

What's All the Noise About Noise Ordinances?

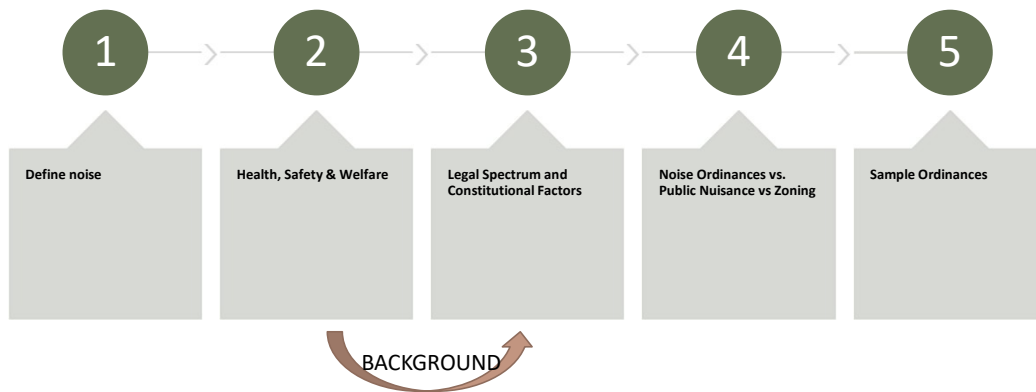
SUPPORTING HEALTH & NEIGHBORLINESS
IN PENNSYLVANIA TOWNSHIPS

v.309

SHANNON BROWN, ESQ. CLARKS SUMMIT, PA--LACKAWANNA COUNTY

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Overview—Noise Ordinances Program




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Noise

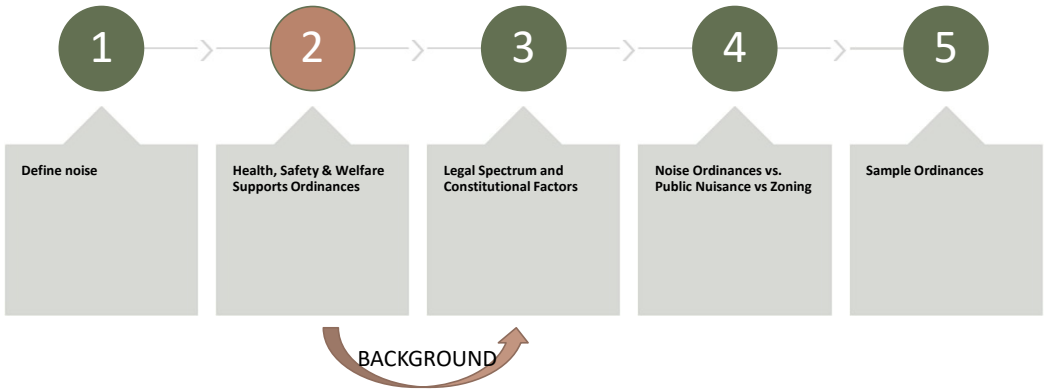
[N]oise is “unwanted or disturbing sound.” Sound becomes unwanted when it either **interferes with normal activities** such as sleeping, conversation, or **disrupts or diminishes one’s quality of life.** The fact that you can’t see, taste or smell it may help explain why it has not received as much attention as other types of pollution, such as air pollution, or water pollution... This “annoyance” can have major consequences, primarily to one’s overall health.—EPA



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Overview—Noise Ordinances Program



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graph LR; 1((1)) --> 2((2)); 2 --> 3((3)); 3 --> 4((4)); 4 --> 5((5)); 3 -.->|BACKGROUND| 2;
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1 Define noise

2 Health, Safety & Welfare Supports Ordinances

3 Legal Spectrum and Constitutional Factors

4 Noise Ordinances vs. Public Nuisance vs Zoning

5 Sample Ordinances

BACKGROUND

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Noise Is a Significant Community & Health Issue

NOISE MAY CONTRIBUTE TO SERIOUS HEALTH PROBLEMS, DEGRADES QUALITY-OF-LIFE, ESCALATES COMMUNITY CONFLICT, AND INTERFERES WITH FUNDAMENTAL, PRIVATE-PROPERTY RIGHTS.

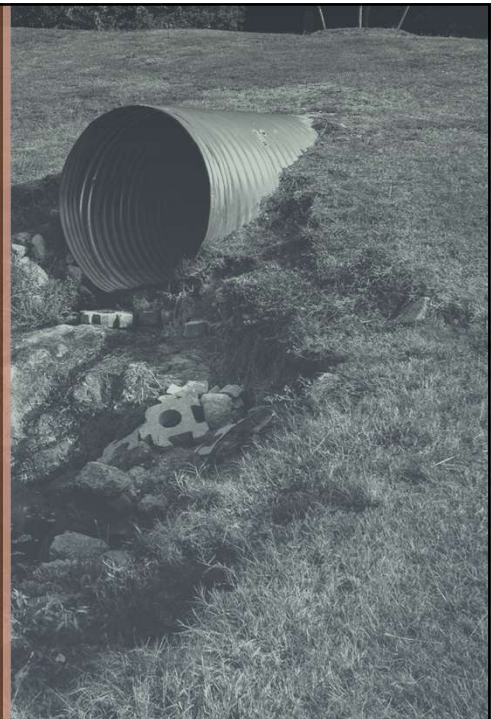
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If Black Goo Oozed From a Rusty Pipe in a Neighborhood Linked to...

... diabetes, **cardiovascular disease**, ischemic heart disease, early death, birth defects, ulcers, colitis, migraine headaches, **increased blood pressure**, increased heart rates, sleep deprivation, impairment of life tasks, neuroticism, myocardial infarction/heart attack, elevated cholesterol, morbidity, **neuropsychological disturbances**, **stress**, psychiatric disorders, psychological annoyance, PTSD, autism, and **cognitive disruption/learning impairment in children ...**

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A Federal Statement on Noise



Noise pollution adversely affects the lives of millions of people. Studies have shown that **there are direct links between noise and health**. Problems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity.

SOURCE: [HTTPS://WWW.EPA.GOV/CLEAN-AIR-ACT-OVERVIEW/CLEAN-AIR-ACT-TITLE-IV-NOISE-POLLUTION](https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution) (EMPHASIS ADDED)

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Global Recognition of Noise & Health Problems

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Noise does NOT need to be “loud”....

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Sample Noise & Health Citations 1

- Ellen Kerns, MPH, CPH, COHC and Elizabeth Masterson, PhD, CPH, COHC, *Workplace Noise: More than just “All Ears”*, NIOSH Science Blog (June 28, 2018).
- John Stewart et al., *Why Noise Matters: A Worldwide Perspective on the Problems, Policies and Solutions*, Earthscan (2011)
- Bronzaft, A. *Impact of Noise on Health: The Divide between Policy and Science*, *Open Journal of Social Sciences*, 10.4236/jss.2017.55008, 05:05, (108-120), (2017) .
- European Commission, Environment, Noise, *Health Effects of Noise* (2016)
- WHO: Europe Office: Noise Website
- Charlotta Eriksson et al., *Biological mechanisms related to cardiovascular and metabolic effects by environmental noise*, WHO (2018)
- *Burden of disease from environmental noise. Quantification of healthy life years lost in Europe*, WHO (2011)
- Ellen Kerns, et al., *Cardiovascular Conditions, Hearing Difficulty, and Occupational Noise Exposure within U.S. Industries and Occupations*, *American Journal of Industrial Medicine* (Mar. 14, 2018)
- Stansfeld, Stephen A. “Noise Effects on Health in the Context of Air Pollution Exposure.” Ed. Wim Passchier and Luc Hens. *International Journal of Environmental Research and Public Health* 12.10 (2015)
- US HHS, NIH, *Noise-Induced Hearing Loss* (Mar. 2014)
- OSHA, *Occupational Noise Exposure*, Health Effects Website
- Monty Munford, *In Pursuit Of Silence Makes Noise About Emulating The Inconvenient Truth*, *Forbes* (Apr. 11, 2016).
- Dr. Rokho Kim, *Quiet Please: The Future of EU Noise Policies*, World Health Organization, (May 25, 2011)
- Dr. Mercola, *Quieting Down Could Save Billions in Heart Disease Costs*, *Natural Health Newsletter*, (June 20, 2015)
- EPA Clean Air Act Title IV – Noise Pollution Website
- Stephen A Stansfeld, Mark P Matheson; *Noise pollution: non-auditory effects on health*, *British Medical Bulletin*, Volume 68, Issue 1, 1 Pages 243–257 (Dec. 2003).

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Sample Noise & Health Citations 2

- Marn Joon Park, et al. Noise in hospital rooms and sleep disturbance in hospitalized medical patients, *Environ Health Toxicol.* 2014; 29 (Aug. 2014)
- Amy Novotney, Silence, please: Psychologists are increasing awareness of the harmful effects noise has on cognition and health, *Monitor on Psychology*, American Psychological Association, 46 (July/Aug. 2011)
- Night Noise Guidelines for Europe, World Health Organization (WHO), 21-24 (2009)
- Monica S. Hammer et al., Environmental Noise Pollution in the United States: Developing an Effective Public Health Response, *Environmental Health Perspectives*,
- George Prochnik, *In Pursuit of Silence: Listening for Meaning in a World of Noise*, Anchor (2011)
- Holzman D, Fighting Noise Pollution: A Public Health Strategy, *Environmental Health Perspectives*, 122:2, (A58-A58), (2014).
- Noise and Hearing Loss. NIH Consensus Statement 1990 Jan 22-24;8(1):1-24 (1990)
- L. Gaines and L. Hadler, Noise Pollution: A Modern Plague, *Southern Medical Journal*, 287-94, 287 (2007)
- Stephen A. Stansfeld and Mark P Matheson, Noise pollution: non-auditory effects on health, *British Medical Bulletin*, Volume 68, Issue 1, 245 (December 2003)
- Casey J, Morello-Frosch R, Mennitt D, Frstrup K, Ogburn E and James P, Race/Ethnicity, Socioeconomic Status, Residential Segregation, and Spatial Variation in Noise Exposure in the Contiguous United States, *Environmental Health Perspectives*, 125:7(Jul. 24, 2017).
- Birgitta Berglund et al., WHO Guidelines for Community Noise (Apr. 1999)(being updated with additional current research)
- Dr. Alice H. Suter, Noise and Its Effects, Administrative Conference of the United States, (Nov. 1991)
- Office of Noise Abatement and Control, US EPA, The Noise Effects Handbook (1981)
- EPA, Noise: A Health Problem (1978)

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U.S. Congress— Pollution Acts

NOISE CONTROL ACT (1972)

NOW PART OF THE
CLEAN AIR ACT

42 USC §§ 7641 ET. SEQ.

QUIET COMMUNITIES ACT (1978)

42 USC §§ 7913 ET. SEQ.



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Federal Recognition of Noise Dangers

The Congress finds ... that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population....

[Thus,] the Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare.

42 USC § 4901(A), (B) (EMPHASIS ADDED)

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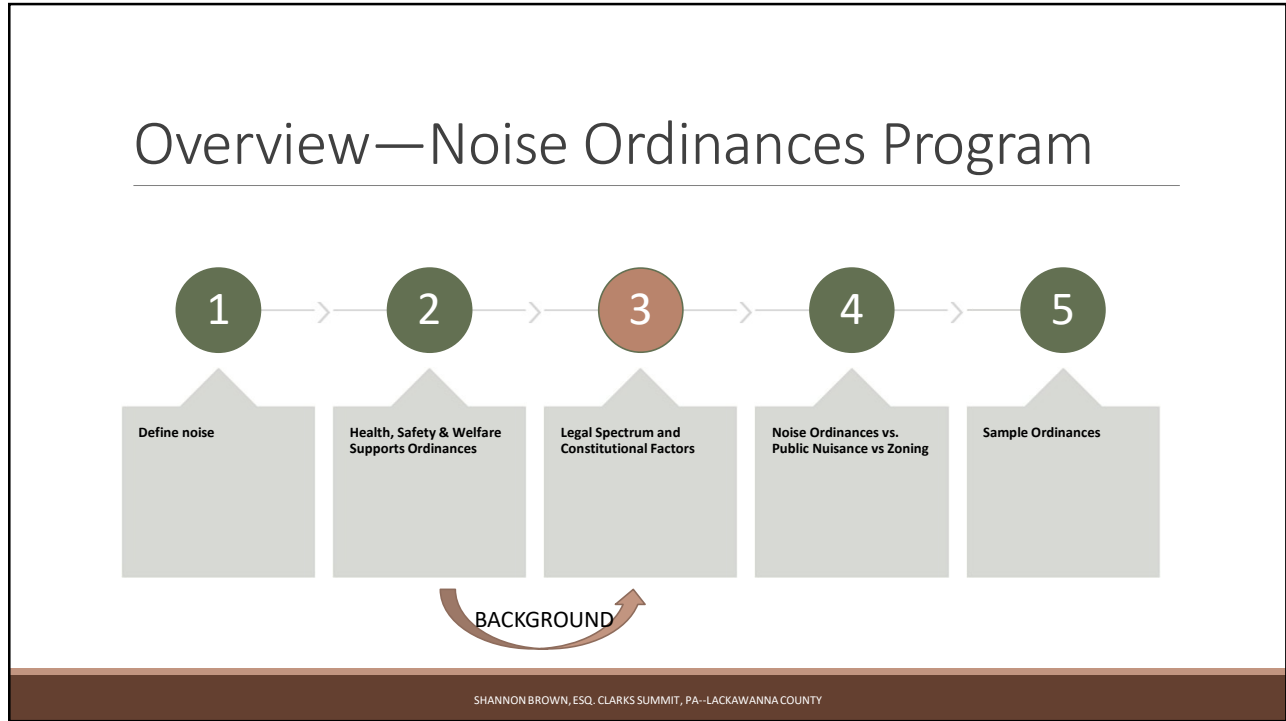


The Point...in Pennsylvania

- Overwhelming evidence to support true noise ordinance enactments based on demonstrated health, safety & welfare factors
- Noise regulation largely rests with state & local authorities (health, safety & welfare)
- Quiet Communities Act (1978) suggests broad state/local powers (avoiding preemption issues)

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Noise, Rights, Freedoms & Duties

FUNDAMENTAL RIGHT TO QUIET ENJOYMENT OF PRIVATE PROPERTY

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If you're not being a good neighbor, there are steps we can take to ensure the peace... —Pittsburg City Council

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*2019 Recent Case
“...this is America
and I can do what I
want with my
property.”*

[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.

MATENKOSKI V. GREER, 2019 PA SUPER 200, 12-13 (PA SUPER, JUNE 2019)(SLIP OP.)

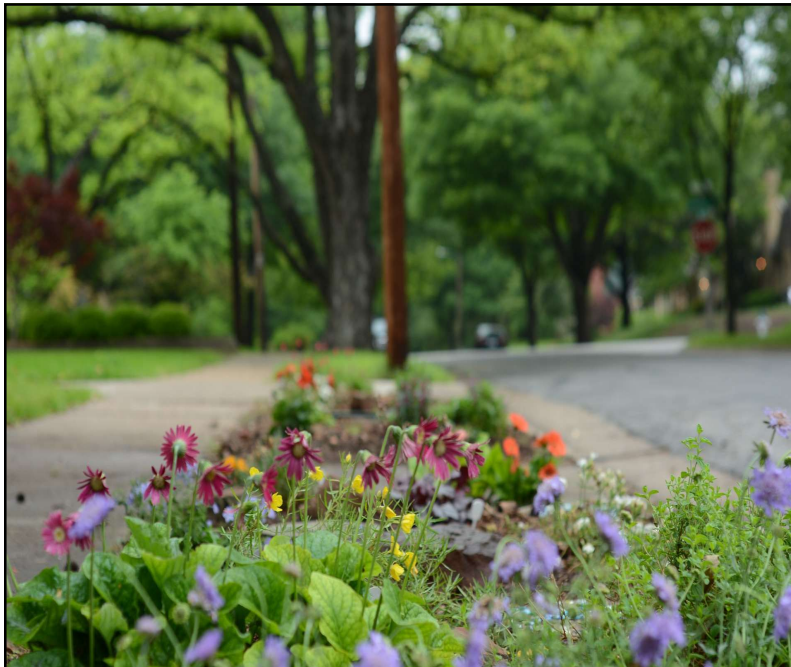
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...The doctrine that each one must so use his own [property] as not to injure his neighbor—*sic utere tuo ut alienum non laedas*—is the rule by which every member of society **must** possess and enjoy his property ; and all legislation essential to secure this common and equal enjoyment is a legitimate exercise of State authority. ...

Munn v. People of State of Illinois, 94 U.S. 113, 145 (U.S.,1876)(emphasis added); See also, e.g., Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 387 (1926); Robinson Tp., Washington County v. Com., 83 A.3d 901, 1001, 623 Pa. 564, 729 (Pa.,2013) (“no individual has a right to use his property so as to create a nuisance or otherwise harm others....”); In re Realen Valley Forge Greenes Associates, 838 A.2d 718, 728, 576 Pa. 115, 132 (Pa.,2003) (“A property owner is obliged to utilize his property in a manner that will not harm others in the use of their property....”)

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PART 1: Fundamental Right to the Quiet Enjoyment of Your Property

... [INDIVIDUALS] HAVE THE RIGHT TO THE QUIET USE AND ENJOYMENT OF THEIR PROPERTY...

CHASE V. ELDRED BOROUGH, 902 A.2D 992, 1001 (PA.CMWLTH. 2006); SEE ALSO, E.G., IN RE REALEN VALLEY FORGE GREENES ASSOCIATES, 838 A.2D 718, 728, 576 PA. 115, 132 (PA. 2003); BALTIMORE & P. R. CO. V. FIFTH BAPTIST CHURCH, 108 U.S. 317, 331-32 (1883).

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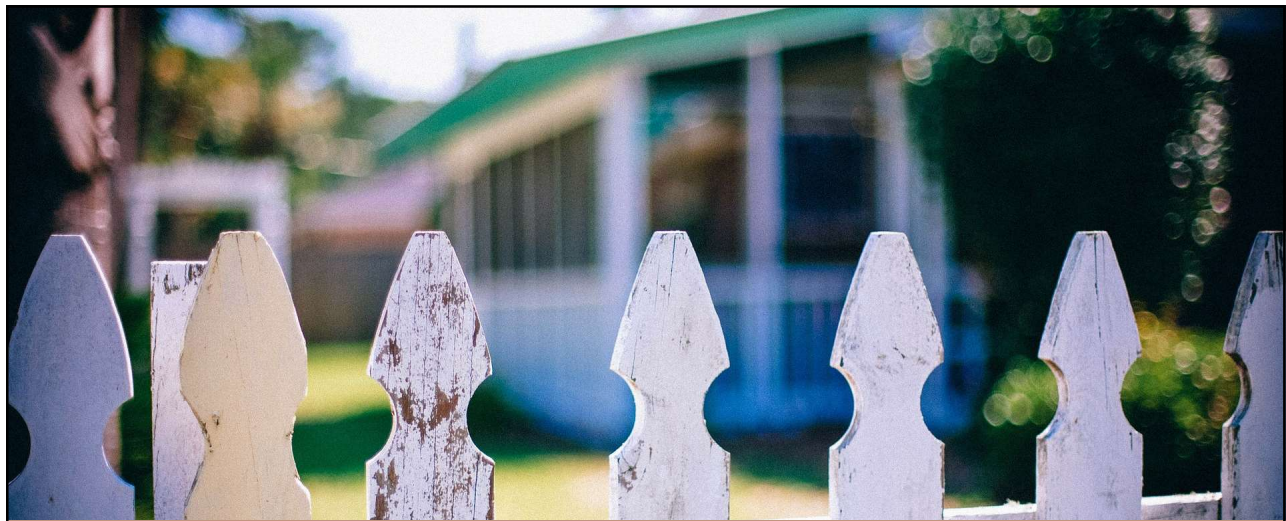
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Part 2: Fundamental Obligation (Duty) Not to Disrupt the Quiet Enjoyment of Others

A PROPERTY OWNER IS 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, 838 A.2D 718, 728, 576 PA. 115, 132 (PA. 2003); SEE ALSO, E.G., BALTIMORE & P. R. CO. V. FIFTH BAPTIST CHURCH, 108 U.S. 317, 331-32 (1883)

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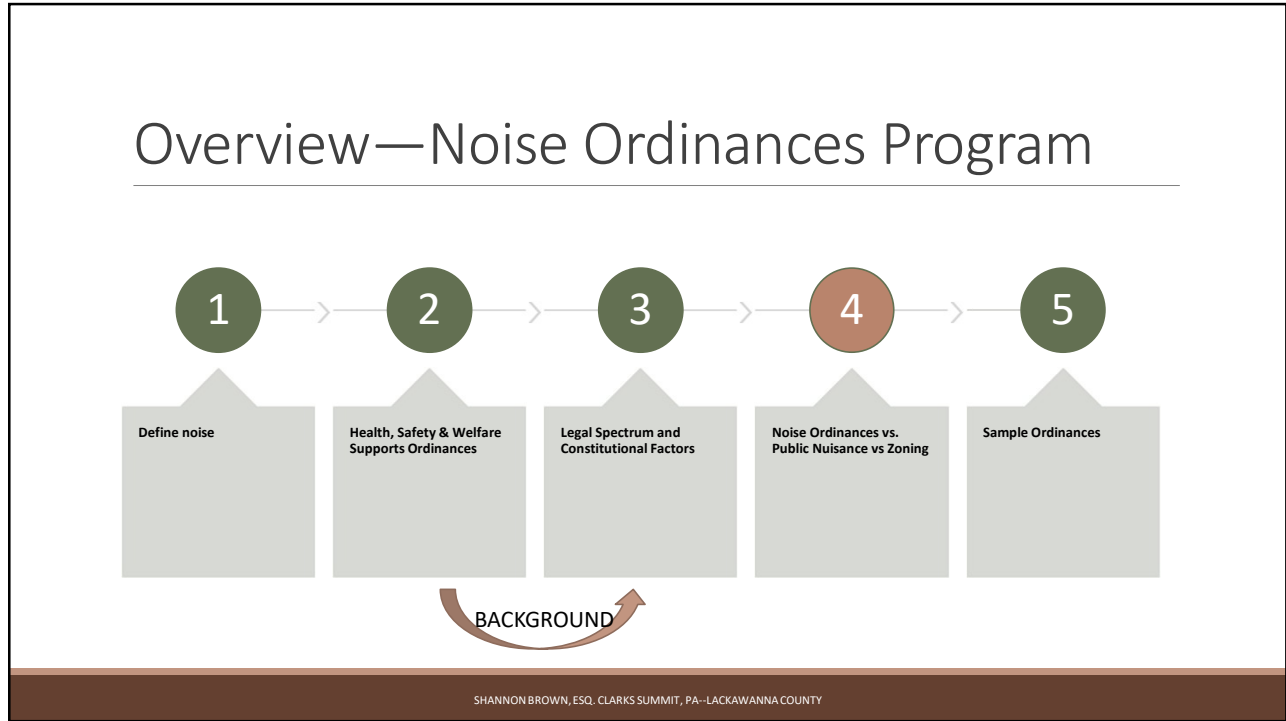
Simple Neighborliness...But Need Law for Problem People

COMMON DECENCY AND RESPECT FOR OTHERS—THE GOLDEN RULE

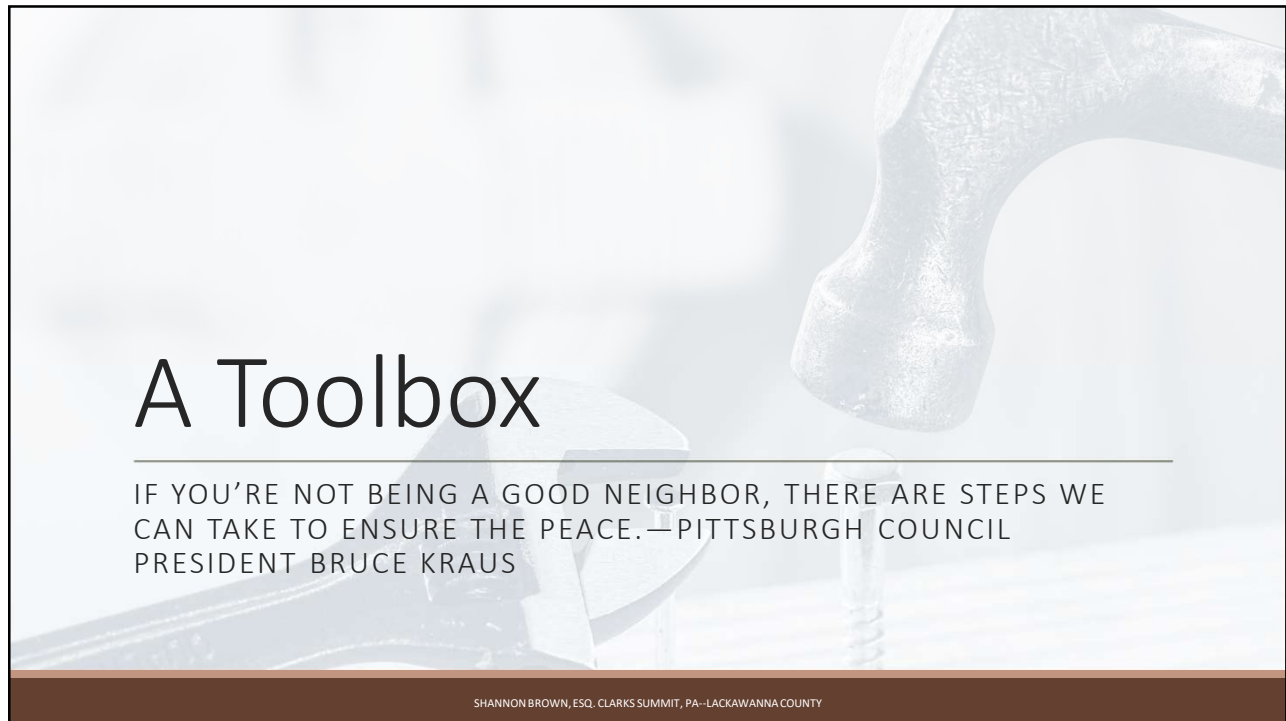
IF YOU'RE NOT BEING A GOOD NEIGHBOR, THERE ARE STEPS WE CAN TAKE TO ENSURE THE PEACE...
—PITTSBURGH COUNCIL MEMBERS (2015, PITTSBURGH GAZETTE)

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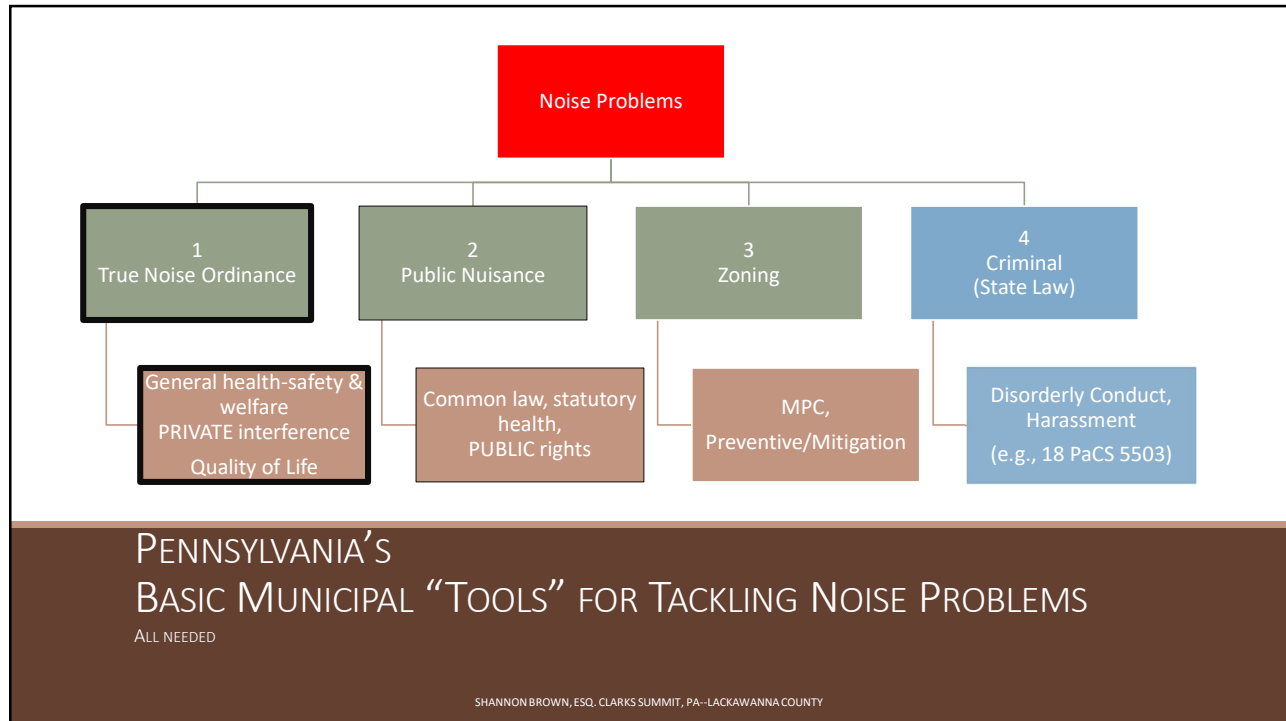
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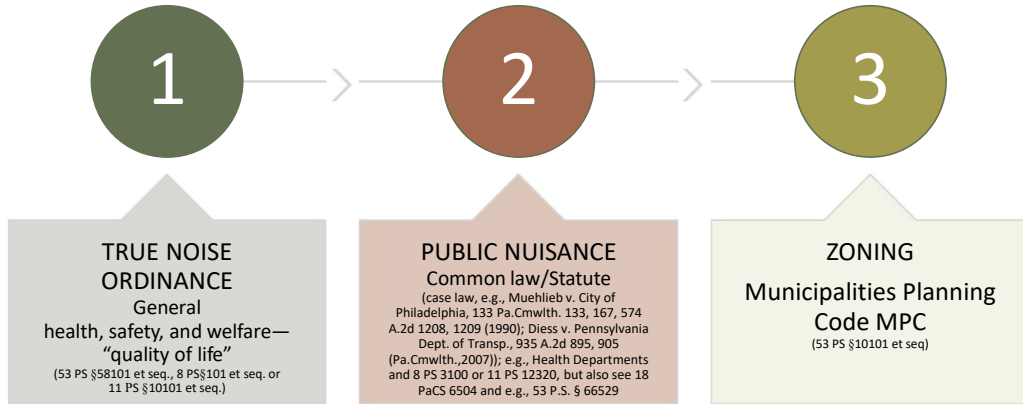
Critical Notes on Police Enforcement of NOISE Ordinances

- Like Code Enforcement Officer role
- Not the same role as criminal Disorderly Conduct or Harassment
- Police merely issuing citation for a local ordinance violation based on policy determined by the local municipal elected officials
- POLICE DISCRETION Limited
 - Police CANNOT make arbitrary or on-the-spot judgements about what they think of the noise
 - Police can notify offender of the violation and WARN but cannot take it upon themselves to arbitrate the noise issue or avoid citing based on their opinion

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Complete Noise Toolbox for Townships



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The Franken-Ordinance— Enforceable?



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Purpose.

It is the purpose of this article to ensure that public health, safety and welfare shall not be abridged by the making and creating of public nuisances from disturbing excessive or offensive noises in the Borough of ZZ. The residents of ZZ recognize that uncontrolled noise represents a danger to the health and welfare of themselves and their neighbors and that each resident of the community is entitled to live in an environment in which the level of impulse and amplified noise is minimized for the community good. This article attempts to foster mutual respect among all residents and to establish a community position against noise pollution.

701.6 Noise
The maximum sound pressure level radiated by any use or facility at any lot line shall not exceed the values in the designated octave bands listed in Table 1, or a single summative value of 51 dBA, after applying the corrections shown in Table 2. The sound pressure level shall be measured with a Sound Level Meter and associated Octave Band Analyzer conforming to standards prescribed by the American Standards Association, Inc., as designated by Borough Council.

A. Maximum Levels - Maximum permissible sound pressure levels at the lot line for noise radiated continuously from any facility or activity between the hours of 9:00 p.m. and 7:00 a.m. shall be as listed in Table 1.

B. Corrections - If the noise is not smooth and continuous, and is not radiated between the hours of 9:00 p.m. and 7:00 a.m., one (1) or more of the corrections in Table 2 shall be applied to the decibel levels in Table 1.

UNWEIGHTED SOUND PRESSURE LEVEL		A - WEIGHTED SOUND PRESSURE LEVEL	
Frequency Band (cycles/octave)	Sound Pressure Level (decibels re 0.0002 dynes/cm ²)	Center Frequency Octave Band (Cycles/octave) (Hz)	Sound Pressure Level (decibels re 0.0002 dynes/cm ²)
20-75	69	63	43
75-150	60	125	44
151-300	58	250	45
301-600	51	500	48
601-1,200	42	1,000	42
1,201-2,400	40	2,000	41
2,401-4,800	38	4,000	39
4,801-10,000	35	8,000	34

Borough of Clarks Summit, Zoning (pre-2020, historical)

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Zoning Tool — Prevention

- Municipalities Planning Code (MPC) governs
- Might include noise-related **performance** standards for districts or for conditional uses/special exceptions in a zoning ordinance
 - Setbacks
 - Buffers
 - Screening
 - Non-sound-reflective materials, materials selection
 - Zoning districts (compatible uses especially with troublesome mixed-use development)
 - Conditional use operational issues
 - Outdoor speakers/drive-throughs/entertainment
- Think ... “what would an engineer need to assure compliance...”
- Gotcha’s
 - Zoning purpose not the same as nuisance purposes
- IMPORTANT Tool in the Toolbox for prevention

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Zoning Tips

Define the performance standards expressly as Performance Standards (not nuisance)

Avoid “operation or activity” and similar language

Instead “No operation or use shall cause or create...”

Make sure the sound level limits for performance standards are overall **50dB or less**

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C. **Noise** No operation or activity shall cause or create sound levels, measured at the lot line of the site upon which the source of the sound is located, in excess of the values in any octave of frequency prescribed in Table 1, below, or as described in Table 1, below, or as described in Table 1 and modified by the correction factors set forth in Table 2. The sound pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American Standards Association.

Table 1
Maximum Permissible Sound Pressure Levels Measured re 002 dyne per CM²

Frequency Band (cycles per second)	Decibels
20 to 75	74
75 to 150	62
150 to 300	57
300 to 600	51
600 to 1,200	47
1,200 to 2,400	42
2,400 to 4,800	38
4,800 to 10,000	35

Allegheny Township, Westmoreland County, Pennsylvania
<https://www.ecode360.com/9016663?highlight=noise,performance&searchid=35311820452539135#9016663>

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BUT No Nuisance- Per-Se In Pennsylvania

*MUST PROVE **NUISANCE IN FACT** FOR
EACH INSTANCE OR CLAIM*

COM. V. CREIGHTON, 639 A.2d 1296 (PA. CMWLTH. 1994); TALLEY V. BOROUGH OF TRAINER, 394 A.2d 645 (PA. CMWLTH. 1978); KADASH V. WILLIAMSPORT, 340 A.2d 617, 619 (PA. CMWLTH. 1975) (QUOTING COMMONWEALTH OF PA V. HANZLIK, 400 PA. 134 (1960)).

§101. Purpose.

The purpose of this Ordinance is to **declare certain actions as public nuisances**; to prohibit the existence of dangerous buildings and structures; to regulate burning; and to abate other public nuisances in order to prevent the blight and deterioration of property, to protect property values within the municipality and to abate public health hazards, and **otherwise protect the general health, safety and welfare of the citizens of Borough of Clarks Summit.**

...

Noise - Any noise source which due to intensity, frequency, duration, location, lack of shielding or other reason which causes injury, damage, hurt, inconvenience, or discomfort to others in the legitimate use and quiet enjoyment of their rights of person or property.

Clarks Summit Borough No. 2009-04 <http://clarkssummitboro.org/documents/2009-04%20nuisance%20ordinance%20updated%20May%2009-%20passed.pdf>

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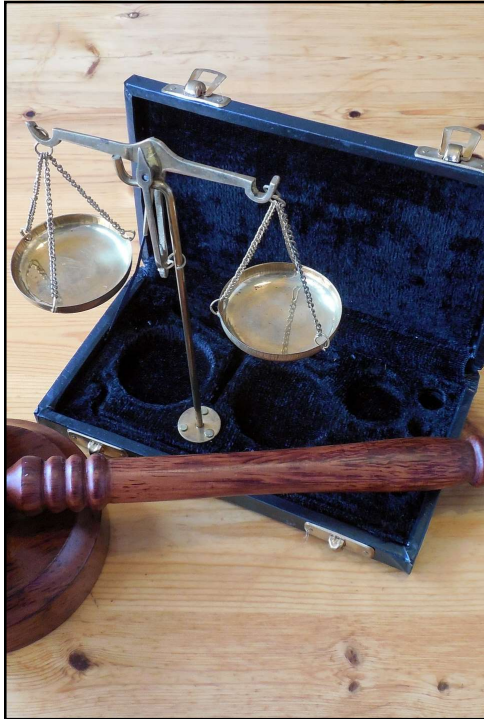
graph TD
    NP[Noise Problem] --> NO[Noise Ordinance]
    NP --> PNL[Public Nuisance Law]
  
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The True Noise Ordinance Tool

A NOISE ORDINANCE SPECIFICALLY ADDRESSES NOISE PROBLEMS IN A NEIGHBORHOOD UNDER A THEORY OF A BAD-NEIGHBOR OR A DISRUPTIVE PERSON WHO BREACHES THE COMMUNITY PEACE

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True Noise Ordinance Promptly Protects Private Property, Health & Welfare

- ▶ PLAINLY DEFINES THE WRONGDOING THROUGH AN ORDINANCE’S TEXT
- ▶ **ACCOUNTABILITY** BECAUSE ELECTED OFFICIALS MAKE DECISIONS BASED ON THE LAW AND THUS AVOIDING ON-THE-SPOT ASSESSMENTS
- ▶ REWARDS GOOD NEIGHBORS--NEIGHBORS CAN MUTUALLY COOPERATE AND AGREE
- ▶ **NO POLICE DISCRETION IN ENFORCING** (BUT MIGHT GIVE A WARNING IF OFFENDER VOLUNTEERS TO CEASE)
- ▶ SIMPLER, SUMMARY-OFFENSE BURDENS OF PROOF APPLY OR SIMPLE PAYMENT OF FINE
- ▶ CLEARLY DEFINED REMEDIES AND ABILITY TO ESCALATE PENALTIES FOR REPEAT OFFENDERS

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Past Legal Challenges to Noise-related Ordinances in Pennsylvania Failed

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A First Amendment 'Red Herring'

SINCE 1989, GOVERNMENTS PLAINLY MAY REGULATE NOISE, EVEN IF INVOLVING FIRST AMENDMENT ACTIVITY, USING CONTENT-NEUTRAL, TIME, PLACE, AND MANNER GUIDELINES.

WARD V. ROCK AGAINST RACISM, 491 US 781, 790-803 (1989).

ALSO SEE CITY OF PHILADELPHIA V. COHEN, 479 A.2D 32, 36, 84 PA.CMWLTH. 200, 206 (PA.CMWLTH.,1984)(LIMITING BUSINESS CHALLENGES OF NOISE, OVERBREADTH DOES NOT APPLY TO COMMERCIAL SPEECH).

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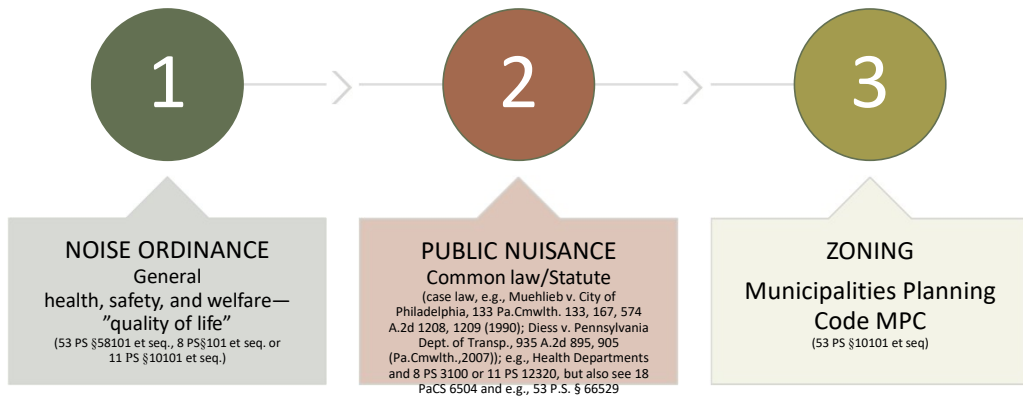
Some Pennsylvania Case Law on Noise

- ▶ **Matenkoski v. Greer, 213 A.3d 1018 2019 PA Super 200, 12-13 (Pa Super, June 2019)**[slip op.]
 - ▶ Noise offender running at-home auto repair and restoration with obdurate refusal to mitigate noise, preliminary injunction affirmed, injunctive relief affirmed abating nuisance, recitation of equal rights to use and enjoyment of property
- ▶ **Com. v. Scott, 878 A.2d 874, 878-79, 2005 PA Super 224, ¶¶ 11,13 (Pa.Super., 2005)**
 - ▶ Definition important but Pennsylvania recognizes "statutes which prohibit audible noises based on a distance standard" and "plainly audible" as adequate.
 - ▶ See also HHI Trucking & Supply, Inc. v. Borough Council of Borough of Oakmont, 990 A.2d 152, 163 (Pa.Cmwth., 2010) (objectionable or acceptable MUST be defined)
- ▶ **Overstreet v. Zoning Hearing Bd. of Schuylkill Tp., 618 A.2d 1108, 1114, 152 Pa.Cmwth. 90, 101-02 (Pa.Cmwth., 1992)**
 - ▶ Suggests that noise limits in zoning ordinances must be tied to specific needs of the zoning district.
- ▶ **Klein v. Council of City of Pittsburgh, 643 A.2d 1107, 1119, 164 Pa.Cmwth. 521, 545 (Pa.Cmwth.,1994)**(citing *Hopewell Township Board of Supervisors v. Gallo*, 499 Pa. 246, 452 A.2d 1337 (1982)).
 - ▶ In order to be valid, a zoning ordinance amendment must "bear a substantial relationship to legitimate community health, safety, and welfare purposes, and may not be unreasonably arbitrary, irrational, unjustifiably discriminatory or confiscatory."
- ▶ **Coal Gas Recovery, L.P. v. Franklin Tp. Zoning Hearing Bd., 944 A.2d 832, 836-39, 840 (Pa.Cmwth., 2008)**
 - ▶ Zoning definitions and zoning maximum-noise applied literally according to definitions of measurement distances.
- ▶ **Leckey v. Lower Southampton Tp. Zoning Hearing Bd., 864 A.2d 593, 596-97 (Pa.Cmwth.,2004)**
 - ▶ ZHB imposing conditions about noise limits as special exception to a non-conforming use within ZHB discretion.
- ▶ **Com. v. Ebaugh, 783 A.2d 846, 850 (Pa.Cmwth.,2001)**
 - ▶ Nuisance ordinance test of "annoy or disturb a reasonable person of normal sensitivities" in the Township's nuisance ordinance objective standard and constitutional [Caution: this was a wrongdoer challenge claiming the ordinance was somehow vague due to this language. Has not been challenged under, e.g., ADA, when terminology used to impair constitutional rights of victims due to disability]
- ▶ **City of Philadelphia v. Cohen, 479 A.2d 32, 36, 84 Pa.Cmwth. 200, 206 (Pa.Cmwth., 1984)**
 - ▶ Decibel, distances, background levels, "adverse psychological and physiological effects on persons:" not vague; businesses may be held to higher noise limits because businesses regulated
- ▶ **Pacurariu v. Com., 744 A.2d 389, 393 (Pa.Cmwth., 2000)**
 - ▶ While rifle ranges enjoy special exemptions, must still comply with local noise ordinances at time of construction

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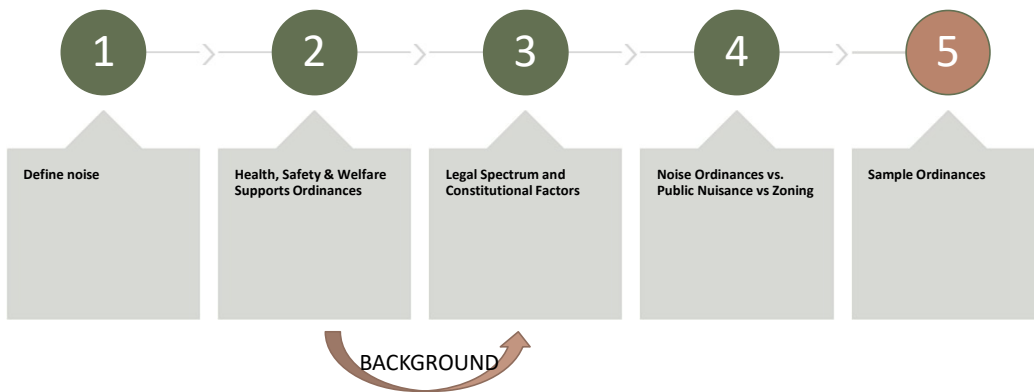
Summary: Noise-related Sources of Township Regulatory Powers in Pennsylvania



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Overview—Noise Ordinances Program



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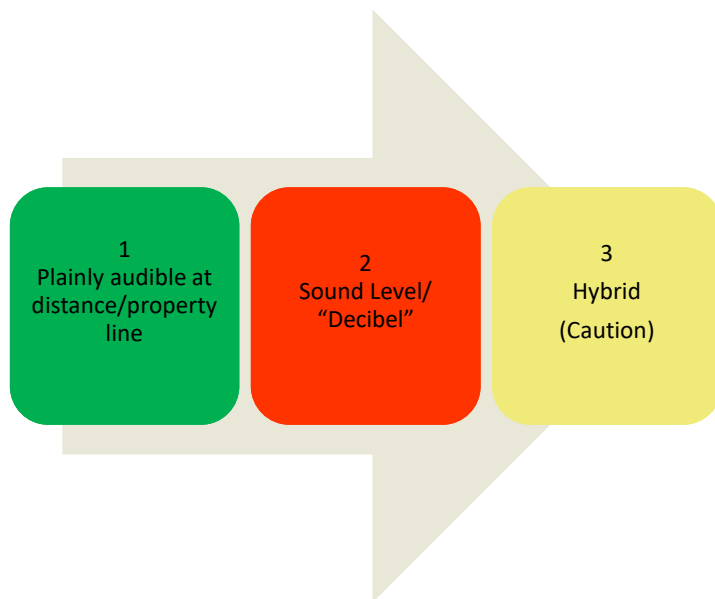
True Noise Ordinances

THREE BASIC OPTIONS FOR PENNSYLVANIA—
PLAINLY AUDIBLE,
SOUND-LEVEL, OR
HYBRID

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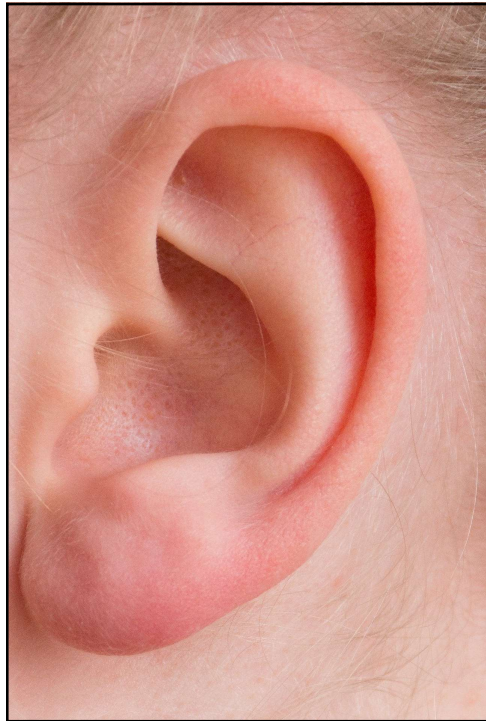
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Noise
Ordinance
General
Options—
What
Constitutes a
Noise
Disturbance?



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Plainly Audible

1. Keep It Simple
2. Can the noise be heard on the property of the complainant?
3. Noise need not be “loud”—plainly audible just means that it can be heard
4. No difficult on-the-spot-assessments
5. Not making judgments whether the enforcer agrees whether the noise is a problem—just can it be heard?
6. No special equipment or calibrations
7. n.b.: NOT THE SAME AS DISORDERLY CONDUCT judgments

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Definitions

dB(A). The symbol designation of a *noise* level, reported in decibels, using the A-Weighting network of a sound level meter, as defined in ANSI S1.4—Specification For Sound Level Meters. For example, *noise* will be reported as seventy-two (72) dB(A). For purposes of this ordinance, the *noise* shall be measured using the slow exponential time weighting characteristic of the sound level meter.

NOISE or NOISE LEVEL (used interchangeably for purposes of this Section). The terms *noise* and *noise level* may mean the sound that is capable of being measured as sound pressure level in decibels. *Noise* and *noise level* may also mean the sound that is clearly audible from a distance of seventy-five (75) feet or sound that annoys or disturbs a reasonable person of normal sensitivities. This Section offers alternative methods to measure *noise*.

Noise levels relative to Tables A and B below will be recorded as the visual average for any continuous measurement period of thirty (30) seconds, and the maximum *noise* level measured at any time. The offending *noise* will be deemed to violate the provisions of Tables A and B below of this Section if the visual average exceeds the maximum allowable *noise* levels and/or the maximum *noise* level measured at any time exceeds the maximum allowable *noise* levels by five (5) dB(A) or five (5) dB(C).

PLAINLY AUDIBLE. Any *noise* that clearly can be heard, however, words or phrases need not be discernible.

Pittsburgh Noise Control §601.04(b)

https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=COOR_TIT6XCO_ARTIRERAC_CH601PUOR_601.04NOCO

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Noise Disturbance Definition

NOISE DISTURBANCE

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

1. endanger or injure the safety or health of humans or animals;
2. annoy or disturb another person or premises;
3. annoy, disturb, or interfere with basic living tasks of others;
4. impair or degrade the rights of another person or property;
5. interfere with the quiet use and enjoyment of the property of another;
6. disrupt, limit, or interfere with the peace of the premises of another or with activities of another person; or
7. endanger or injure personal or real property

and that is plainly audible at the specified distance measurement in this Ordinance.

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Plainly Audible Definition

PLAINLY AUDIBLE.

Any sound that can be heard by a person. Words, phrases, or specific noise signatures need not be discernible or identifiable. Plainly audible does not implicate issues of subjective “loudness”—the plainly audible standard simply determines whether any sound can be heard regardless of the perceived “loudness.” Plainly audible observation alone is sufficient to support and prove a noise disturbance.

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Plainly Audible Noise Disturbance

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

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Plainly Audible Drafting Guidelines

Straight-forward

Policy findings

Definitions

Fines (typically ~\$300 per incident and escalating if additional incidents)



NOISE DISTURBANCE DEFINED



USE PLAINLY AUDIBLE STANDARD /DISTANCE



PER SE PROHIBITED CONDUCT DEFINED (OPTIONAL)



EXEMPTIONS/EXCEPTIONS/ QUALIFIED EXCEPTIONS



PENALTIES/FINES

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Examples of Plainly Audible Specifics

- Prohibited**
 - Operation of vehicles with tampered/ineffective mufflers
 - Jake Brakes
 - ATVs
- Mention Specific Devices**
 - Leaf blowers
 - Stereos, amplified music, etc.
 - Emergency generators
- Exceptions**
 - Construction activity completed in a professional timeframe
 - Lawn care done prudently
 - Limited public events
 - Emergency vehicles responding to an emergency

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Plainly Audible Summary

COM. V. SCOTT, 878 A.2d 874, 878-79, 2005 PA SUPER 224, ¶¶ 11,13 (PA.SUPER.,2005)

- Sound plainly audible (clearly audible) mentioned
- Distance measurement typical (at property line, may be special situations such as apartments)
- Typical Criteria
 - Noise disturbance
 - Exceptions
 - Exemptions
- Free sample noise ordinances at <https://shannonbrownlaw.com> or <https://panpa.org>

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Sound-limit Ordinance

▶ “Maximum Noise Level Limits” Concept

▶ Decibel-level measure triggers Noise Disturbance

- ▶ Hallmarks
 - ▶ Time of Day
 - ▶ Some type of chart
 - ▶ Maximum sound levels

▶ Distinguish ZONING PERFORMANCE STANDARDS from true noise ordinances

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Table I: Maximum Noise Level Limits

Period	Time	Maximum Level, dBA
Day Time	7:00 A.M. - 7:00 P.M.	40 dBA
Night Time	7:00 P.M. - 7:00 A.M.	35 dBA



Noise sources with pure tones or a line spectra cannot exceed the Octave Band Noise Level Limit, OBNLL, criteria of Table II as measured on the receiving property. The OBNLL value will be the same as the corresponding value of the MNLL, e.g., MNLL 40 and OBNLL 40.

Table II: Octave Band Noise Level Limits

Octave Band Center Frequency	31.5	63	125	250	500	1000	2000	4000	8000	Hz
OBNLL 40	65	60	55	50	45	40	35	30	25	dB
OBNLL 35	60	55	50	45	40	35	30	25	20	dB

Section 202 - Measurement Metrics:

- A. L_{EQ} 's will be measured in fifteen minute intervals using an ANSI Type I meter.
- B. $L_{1/3}$'s will be measured in fifteen minute intervals using the "fast" response of a Type I meter.
- C. L_{MAX} will be measured with the "fast" response of a Type I meter.
- D. Octave band sound pressure levels will be measured with an ANSI Type I meter with appropriate ANSI filters using fifteen minute averages with no weighting.
- E. Narrow band analysis will be performed with at least a 1 Hz resolution, Hanning window, and 63% overlap using at least 100 ensemble averages for steady noise produced by the tones of a line spectra and 5 ensemble averages for a fluctuating or intermittent tones of a line spectra. Appropriate ANSI filters will be used.

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A Decibel Measures SOUND Not Noise



- Decibel, applied to acoustics, measures SOUND “pressure level” using a **logarithmic scale**
- dB or DB symbol used
- ANSI weighting scales to weight frequencies dB(A) & dB(C)
- dBA most common
- *NOISE IS NOT “LOUDNESS” ALONE: noise machines/noise masking device may actually increase relative or average decibel levels but not generally be objectionable and would potentially fail a decibel measure*

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...a 10dB increase
DOUBLES
perceived sound
level (“loudness”)...

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Decibels are measured on a logarithmic scale: **a small change in the number of decibels indicates a huge change in the amount of noise....**

https://www.osha.gov/dts/ost-a/otm/new_noise/#decibels

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If You Elect Sound-level, Sound –level Suggestions

EPA suggested 55dB maximum at any time outdoors based on 1970s research (less at night typical)

EU/WHO latest guidance 30-40dB target (max 40dB night, 30-50dB range, 50dB max to prevent serious annoyance)

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...any “decibel” levels at or above 50dB raise serious questions whether based on any scientific or medical support...



EU Night Noise Guidelines for Europe (XVI) and EPA. Noise in America: The Extent of the Noise Problem. EPA Report 550/9-81-101

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Sound Levels WAY, WAY, WAY Too High

Table 1 Sound Levels by Zoning District

Zoning District of Property on which Source of Noise Located	Sound Level 7:00 a.m. to 9:00 p.m.	Limit dB(A) 9:00 p.m. to 7:00 a.m.
Residential	65	55
Commercial	75	65
Industrial and institutional	80	75

Violation needs to exceed **maximum** level by

- ▶ 15dBA at any time OR
- ▶ 10 dBA for one minute in ten minutes OR
- ▶ 3 dBA continuously for five minutes or total of five minutes in ten minutes

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WARNING: OSHA Trap

OSHA research focuses on WORKPLACE hearing LOSS, not medical effects or community noise

70dB or higher BUT they address only **HEARING LOSS** from workplace exposure

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Biggest Sound- Level Ordinance Issues

- Sound levels set WAY too high (anything over 50dB in residential indefensible, targets likely in 40dB range)
- Difficult to enforce as a noise ordinance (may be OK to use for zoning performance standards because those are likely engineering issues)
- Complex
- Requires special equipment, calibration, and training
- Usually arbitrary in setting sound levels (requires sound mapping and sound study)
- False sense of “more scientific”
- “Franken-Ordinances” Trying to claim a noise ordinance, a nuisance ordinance, and zoning ordinance all at one time.

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Hybrid Approach Alternative

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Pittsburgh—
Complex But
Helpful
Approach

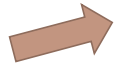
<p>1 Noise Ordinance §601.01</p>	<p>Disruptive Properties §670.01 et seq, 15 days after notice, wrongdoer required to provide abatement plan and city can assess costs of public safety services in addition to public nuisance remedies</p>
<p>2 Public Nuisances §615.01 et seq. — Forfeitures, permanent injunction, knowledge presumed by delivery of notice</p>	<p>3 Zoning—Noise a factor in zoning</p>

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Noise Control
§601.04(c)—
Hybrid
Approach

CRITICAL NOTE: This usage of distance is NOT the same as a true noise-ordinance-only usage and is too far for a true noise ordinance.



(c) Restriction of *noise* between premises :

- (1) Unamplified *noise*. No person shall transmit or cause to be transmitted any unamplified *noise*, which leaves the premises from which it originates, and enters any residential property or premises in a residential zoning district:
 - (i) In excess of the **noise levels** specified below in Table A; **or**
 - (ii) *Noise* that is **clearly audible** from a distance of seventy-five (75) feet.

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Philadelphia—
Noise, Generally
Prohibited
Conduct §10-
403(2)

Uses Neighborhood-Specific Baseline

SOUND FROM RESIDENTIAL PROPERTIES.

NO PERSON SHALL CREATE OR CAUSE, OR PERMIT THE CREATION OF, SOUND ORIGINATING FROM A RESIDENTIAL PROPERTY AUDIBLE AT A DISTANCE GREATER THAN ONE HUNDRED FEET FROM THE PROPERTY BOUNDARY OR THAT EXCEEDS 3 DECIBELS ABOVE BACKGROUND LEVEL MEASURED BEYOND THE PROPERTY BOUNDARY...

BACKGROUND SOUND LEVEL. THE MEASURED SOUND LEVEL IN THE AREA, EXCLUSIVE OF EXTRANEOUS SOUNDS AND THE SOUND CONTRIBUTION OF THE SPECIFIC SOURCE IN QUESTION.

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Hybrid Thoughts

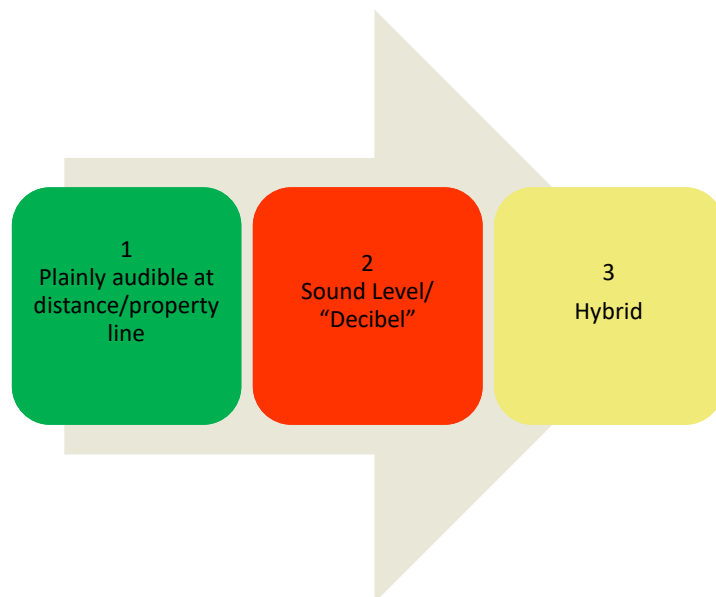
- Might be an option for highly-urbanized townships or townships bordering urbanized areas
- Distance used differently here
- Increases enforcement difficulty due to decibel-levels (imports all the problems of sound-level ordinances)
- Usually, whole departments addressing
- Requires sound mapping and analysis to set sound levels
- Monitoring and application can be challenging

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Photo philia.gov

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Noise Ordinance General Options SUMMARY



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Noise In Townships

POTENTIAL SPECIAL ISSUES FOCUSED ON TOWNSHIPS

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Township Special Issues

NO-IMPACT Home-Based Businesses

53 P.S. 10107(a)

“**No-impact home-based business**,” a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use. The business or commercial activity must satisfy the following requirements:

(1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.

(2) The business shall employ no employees other than family members residing in the dwelling.

(3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.

(4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.

(5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.

(6) The business activity may not generate any solid waste or sewage discharge in volume or type which is not normally associated with residential use in the neighborhood.

(7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.

(8) The business may not involve any illegal activity.

53 P.S. 10107(a)(emphasis added)

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"Agritourism"/ "Agritainment"

Example 2021-2022 HB 216

Another attempt to summarily bar any local regulation of problem "agritourism" activity

Does limit music performances "in compliance with applicable noise and nuisance ordinances"

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The screenshot shows the Pennsylvania General Assembly website for House Bill 216. The page title is "Regular Session 2021-2022 House Bill 216". The short title is "An Act restricting local government from certain regulation of agritourism." The prime sponsor is Representative POLINCHOCK. The last action was referred to LOCAL GOVERNMENT on Jan. 22, 2021. The memo is "Agritourism For Farmers - 'Save Tabora Farm'".

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Township Special Issues Pennsylvania Right-to-Farm Act Not Preclusive of Noise Regulation

3 P S 951-957 (2009)

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§ 953. Limitation on local ordinances
 (a) Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that **defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.**

§ 954. Limitation on public nuisances
 (a) No **nuisance action** shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No. 6), known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.
 (b) The provisions of this section **shall not affect or defeat the right** of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State **or local statute or governmental regulation** which applies to that agricultural operation or portion thereof.

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Township Special Issues

Shooting Ranges

35 P.S. §§ 4501-02



All owners of rifle, pistol, silhouette, skeet, trap, blackpowder or other ranges in this Commonwealth shall be exempt and immune from any civil action or criminal prosecution in any matter relating to noise or noise pollution resulting from the normal and accepted shooting activity on ranges, ***provided that the owners of the ranges are in compliance with any applicable noise control laws or ordinances extant at the time construction of the range was initiated.*** If there were no noise control laws or ordinances extant at the time construction of the range was initiated, then the immunity granted by this act shall apply to said ranges.

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Fireworks

- 2017 Change in Pennsylvania Law
- A true noise ordinance should apply (public nuisance unclear unless persistent problem-maker)
- Unclear area due to new law
 - Rigorous enforcement of Fireworks Law
 - 150 feet of "an occupied structure" regardless whether actually occupied
 - No drugs or alcohol
 - Require express permission of property owner → if shot over other property then is there express permission?
 - If on public right-of-ways, express permission?
 - Ag purposes but permissive language "The governing body of a municipality *may*, under reasonable rules and regulations adopted by it, grant permits for the use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage." 2404.1(a)

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Noise From ATVs and Other Problem Recreational Vehicles

- DCNR largely regulates
- Tip: do not enact ordinances that allow operation on roads and repeal such ordinances
- Problem area with legislative activity

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Noise Control Summary-- Neighborliness

"IF YOU'RE NOT BEING A GOOD NEIGHBOR, THERE ARE STEPS WE CAN TAKE TO ENSURE THE PEACE..."



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Conclusions & Questions

FUNDAMENTALLY, MUCH OF NOISE LAW COMES DOWN TO BE-A-GOOD-NEIGHBOR

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The presentation features general research and legal information. The presentation does not substitute for legal advice and is not intended as legal advice. Questions & Answers are general discussion and not legal advice.

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