

## UNDERSTANDING NOISE ORDINANCES

# How to Protect Private Property, Encourage Neighborliness, and Promote Peace in Your Township

As protectors of the public health, safety, and welfare, townships may want to consider the impact of noise on residents of their community and adopt ordinances to help keep the peace. Noise is a serious human health issue, and noise-related ordinances can help protect private property rights, promote neighborliness, and keep the peace.

BY SHANNON BROWN, ESQ.

**N**oise poses a growing issue for townships. Agrabtainment venues, unconventional gas extraction (*fracking*), short-term rentals, “mixed use” development, increased traffic, changing demographics, and growing population increase noise conflicts. Unfortunately, when a noise issue arises, townships, or angry residents, may suddenly find that the township’s outdated noise-related ordinance cannot be enforced — or worse, does not even exist. To date, townships have escaped liability for such omissions or errors.

Fortunately, a township can help residents with noise issues by using three basic tools: a true noise ordinance, a public nuisance ordinance, and noise-related performance standards in a zoning ordinance. While sounding similar, each tool serves a specific purpose, and all three tools are usually needed.

### A serious pollutant and health issue

The EPA defines noise as “unwanted or disturbing sound” that either interferes with normal activities, such as sleeping or conversation, or disrupts or diminishes one’s quality of life. Importantly, noise is more than just “loud” sounds. Noise is also more than just the sound itself with additional character such as repetitiveness, time of day, suddenness (*impulse*), purpose, and pitch (*octave level*).

Current medical research links noise to diabetes, cardiovascular disease, early death, birth defects, ulcers, colitis, migraine headaches, increased blood pressure, hearing loss, increased heart rates, sleep deprivation, neuroticism, heart attack, elevated cholesterol, neuropsychological disturbances, stress, psychiatric disorders, psychological annoyance, and learning impairment in children. Current recommendations place maximum daytime sound

exposure limits for residential areas at 40 decibels (dB) and nighttime sound exposure levels at 35dB to minimize adverse health effects.

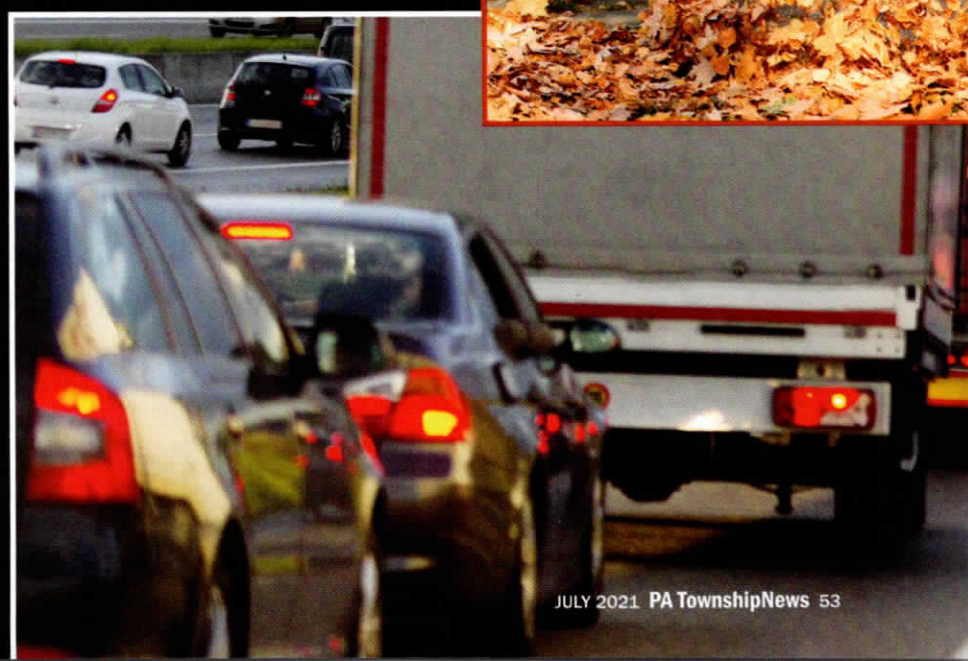
These adverse health effects are not new. In 1972 and again in 1978, Congress passed noise pollution legislation, along with all the other major pollution acts. Federal law recognizes noise as a major pollutant with significant, detrimental health effects. The Noise Control Act and Quiet Communities Act remain part of the federal Clean Air Act.

### Protection of fundamental constitutional property rights

The noise definition carries elements of interference or disruption. The U.S. Constitution protects private property from interference by others: “[t]he doctrine that each one must so use his own [property] as not to injure his neighbor — *sic utere tuo ut alienum non laedas* — is the rule by which every member of society must possess and enjoy his property; and all legislation essential to secure this common and equal enjoyment is a legitimate exercise of State authority...” *Munn v. Illinois* (US, 1876).

Pennsylvania’s highest court repeated this core principle more than 125 years later: “[a] property owner is

Noise need not be loud to **cause interference to others.**



**Noise is defined as unwanted or disturbing sound that interferes with normal activities, such as conversation, or diminishes one's quality of life.**

obliged to utilize his property in a manner that will not harm others in the use of their property....” *In re Realen Valley Forge Greenes Associates* (Pa., 2003).

The Pittsburgh City Council similarly echoed this constitutional principle when adopting a new noise ordinance: “[i]f you’re not being a good neighbor, there are steps we can take to ensure the peace.” “Neighborliness” summarizes this long-standing constitutional rule.

Yet, some still ignore simple neigh-

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## Federal law recognizes noise as a major pollutant with significant, detrimental health effects.

borliness. In 2019, in *Matenkoski v. Greer*, a noisemaker claimed "...this is America, and I can do what I want with my property..." in response to objections from neighbors to noise and disruption. Finding against the noisemaker, the court colorfully responded: "[One] is correct to the extent that this certainly is America. What [one] fails to grasp is that in America...his fellow citizens have the same rights that he does. Freedom does not give him an excuse to trample on his neighbors' rights and brush aside their objections with his middle finger." There is no "right" to make noise or "right" to interfere with the property of others.

Rather, the court reminded that each person has an equal right to the quiet enjoyment of his property without interference from others. Both par-

ties benefit from this quiet enjoyment. Thus, noise ordinances help protect constitutional rights.

### Assembling a noise toolbox

In Pennsylvania, townships need three basic tools to address noise: 1) a true noise ordinance, 2) a public nuisance ordinance, and 3) a zoning ordinance with noise-related performance standards. A basic overview of each tool helps explain how they serve a specific purpose and why a complete toolbox needs all three tools.

First, the true noise ordinance provides a quick response for situational and behavioral noise issues, such as disruptive parties, short-term rentals, fireworks, rowdy recreational activities, or boom cars. Basically, when a noise issue arises, someone can simply call

the police or township to file a complaint. The police or code enforcement officer responds and determines if a noise disturbance exists based on the noise ordinance. A violation results in a citation and a fine.

Second, a township needs a public nuisance ordinance. "Public nuisance" describes a somewhat murky but very specific body of law deriving largely from centuries-old common law. Nevertheless, public nuisance law remains important.

While ordinary people casually use the term "public nuisance" to describe community problems (*or people*), public nuisance is legal term-of-art that applies to a wide range of health, safety, and welfare issues, such as junk cars, dilapidated houses, abandoned swimming pools, vacant quarries, and persistent noise problems. ➤

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So why not just use public nuisance to address all noise issues? Pennsylvania requires that the township prove in court that a public nuisance, in fact, exists. Proving a public nuisance in fact requires the township to build a case supported by substantial evidence showing that the specific noise problem reasonably poses a threat in fact to public health, safety, and welfare. The time and effort required for such proof may be warranted with persistent offenders but are usually not practical for one-off neighborhood noise violations, such as a single disruptive party. Furthermore, public nuisance law allows specific defenses and requires specific analysis.

Despite limitations, public nuisance remains an important tool because the successful proof of such a nuisance results in a powerful court injunction: a command by the court to stop doing something (*or to do something*). The court enforces the injunction through its contempt powers, including jail, fines, or other remedies (*e.g., requiring the removal of a junk car*).

Third, the zoning ordinance pro-

vides an important noise prevention tool by including noise-mitigating performance standards. Historically, preventing harms was a primary justification for zoning districts, specifically for preventing noise conflicts by separating noisy activities into distinct zoning districts based on uses.

Basically, a *bona fide* performance standard might be considered an engineering guideline — something that an engineer can look at and say, “yes, we meet that criterion.” The township has some flexibility in defining the performance standards. Some standards directly limit noise, such as reducing noise from outdoor speakers in drive-throughs, requiring sound-dampening fencing materials, or limiting noise emissions from commercial HVAC equipment. Other performance standards that indirectly reduce noise include setbacks, buffers, or separating conflicting uses into separate zoning districts. Pennsylvania also allows noise mitigation to be a criterion in conditional uses or special exceptions, if specific.

However, be very careful here. The zoning ordinance is not the place to provide general noise abatement criteria for all activities because the zoning ordinance derives authority from the Pennsylvania Municipalities Planning Code (MPC). The zoning ordinance

There is no “right”  
to **make noise**.

thus focuses on uses, not general behavior or activity. Also, the MPC controls enforcement of the zoning ordinance provisions, which may further limit attempts to regulate behavioral noise through the zoning ordinance.

Violation of a zoning ordinance’s noise performance standards results in a citation from the code enforcement officer. Typically, the property owner must cure the defect.

## Drafting a dedicated, true noise ordinance

While adopting a true noise ordinance is straightforward, townships sometimes misunderstand this distinct tool. A true noise ordinance acts as a separate ordinance enacted under the general health, safety, and welfare authority available to townships through the Township Code, not deriving from nuisance law, common law, or the MPC.

A true noise ordinance defines noise, adopts a standard to identify a noise disturbance, provides qualifications or exceptions, and specifies the penalties. While each section is important, the noise disturbance standard generally causes the most confusion. Some still believe that a noise ordinance must include “decibels” and be complicated. That is not the case in Pennsylvania.

The noise disturbance standards define how the enforcing authority determines whether a noise disturbance exists. Pennsylvania currently recognizes three standards: 1) plainly audible, 2) sound level (using “decibels”), or 3) hybrid:

### • **Option 1: Plainly audible**

“Plainly audible” defines an actionable noise disturbance as occurring if the enforcing authority can plainly hear the complained-of noise beyond the property line of the source (*or from some short distance from the property line*).

The enforcing authority does not



need to discern specific noise information, such as the exact words of a song or specific cause of the noise. The sound does not need to be “loud”—just plainly audible. The enforcing authority does not evaluate whether he would be bothered by the noise. The sound or activity does not need to rise to disorderly conduct. “Plainly audible” simply determines whether the noise can be detected by ordinary hearing on the complainant’s property (*and no*

*exception applies*).

“Plainly audible” represents the simplest standard, requires no special equipment, is easy to enforce, is easy for a property owner to check his own activity, encourages neighborly cooperation, and complies with constitutional law.

• **Option 2: Sound level using decibels**

A sound level standard requires setting a maximum sound level using

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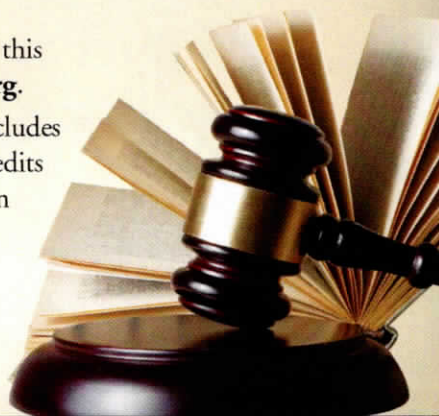
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decibels and then requires the enforcing authority to use a sound level meter to measure the sound to determine whether the sound exceeds the defined limit (*and no exception applies*). Typically, the township provides a chart of maximum sound level limits and divides the chart by time of day or zoning district. Such an ordinance must specify measurement criteria such as distance from the sound source, sound weighting (*A or C*), measurement rate (*fast/slow*), or octave band distinctions.

Sound level ordinances pose special challenges, especially for townships with limited staff. First, these ordinances can be difficult to enforce because they require special equipment, training, and calibration.

Second, counterintuitively, decibels

do not measure noise. Decibels simply quantify sound intensity (*loosely, "loudness"*). Thus, sound level ordinances miss many noise issues where legitimate disruption or interference occurs but does not technically rise to the decibel level set by the ordinance. This is especially the case when municipalities apply outdated guidelines and set decibel levels way too high. Current sound level exposure recommendations set maximum residential sound levels at 40dB daytime and 35dB nighttime. Deviating upwards from such levels poses risks for the municipality, such as arbitrariness or licensing takings.

Even an apparently small upward deviation can have huge effects because

decibels represent a logarithmic scale, meaning that small changes in decibels result in huge changes in sound intensity (*"loudness"*). Every 10dB increase doubles the "loudness." Thus, an upward deviation of 20dB to a 60dB limit is at least four times (400%) "louder" than current sound level recommendations, and a 65dB limit approaches a shocking eight times (800%) "louder" due to the doubling effect. Outdated ordinances commonly use the 65dB limit (*or higher*). From a practical perspective, a municipality setting a 65dB limit "permits" a neighbor's noise to drown out every conversation on an affected property!

Thus, Pennsylvania still allows

**"Plainly audible" represents the simplest standard, requires no special equipment, is easy to enforce, and complies with constitutional law.**

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sound level ordinances. However, a township using such an ordinance must, at least, follow current sound level recommendations and recognize the logarithmic scaling when setting sound levels.

**• Option 3: Hybrid**

Last, a hybrid standard combines elements of the “plainly audible” and sound level standards. Basically, a hybrid ordinance sets maximum sound levels but also uses a “plainly audible” standard for backup when sound level measurements cannot be taken. The hybrid approach assumes the municipality has a trained and dedicated noise control staff and is thus more appropriate for larger urban areas. Pittsburgh and Philadelphia use a hybrid standard.

**Drafting the noise definition**

The noise definition typically follows the U.S. Environmental Protection Agency’s text: Unwanted sound that disturbs someone else or interferes with basic life tasks represents noise.

Keep it simple: If a sound is unwanted and causing disruption, the sound is noise.

Drafters should avoid adding extra language and especially avoid language derived from public nuisance law, such as “of ordinary sensibilities” or “reasonableness of activity.” Such unnecessary language creates ambiguity in the ordinance.

**Drafting exceptions to literal enforcement**

A true noise ordinance typically provides both exceptions and qualified exceptions to address situations where literal enforcement of the noise ordinance impairs critical services. Common exceptions include first-responder sirens, emergency construction, and public snow removal.

Qualified exceptions, on the other hand, exempt certain required activities that otherwise create noise disturbances when the required activity is conducted in a specified manner. Qualified exceptions include lawn maintenance, general construction, private snow removal, and emergency generator use. Each of



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these items addresses a required activity: mowing lawns, removing snow from sidewalks, or keeping houses in repair. Exceptions and qualified exceptions should be carefully drafted, spe-

cific, and the minimum necessary.

Some municipalities incorrectly assume that anything related to potential First Amendment activities must be excepted. This is not the case. Even First Amendment activity itself may be limited in time, place, and manner, according to *Ward v. Rock Against Racism* (US, 1989), which was about noise. Thus, townships may limit vocalizations, yelling, screaming, megaphones, rowdy recreational activity, and other noise.

## Drafting the penalties

The penalties involve escalating fines for repeat offenders and a simple, non-criminal summary offense. Fines may start at \$300 and escalate to \$1,000. The penalties section should acknowledge that other remedies may be enforced as well, such as “public nuisance” for repeat offenders.

## Summary of true noise ordinances

The true noise ordinance represents an important tool that most community members assume a township will maintain. Such an ordinance provides rapid response to common noise problems and subtly encourages neighbors to cooperate but with a means to keep the peace for those obdurate individuals who refuse to respect the property of others or stop disrupting the quiet enjoyment of others.

## Taking the next steps

Noise is pollution and is a serious health, safety, and welfare issue for townships. Tools exist to address noise and help maintain order, protect private property rights, and encourage neighborliness in townships.

If you have — or think you have — noise-related ordinances, dust them off, check them with your solicitor, and see if all three suggested tools distinctly exist — or if you have a dreaded Franken-ordinance that improperly “combines” all three.

If you do not have any noise-related ordinances or have defective ordinances, get started now. Having noise-related ordinances on the books may avoid claims for “grandfathering,” challenges from victimized community members, and other problems.

The township may be surprised at how many community members will thank you for properly addressing noise. ♦



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## Sample ordinance available

For a draft noise ordinance, go to <https://shannonbrownlaw.com>.