly, as defined in section 389.30.

(3) *Horns and other signal devices.* The sounding of any horn or signal device on an automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal or traffic warning.

(4) *Keeping animals or birds.* The keeping of any animal or bird which causes long, frequent, and/or continuous noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(5) *Operation of vehicles.* The use of any automobile, pickup truck, motorcycle, or other vehicle which is not reasonably maintained and which causes noise which would be likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area.

(6) *Amplified sound from vehicles.* Except as provided in section 389.105, the playing or operation, or permitting the playing, use or operation, of any radio, tape player, disc player, loud speaker, or other electronic device used for the amplification of music or other entertainment, which is located within a motor vehicle being operated on a public street or alley, or in commercial or residential parking facilities, which is audible by any person from a distance of fifty (50) feet or more from the vehicle. When sound violating this section is produced or reproduced by any such device that is located in a motor vehicle, the motor vehicle's owner, if present when the violation occurs, is in violation of this section. If the motor vehicle's owner is not present at the time of the violation, the person in charge or control of the vehicle at the time of the violation is in violation of this section. In addition to an owner or a driver, any person who controls or assists with the production of sound violating this section is in violation of this section. Violation of this subsection is a misdemeanor. A first violation of this subsection is punishable by a fine not to exceed five hundred dollars (\$500.00), a second violation is punishable by a fine not to exceed seven hundred dollars (\$700.00), and a third violation is punishable by a fine to the maximum amount.

(7) *Amplified sound.* The playing or operation, or permitting the playing, use or operation, of any radio tape player, loud speaker or other electronic device used for the amplification of sound (except as specifically permitted under section 389.105) located inside or outside, the sound of which carries to points of habitation on adjacent properties, and is audible above the level of conversational speech at a distance of fifty (50) feet or more from the point of origin of the amplified sound. (97-Or-063, § 7, 7-11-97; 97-Or-067, § 2, 7-25-97)

389.70. Construction and demolition equipment. (a) Except as hereinafter provided, no construction or demolition equipment shall be operated within the city between the hours of 6:00 p.m. and 7:00 a.m. on weekdays or during any hours on Saturdays, Sundays and state and federal holidays, except under specific permit from the director of inspections or the city council, for the purpose of a specified construction project only, as provided below and no such equipment shall be operated at any time if the sound level from such operation exceeds ninety (90) decibels measured at fifty (50) feet or more away from the source; provided further, however, that such equipment, the operation of which conforms to the maximum allowable sound levels as set forth in Minnesota Rules chapter 7030 may be operated during the above-prohibited hours and days.

(b) No internal-combustion engine or any other power unit when operated in connection with construction or demolition equipment shall be operated at any time other than at the times as above set forth in this section and any sound emitted from any such engine or power unit shall not exceed ninety (90) decibels measured at fifty (50) feet or more away from the source.

(4) No person shall operate a parking lot sweeper or commercial snow plowing equipment in any residentially zoned and used area between the hours of 10:00 p.m. and 6:00 a.m. Snow plowing of off-street parking areas and adjoining walkways with reasonably maintained and proficiently operated equipment in residentially zoned and

used areas is allowed between 10:00 p.m. and 6:00 a.m. during an official snow emergency which has been declared by the proper city officials. The Minneapolis Department of Public Works may plow and otherwise remove snow from public streets and other public areas between the hours of 10:00 p.m. and 6:00 a.m. whenever, in the judgment of the City Engineer, such plowing or otherwise removing snow is in the public interest.

(5) Removing or rendering inoperative any noise control device or the design of a product having those devices, by any person other than for purposes of maintenance, repair or replacement.

(6) It shall be unlawful for any person to be in control of and allow operation of an electronic theft or burglar alarm which sounds an audible signal without an automatic shutoff device to prohibit the audible signal from sounding continually for more than five minutes. (97-Or-063, § 11, 7-11-97)

389.105. Permits for sound amplifying equipment. Except as provided in section 389.60(e)(5), no person shall use or maintain any outside sound amplifying equipment without first having obtained a permit from the pollution control section of the inspections division, department of regulatory services. The fees for this permit shall be thirty-five dollars (\$35.00) for each calendar day, Saturday, Sunday or legal holiday for which amplified sound is played or operated subject to the following conditions:

(1) Outside sound amplifying equipment shall be used only between the hours of 9:00 a.m. and 9:00 p.m. This may be expanded to include hours between 7:00 a.m. and 10:00 p.m. upon a showing that the event can not reasonably take place without such expansion of hours.

(2) Amplification that does not meet the limits of section 389.60 shall be limited to eight (8) hours in any one (1) day, sixteen (16) hours in any seven (7) day period and thirty-two (32) hours in any twenty-eight (28) day period for the same property.

(3) Sound measured at fifty (50) feet from the source shall not exceed ninety (90) dB(A).

(4) Sound measured off the property where the equipment is allowed under the permit shall never be more than fifteen (15) dB(A) above the ambient noise level.

(5) Compliance with section 389.65 (a) and (b).

A permit shall be issued only after the applicant gives a written promise to comply with these conditions and reasonably demonstrates that the activity will comply with these conditions. The terms of the permit, may be expanded, or the fee waived or reduced, when it is deemed necessary, upon a proper showing, for the purpose of complying with section 389.65 (b) (13), which is incorporated herein.

Permits shall be obtained in advance of the proposed extended hours of operation. If the permit has not been applied for in advance, the fee will be doubled for the days of operation prior to the date of application if the permit is issued. (92-Or-122, § 1, 10-9-92;

97-Or-063, § 12, 7-11-97)

389.110. Advertising by public address systems. No person shall maintain and operate in any building a radio device or musical instrument where the sound therefrom is cast directly upon a public street and where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public. Nothing herein contained shall prohibit the playing of records in a record shop where the sounds created, emitted or transmitted therefrom are not audible for a distance of more than twenty-five (25) feet from the building in which the record shop is located. (Code 1960, As Amend., § 875.040)

389.115. Severability. Should any of the sections, paragraphs, sentences, clauses or phrases of this chapter, title or Code of Ordinances be declared unconstitutional or invalid, at the valid judgment or decision of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of this chapter in its entirety or any of the remaining sections, paragraphs, sentences, clauses and phrases. (97-Or-063, § 13, 7-11-97)

389.120. Penalties. (a) Any person who violates any portion of this chapter shall receive a verbal order to cease or abate the noise immediately or within a reasonable time period, except that after 10:00 p.m. and until 6:00 a.m. any person designated to enforce this chapter need not issue a verbal order to cease or abate the noise before charging any person with a violation of this ordinance, provided further that this sub-paragraph shall not apply to 389.65(c)(6).

(b) If the order to cease or abate the noise is not complied with, or is complied with and then violated again within sixty (60) days, or if the violation charged is a violation of 389.65(c)(6), the person or persons responsible for the subject noise may be charged with violation of an appropriate section of this chapter with penalties as provided by section 1.30(a) of this code, except as otherwise specifically provided in this chapter. Each day such violation is committed or permitted to continue shall constitute a separate offense and may be punished separately. (97-Or-063, § 14, 7-11-97; 97-Or-067, § 3, 7-25-97)

389.125. Violations deemed nuisances. Violations of this chapter are deemed a public nuisance. As an additional remedy, the city attorney may, in a court of competent jurisdiction, seek appropriate equitable relief in enforcing this chapter including, but not limited to:

- (1) Declaratory relief pursuant to Minnesota Statutes Chapter 555 or other law; and/or
- (2) Injunctive relief on either an interim or permanent basis. (97-Or-063, § 15, 7-11-97)

389.130. Waiver of ordinance as applied. Any person who claims that the application or threatened application of this chapter or any section of this code regulating the generation of noise to such person violates their right to freedom of speech, freedom of assembly, equal protection, or to the free exercise of their religion as secured by the Minnesota Constitution or United States Constitution, should promptly apply to the

director of inspections for a waiver. Application shall be made to the director on a form provided by the director. The matter shall then be heard by the director of inspections or the director's designee or referred to a hearing officer(s) as the director may determine. After hearing the matter or receiving the report of the hearing officer(s), the director or the director's designee shall grant such waiver to the extent necessary to eliminate the violation if the director or director's designee determines based on the reliable evidence submitted or on the report of the reliable evidence presented that application of the ordinance in such case would violate the applicant's right to freedom of speech, freedom of assembly, equal protection, or to the free exercise of the applicant's religion as secured by the Minnesota Constitution or United States Constitution, section 389.60(g) or (h) of this chapter, or section 389.65 (b)(13) of this chapter. (97-Or-063, § 16, 7-11-97; 97-Or-067, § 4, 7-25-97)

ARTICLE II. VEHICULAR NOISE CONTROL

389.140. Purpose and scope. It is the purpose of these regulations to state the maximum sound levels that vehicles shall be allowed to emit when used on trafficways of the city. These regulations are intended to limit such maximum sound levels to those consistent with the physical, mental and social well-being of the people. (Code 1960, As Amend., § 948.060)

389.150. Applicability. (a) These regulations shall apply to all vehicles wherever operated on the trafficways of the city.

(b) These regulations shall apply to sounds of any time duration.

(c) For the purpose of these regulations, those persons who are the vehicle owner(s) or operator(s) may be held responsible separately or jointly for a violation. (Code 1960, As Amend., § 948.060)

389.160. Exemptions. The following are exempt from the provisions of this article:

(a) All vehicular warning devices authorized for use under the traffic code of the city.

(b) Back-up alarm devices on trucks when installed and operated in accordance with the Society of Automotive Engineers recommended practice J994, "Criteria for Back-up Alarm Devices." (Code 1960, As Amend., § 948.060)

389.170. Light vehicles. No person shall operate, nor shall its owner permit the operation of a light vehicle, or any auxiliary device attached to or required for the operation of said vehicle, on any traffic way in such a manner that it emits noise at levels in excess of the limits specified in Table A-1 or A-2, as applicable.

TABLE A-1

**Thomas and Rebecca Keep
8601 Davey Road
Lincoln, Nebraska 68517
402/785-2039
TAKeep@aol.com**

October 13, 2006

Ms. Jean Walker
Administrative Officer
Planning Department
555 S. 10th Street
Lincoln, NE 68508

Re: County Special Permit No. 06051 (Highway 77 and Davey Road)
Applicant: Greg Sanford

Dear Ms. Walker:

On behalf of CPR Life (Citizens for the Protection of Rural Life), I am submitting petitions executed by residents of the Northridge Neighborhood Association in opposition to the application for a special permit to operate a motorsports facility on Highway 77 between Davey and Branched Oak Roads. The rural development known as Northridge is located on Davey Road just west of 14th Street. I would be most appreciative if you would please forward the petitions to the Planning Commission for their consideration. Thank you for your attention to this matter.

Sincerely,



Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Richard Jacob

Address: 801 Cresthill Lane
Davey, NE. 68336

Dated: 10/10/06

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Nancy Feb

Address: 801 Crestline Lane
Davey Nebraska 68336

Dated: 10-10-06

City County Building
Oct 11th - 1:00 pm
Wed

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Brenda Roseberry, Steve Iskender

Address: 4420 S. 36th St.
Lincoln NE 68516

Dated: 9-30-06

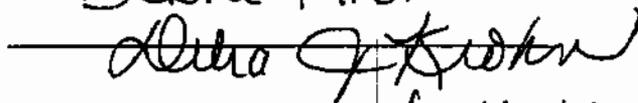
Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

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Regards,

Debra Krohn


Address: 17600 Northridge LN
Davey NE 68336

Dated: 10-3-06

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

City County Building
Oct 11th - 1:00 pm
Wed.

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Dennis & Kara Fossing

Address: 17401 Northridge Lane
Lincoln

Dated: 10-2-06

City County Building
Oct 11th - 1pm
Wed

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Ralt R Meyer

Address:

801 Pinnacle Ln

Davey, NE 68335

Dated:

10/13/06

City County Building
Oct 11th 1pm
Wed

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Sue McGuire

Address: 801 Pinnacle Ln.
Davey, NE 68336

Dated: 10-2-06

City County Planning
Oct 11th 1pm
Wed

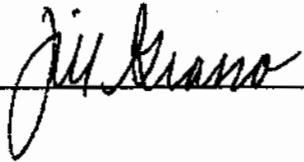
Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

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Regards,



Address: _____

Dated: 9/30/06

City County Building
Oct 11th - 1pm
Wed

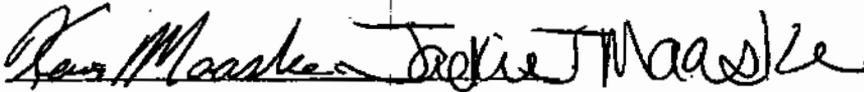
Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

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Regards,



Address: _____

Dated: Sept 30, 2006

City County Building
Oct 11th - 1pm
Wed

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Pamela S. Dunn Skuh

Address: 734 North 57th Street
Lincoln, Nebraska 68505

Dated: 9/30/06

City County Building

Oct 11 - 1 pm
Wed

Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE. 68508

Re: Proposed Motorsports Facility, Lancaster County

To whom it may concern:

This letter is being submitted to the Lancaster County Planning Commission to express my **OBJECTION** to the Motorsports Facility that has been proposed for construction between Branched Oak Road and Davey Road on the East side of Highway 77. My residence would be in close proximity to the proposed Motorsports Facility. I strongly feel that its construction will adversely affect the safe and peaceful lifestyle my family and I have chosen by living in a rural setting.

Regards,

Kyla Dose

Address: 17301 Northridge
Davey, NE 68334

Dated: 10-5-06



"Terri Tvrdy"
<terri@haberfeld.net>
10/16/2006 10:11 AM

To <plan@lincoln.ne.gov>
cc <commish@lancaster.ne.gov>, <rstevens@lancaster.ne.gov>, <dschorr@lancaster.ne.gov>, <workbob@msn.com>, <cpr.life@yahoo.com>
bcc

Subject motorsports drag strip

To members of the Lancaster County Planning Commission and Board of Commissioners:

I'm a property owner at 6495 Little Salt Road just north of Davey, writing in regards to the proposed drag strip that is being considered next week.

This land has been in my family for 4 generations, since 1928. My grandfather purchased it as a quiet place to live and farm and raise his family. Likewise my father used the land for the same reason, and now myself, raising my little boys there. We own 125 acres right next to the Game and Parks land—that land is used for hunting and agriculture. The Jack Sinn Memorial Wildlife refuge is directly west of us, on the other side of Hwy 77—that land, too, would be compromised. We want to preserve our quiet way of rural life, and beg you not to allow this drag strip in the proposed area. In doing so, you would be transforming an area of quiet country and farm life, into a noisy, polluting, environmental hazard.

The value of our property would plummet. No one wants to own property next to a drag strip. My father and grandfather worked very hard for many years as farmers to own and pay for this land—now we would have to sell it for an amount far less than what it's currently worth.

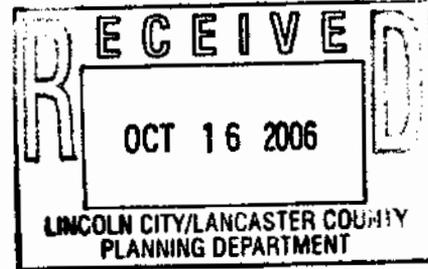
Please. Protect our way of life—allow us to keep in our family the quiet rural land my grandfather worked so hard for, so that my sons can know the same quality of life I had as a girl growing up. Ask yourselves if you would want this next door to your home, then vote with your conscience.

Thank you,
Theresa Tvrdy
6495 Little Salt Road

October 14, 2006

Lincoln/Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE 68508

Dear Commissioners:



This letter is in opposition to the proposed drag strip in Lancaster County.

As I am sure you are aware, Mr. Sanford operated a drag strip near Scribner, Ne on the site of the old abandoned airfield. This particular property had been a drag strip for probably 25 years, and Mr. Sanford has owned the property for approximately 5-6 years. Mr. Sanford closed that strip this year after a dispute with the Dodge County board of Supervisors over the paving of a mile of gravel road between Hiway 275 and the drag strip.

On a local radio call-in show, which I listened to (John Baylor-KFOR), Mr. Sanford when asked about the road paving issue, basically accused the Board of Supervisors of misappropriating funds which had been earlier earmarked for the paving of that road.

To determine what really was going on, I researched back issues of the Fremont Tribune, and spoke with one of the Dodge County Board of Commissioners, and also to a member of the Dodge County Visitors and Convention Bureau. As reported in the Fremont Tribune, this is what I gleaned:

- 1 According to the Supervisor I talked with, Mr. Sanford had originally agreed to pay half of the cost of paving the road.
- 2 In March of 2005, the Board approved a contract to pave the road and assessed half the cost to Mr. Sanford.
- 3 In June of 2005, Mr. Sanford asked the Fremont and Dodge County Visitors Bureau to commit at least a portion of a new 2 percent lodging tax, to help pay his share.
- 4 In October of 2005, Mr. Sanford applied for a \$150,000 grant from the Visitors Bureau. They voted to commit \$75,000 over 5 years.
- 5 In November of 2005, Mr. Sanford asked the Board of Supervisors to pay the full amount of paving the road. They refused.
- 6 Later in November 2005, Mr. Sanford asked the Visitors Bureau for an additional \$75,000 to cover the full cost of his share. They at first voted against and then decided to form a special committee to discuss the issue.
- 7 In December of 2005, the Board of Supervisors set a deadline of Jan 15 for

- Mr. Sanford to come up with the \$150,000.
- 8 In January of 2006, the Visitors Bureau turned down his request for the additional \$75,000.
 - 9 Mr. Sanford closed down the drag strip for 2006.

During my discussions with the members of the Board of Supervisors and Visitors Bureau, while being politically correct, the bottom line of both of them was that they did not trust Mr. Sanford and did not like the way he conducted business. I definitely was left with the sense that much more had happened that was not reported and the officials did not want to discuss. Being elected officials and talking to someone outside their political arena, they asked to remain anonymous. However, I would furnish you their names if you would honor the confidentiality.

The Fremont and Dodge County Visitors Bureau obviously represents the economic interests of their city and county. If this organization would let \$75,000 stand in the way of keeping the drag strip in Dodge County, is this really the economic boon that Mr. Sanford and his proponents say it is??????

I would encourage you to contact your counterparts in Dodge County. I know they are watching to see how this develops.

Carl and Carolyn Fitzke
17400 N 84
Lincoln, NE 68517

cf93924@alltel.net



"Kristalee"
<kristaleec@optusnet.com.au
>

10/15/2006 07:26 PM

Please respond to
<kristaleec@optusnet.com.au>

To <plan@lincoln.ne.gov>, <commish@lancaster.ne.gov>

cc

bcc

Subject

Hello,

I would like to submit my name for a petition which is opposing the building and construction of a race track on HWY 77 between Davey Rd and Branch Oak Rd., Lincoln, Nebraska.

It is my understanding that constructing such a race track would have detrimental effects:

- 1) There is an active cemetery across the road, and thus would have serious effects for the grievers of those left behind, as well as for this local business.***
- 2) There is an active wildlife habitat across the road, and the disturbance and noise of both the construction and subsequent use of the race track would jeopardize the well-being of all animals in this particular natural sanctuary.***
- 3) The noise from the race track would have compounding mental and emotional effects for several families living in the area. Several of these families have young children who require peace and quiet so that they may continue to be home-schooled by their parents. As well, it is also my understanding that there is a child with a pervasive developmental disability, who when subjected to loud and abrupt noises causes him severe distress.***

Thank you for your attention.

Yours truly,

***Kristalee Caylen
Unit 4/39 Colburn Avenue
Victoria Point
Brisbane
Australia***