

**BOARDMAN TOWNSHIP
MAHONING COUNTY, OHIO**

AMENDED HOME RULE RESOLUTION #02-05

**AMENDING A HOME RULE RESOLUTION FOR BOARDMAN TOWNSHIP
REGULATING NOISE.**

The Board of Trustees of Boardman Township, Mahoning County, Ohio met in regular session at the Boardman Township Government Center on the 24th day of February 2003, with the following members present: Thomas P. Costello, Elaine R. Mancini, Kathy Miller.

Mrs. Mancini made a motion to approve a **Second Reading of Amended Home Rule Resolution No. 02-05, As Amended:**

WHEREAS, the Boardman Township Board of Trustees adopted a Limited Home Rule Government in accordance with Ohio Revised Code Section 504.01(B) by Resolution duly adopted and approved October 12, 1999; and

WHEREAS, Boardman Township constitutes an Urban Township with Limited Home Rule Authority as provided in Ohio Revised Code Section 504.01(B)1, vested with the powers, rights and immunities granted therein; and

WHEREAS, it is the desire of the Boardman Township Board of Trustees to provide for regulations governing noise as necessary for the general health, safety and welfare of the general public;

NOW, THEREFORE, BE IT RESOLVED, THAT THE FOLLOWING REGULATIONS BE AMENDED AND ADOPTED UPON FIRST AND SECOND READINGS AND PUBLICATION:

SECTION 1: DEFINITIONS

- (1) **Loud and Raucous Noise**: For the purposes of this resolution, the term "loud and raucous noise shall mean any sound that, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.
- (2) **Plainly Audible**: For purposes of this resolution, the term "plainly audible" shall mean any sound that can be clearly heard at a distance of 100 feet or more from the source of the sound by a person with normal hearing using ordinary auditory senses without artificial enhancement.
 - a. It is not necessary that the hearer determine the particular words or phrases or the name of a song or artist to establish that a sound is plainly audible; and,
 - b. The detection of a rhythmic, reverberating bass sound is sufficient to constitute a plainly audible sound.

SECTION 2: PROHIBITED GENERALLY; ENUMERATIONS; EXEMPTIONS

- (1) It is unlawful for any person to make, continue, or cause to be made or continued any loud and raucous noise, specifically including the kinds of noise generated by the activities enumerated in Subsection (2) below, but excluding the activities enumerated in Sub-section (3) following, that can be heard upon the public streets, in any public park, in any parking lot, in any school or public building or ground thereof, in any church or hospital or grounds thereof, or in any occupied business establishment or occupied residential dwelling of another.
- (2) The following noises are declared to be loud and raucous noises in violation of this resolution:
 - a. Operation or amplification of any radios, phonographs, tape players, compact disk players, musical instruments, stereos, televisions or other mechanical or electronic sound-making devices so as to create a noise that is plainly audible before 7:00 a.m. or after 10:00 p.m. on any day, whether such sound-making device is located within or upon any structure, vehicle or outdoor premises;
 - b. Live outdoor musical performances and/or musical concerts so as to create a noise that is plainly audible before 7:00 a.m. or after 10:00 p.m. on Sundays through and including Thursdays; before 7:00 a.m. or after 11:00 PM on Fridays and Saturdays; and, before 7:00 a.m. or after 11:00 p.m. on any day preceding a nationally-recognized holiday.

- c. Construction, erection, excavation, demolition, alteration or repair of any building or structure so as to create a noise that is plainly audible before 7:00 a.m. or after 7:00 p.m. on any day of the week, except in case of emergency or urgent necessity in the interest of public health and safety;
- d. Delivery of goods, materials or merchandise to commercial properties adjacent to residentially zoned property so as to create a noise that is plainly audible before 7:00 a.m. or after 11:00 p.m. on any day;
- e. Operation of property maintenance equipment, including but not limited to lawn tractors, lawnmowers, roto-tillers, chainsaws, weed-eaters, lawn edgers, trimmers or leaf blowers, so as to create a noise that is plainly audible before 7:00 a.m. or after 10:00 p.m. on any day; and,
- f. Yelling, shouting, screaming, whistling or singing so as to create a noise that is plainly audible before 7:00 a.m. or after 10:00 p.m. on any day.

(3) The following activities are declared to be exempt and do not create loud and raucous noise in violation of this resolution:

- a. Cries for emergency assistance and warning calls;
- b. Communications equipment and audible warning signal devices on police, fire, emergency medical service or other emergency response vehicles;
- c. Horns and other audible warning devices required or permitted to be installed on vehicles for safety reasons, when used in the prescribed manner;
- d. Horns, sirens or other audible warning or alarm devices to protect the safety and security of dwellings or other premises or vehicles, when properly functioning and used in the prescribed manner;
- e. Activities on or in township and school athletic facilities and on or in publicly owned facilities, provided that such activities have been authorized by the owner of such property or facilities, or by the owner's authorized agent;
- f. Religious worship activities occurring on or in the premises owned or leased by the places of worship, including but not limited to bells and organs;

- g. Parades, fireworks displays or other special events that are conducted in areas not zoned as residential, except that such events shall be limited to the hours between 7:00 a.m. and 12:00 p.m. midnight on any day;
- h. Locomotives, other railroad equipment, and aircraft over which the federal government has exclusive authority to regulate;
- i. Any other activity that is exempt from regulation by the township under federal or state law.

SECTION 3: ENFORCEMENT

- (1) Notwithstanding any enforcement action taken against the person actually making, continuing or causing to be made or continued any noise in violation of this resolution, any person, owner, agent, manager or supervisor in charge of operating, ordering, directing or allowing the operation or maintenance of a device, machine or other source of noise in violation of this resolution shall be subject to enforcement of this resolution so long as the person, owner, agent, manager or supervisor had knowledge or reason to know that the activity was occurring, failed to intervene in an attempt to prevent the activity from occurring, and had the power or authority to prevent the activity from occurring.
- (2) A police officer that initiates enforcement action for any of the violations enumerated in Section 2, Subsection (2) of this resolution shall use the following standards:
 - a. The primary means of detection shall be the officer's own ordinary auditory senses without mechanical or electronic enhancement;
 - b. The source of the sound shall be determined by the officer's own direct line of sight and hearing; and,
 - c. The distance shall be determined to be 100 feet or greater by use of a measuring device or by visual estimation in comparison to fixed points of reference; as long as the distance is reasonably shown to be 100 feet or greater, the exact distance at the time of the violation need not be established.
- 2. A violation of any other portion of this resolution shall constitute an unclassified civil misdemeanor punishable by a civil fine as follows:

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|--------------------|----------|
| (1) First Offense | \$ 25.00 |
| (2) Second Offense | \$ 50.00 |

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| (3) | Third Offense | \$ 75.00 |
| (4) | Fourth and Subsequent Offenses | \$ 100.00 |

SECTION 4: EFFECTIVE DATE OF RESOLUTION

This Resolution shall be effective thirty (30) days from the date of adoption upon both First and Second Readings and Publication thereof.

Mrs. Miller moved to second the motion to approve a **Second Reading of Amended Home Rule Resolution No. 02-05, As Amended:**

ROLL CALL:

| | AYE | NAY |
|------------------------|------------|------------|
| Mr. Thomas P. Costello | X | |
| Mrs. Elaine R. Mancini | X | |
| Mrs. Kathy Miller | X | |

Date of First Reading: October 28, 2002.

Date of Second Reading: February 24, 2003.

Amended Home Rule Resolution No. #02-05 adopted upon Second Reading this 24th day of February 2003.

EFFECTIVE DATE OF RESOLUTION: March 26, 2003.

BY ORDER OF THE BOARDMAN TOWNSHIP BOARD OF TRUSTEES:

Thomas P. Costello, Chair
Elaine R. Mancini, Vice-Chair
Kathy Miller, Trustee

ATTEST:

William D. Leicht, Clerk

Prepared by:

Attorney Mark S. Finamore
Home Rule Legal Counsel

Approved as to form by:

Attorney Paul J. Gains
Mahoning County Prosecutor/
Boardman Township Law Director

CERTIFICATION

I, William D. Leicht, Clerk of Boardman Township, do hereby that the foregoing is taken and copied from the Minutes of Boardman Township, that the same has been compared by me with the Second Reading and Adoption of Amended Home Rule Resolution No. 02-05, As Amended, of said Minutes, and that same is a true copy thereof.

William D. Leicht, Clerk