

**LACKAWAXEN TOWNSHIP
PIKE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 82

AN ORDINANCE OF LACKAWAXEN TOWNSHIP, PIKE COUNTY, PENNSYLVANIA, PROTECTING PUBLIC HEALTH, SAFETY AND WELFARE BY REGULATING NOISE LEVELS WHICH INTERFERES WITH OTHER’S RIGHTS; REGULATING LIGHT SOURCES THAT CAUSE INTERFERENCE WITH OTHER’S RIGHTS; PROVIDING FOR THE ABATEMENT OF SUCH ACTIVITIES WHICH ARE CONTRARY TO PUBLIC SAFETY AND WELFARE; AND PRESCRIBING PENALTIES FOR VIOLATIONS.

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BE IT ENACTED AND ORDAINED by the Board of Supervisors of Lackawaxen Township, Pike County, Pennsylvania, as follows:

SECTION 1 -- SHORT TITLE

This Ordinance shall be known and may be cited as *THE LACKAWAXEN TOWNSHIP HEALTH, SAFETY AND WELFARE ORDINANCE*.

SECTION 2 -- PURPOSE

2.1 The purpose of this Ordinance is to regulate any unreasonable, unwarrantable or unlawful course of conduct or use of private or public property that causes or may cause injury, damage, hurt, annoyance, alarm, interference, or discomfort to others in the legitimate use and enjoyment of their rights of person or property, specifically due to excessive noise or light; to control noise and light generated on the property; and otherwise protect the general health, safety and welfare.

2.2 Lackawaxen Township has created an Agricultural Security Area (ASA) under the PA

Agricultural Area Security Law, 3 P.S. Section 901 et seq. It is not the purpose of this Ordinance to limit or interfere with any Agricultural Operation as defined herein and any activity or use involved in an Agricultural Operation that would, in other circumstances, be considered a violation as declared or defined in this Ordinance shall not be considered a violation.

SECTION 3 -- AUTHORITY

This Ordinance is ordained and enacted under the authority granted by §1529 and §1601 of the Pennsylvania Second Class Township Code, 53 P.S. §66529 and §66601.

SECTION 4 -- DEFINITIONS

Agricultural Operation - Any enterprise that is actively engaged in the production and preparation for market of crops, livestock or livestock products and/or in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry. It includes necessary structures within the limits of the parcel and the storage of equipment necessary for production.

Dwelling - Any building which is wholly or partly used or intended to be used for living by human occupants.

Owner - The person who, alone or jointly or severally with others is the owner of record of the premises as filed with the Pike County Recorder of Deeds. In the case where an owner is represented by an agent, including but not limited to a manager, executor, executrix, administrator, administratrix, or guardian of the estate of the owner, such person thus representing the actual owner shall be bound to comply with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Person: An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other legal entity.

Premises or Property - A piece, parcel, lot or tract of land.

Township - Lackawaxen Township, Pike County, Pennsylvania.

SECTION 5 -- RESPONSIBILITY – DUTY TO CONTROL USES OF PROPERTY

It shall be the responsibility of the property owner and/or occupant of the premises upon which any activity, condition and/or use of property regulated by this Ordinance, is situated and/or occurring, specifically the generation of light and noise; to provide for the removal or abatement

of any such public activity, condition and/or use; and the remediation of any environmental problems associated with the activity, use or property condition which constitutes a violation of this Ordinance. Any owner and/or occupant of property upon which such violation is located or taking place, and/or any person who or which owns or is engaged in conduct or use, or allows the condition to remain, shall be deemed to be in violation of this Ordinance, and shall be subject to the penalties and remedies prescribed herein.

The following are hereby declared to be public health safety and welfare concerns and shall be removed, disposed of, or corrected as herein provided:

- A. Noise - Any noise source which due to intensity, frequency, duration, location, lack of shielding or other reason which causes injury, damage, hurt, or discomfort to others in the legitimate use and enjoyment of their rights of person or property.
- B. Light - Any light source which due to intensity, frequency, duration, location, lack of shielding or other reason causes any direct or sky-reflected light visible at the property line of the property on which the light source is located; or which causes any safety hazard to any driver on any public or private road, or shines out onto any waterway.

SECTION 6 -- NOISE

6.1 - Definitions:

A-weighted noise level: A single number measurement of a noise level that approximates the human ear's response to an equal-loudness contour of 40 phons.

Environmental noise level: The equivalent continuous noise level measured at any specified point which is representative of the noise level of that environment.

Equivalent continuous noise level (ECNL): The constant A-weighted noise level that would produce the same energy density exposure as a continuously varying noise level. ECNL is calculated from a series of measurements by the following formula:

$$ECNL = 10 \log \left(\frac{\sum \Delta t_i 10^{L_i/10}}{\sum \Delta t_i} \right)$$

where L_i is an A-weighted noise level, and t_i is the time over which that level occurs, or, for measurements taken over an equal, fixed time interval:

$$ECNL = 10 \log \left(\sum 10^{L_i/10} \right)$$

Intentional radiator: A source of sound, or noise source, which is designed or operated with its primary function being to produce sound. For example, sirens, air horns and loud speakers are all intentional radiators.

Noise source: A single piece of equipment, or a collection of equipment under the control and operation of a single entity, that produces noise as a consequence of its operation. A collection of equipment may not necessarily be connected or related, if they may be operated simultaneously.

Suspect source: A noise source that may be in violation of this ordinance, identified by the nature of sound or a correlation with the times of operation and the alleged violation.

Unintentional radiator: A source of sound, or noise source, which is not designed or operated with its primary function to produce sound, but which does produce sound as an unintentional byproduct of its operation. For example, chain saws, wood chippers, vacuum cleaners, leaf blowers, sand blasting and rock crushers are all unintentional radiators.

6.2 - Noise

No person shall operate equipment of any type that produces a noise level that can reasonably be expected to interfere with normal residential activities on another property, except for those Exceptions set forth in Subsection 6.6 below. No noise source shall be found to be in violation of this standard unless the operation of the noise source causes an increase in the environmental noise level of at least 5 dB.

6.3 - Standards

The levels based on recommendations by the U.S. Environmental Protection Agency, Office of Noise Abatement and Control in the report "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", March 1974, Report No. 550/9-74-004, are:

Daytime (6 AM to 7 PM) outdoor ECNL - 63 dB

Evening (7 PM to 10 PM) outdoor ECNL - 50 dB

Nighttime (10 PM to 6 AM) outdoor ECNL - 40 dB

6.4 - Measurements

The investigating officer shall measure the environmental noise level with the suspect source in operation. If the environmental noise level exceeds the standards, the investigating officer shall then order the suspect source secured and measure the environmental noise level without the source.

All noise level measurements shall be made at the property line using a sound level meter meeting American National Standard Specification for Sound Level Meters (ANSI S1.4-1983 (R2001)/ANSI S1.4A-1985 or the current revision of that standard) for Type 1 or Type 2 instruments. The instrument shall have been field calibrated according to the manufacturer's

directions within the periodicity required by the manufacturer prior to the measurements. All measurements shall be taken using the FAST response time and A-weighting.

Measurements of the background equivalent continuous noise level shall be made for the length of time the suspect source is in operation, but in any case shall not be less than one minute, and need not be any longer than five minutes. For manual measurements, the measurements shall be recorded every 10 seconds. For automatic recording devices, the recording interval shall be one second, or the closest fixed or variable interval allowed by the meter and recording equipment.

Measurements of the equivalent continuous noise level with the suspect source in operation shall be made for the length of time the suspect source is in operation, but in any case shall not be less than one minute, and need not be any longer than five minutes. For manual measurements, the measurements shall be recorded every 10 seconds. For automatic recording devices, the recording interval shall be one second, or the closest fixed or variable interval allowed by the meter and recording equipment.

6.5 - Report

The code enforcement officer's report shall include:

- The instrument type, serial number, field calibration date, time, background noise level, calibration level and any adjustments made during the most recent field calibration of the sound level meter.
- The type and serial number of the field calibrator used at the last field calibration of the sound level meter.
- The location of the environmental noise level measurements, by latitude and longitude or by other descriptive terms that would allow someone unfamiliar with the complaint to locate, unambiguously, the measurement point on the ground, or on a map.
- The location of the suspect source, by latitude and longitude or by other descriptive terms that would allow someone unfamiliar with the complaint to locate, unambiguously, the measurement point on the ground, or on a map.
- A description of the suspect source in operation, sufficient to allow someone to recreate the conditions of the test.
- The weather conditions at the time of measurement, including, temperature, relative humidity, wind speed and direction, cloud cover, and an impression of the temperature gradient.
- For manual measurements:
 - a table of times and sound levels as reported on the meter
 - the calculated ECNL for each set of measurements

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- For automatic measurements:
 - a notation of the time the instrument was started and the time stopped
 - the reported ECNL
 - A list of witnesses or other persons present during the measurements.
 - Any additional comments from the complainant, witnesses or the operator/owner of the suspect equipment or sources.

6.6 - Exceptions

The following sources or operations are exempt from the noise standards of this section, however, they may be subject to other sections of this ordinance, and they may be subject to regulation under other ordinances:

- lawn mowers, leaf blowers, chain saws, chippers, string trimmers, tillers and any other small yard or garden maintenance equipment when operated on residential property during Daytime and Evening hours as set forth in **6.3** above.

- all emergency equipment and emergency operations
- fixed equipment permitted under the Zoning Ordinance
- special and permitted activities operating under the conditions of their authorization
- unaided human voices
- ***the sound from shooting a firearm.***

6.7 - Temporary Certificates

The Township Supervisors, in their discretion, may issue a Temporary Certificate for a temporary use or event. Application shall be made in writing to the Township at least forty-five (45) days prior to the proposed use or event and such application shall be considered by the Supervisors at a public meeting. No Temporary Certificate shall be issued for any event generating noise and will indicate the hours on the certificate. In determining whether a Temporary Certificate shall be issued, the Supervisors shall evaluate whether there is any adverse impacts to the adjoining properties, the neighboring community and public health, safety and welfare.

SECTION 7 -- COMPLAINTS

Any person may file a written complaint or call in a complaint in regard to any suspected violation of this Ordinance with the Enforcement Officer. The investigation of all other complaints shall be at the discretion of the Enforcement Officer. A log will be kept including but not limited to, date, time, and violation. For call in complaints, if available or disclosed, the

name, address, and phone number.

SECTION 8 -- CODE ENFORCEMENT OFFICER; NOTICE

The Board of Supervisors shall appoint the Code Enforcement Officer to be responsible for enforcing the terms of this Ordinance. The Board of Supervisors may also appoint one or more Assistant Enforcement officers who shall have all authority of the Enforcement Officer.

- A. Inspections; Permission - The Code Enforcement Officer may inspect any premises to determine whether any violations of this Ordinance exist. Prior to entering upon any property to conduct an inspection, the Code Enforcement Officer shall obtain the permission of the owner and/or occupant for the same. If the Code Enforcement Officer is unable to obtain such permission, the Code Enforcement Officer shall have the authority to conduct the necessary inspection of the premises in accord with this Ordinance and the applicable laws of the Commonwealth.
- B. Consultation - In carrying out any of the duties authorized by this Ordinance, the Code Enforcement Officer may consult with the Township Engineer, the Township Solicitor or any other professional designated by the Board of Supervisors.
- C. Notice of Violation - Whenever an inspection discloses that a violation exists, the Code Enforcement Officer shall issue a notice of violation to the owner and/or occupant of the premises. The notice:
1. Shall be in writing;
 2. Shall include a statement of the reasons it is being issued;
 3. Shall state a reasonable time to rectify the conditions constituting the violation, and may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.
 4. Shall inform the owner and/or occupant that should he fail to correct the violation as required by the notice, he will be subject to the enforcement remedies and/or actions to abate the violation provided in § 9.
- D. Service of Notice - Except in emergency cases, the notice shall be sent by certified mail or personally delivered to, the owner and/or the occupant of the premises. Where the owner and/or occupant is absent from the Township, all notices shall be deemed to be properly served upon the owner and/or occupant if:
1. A copy of the notice is served upon the owner and/or occupant personally; or
 2. A copy of the notice is sent by certified mail, or by proof of mailing to the last known address of the owner and/or occupant, regardless of receipt, and is posted in a

conspicuous place on or about the premises affected by the notice; or

3. The owner and/or occupant is served with such notice by any other method authorized under the laws of the Commonwealth of Pennsylvania.

- E. Appeal Process - If an owner and/or occupant has received a Notice of Violation, as set forth in B. above, and wishes to challenge that Notice of Violation, he/they may request a review by the Board of Lackawaxen Township Supervisors by submitting such request in writing to the Township within fifteen (15) days of the date of the Notice of Violation. Such request shall state the reason or reasons why the Notice of Violation is being challenged. A Request for Review shall operate as a stay on any further prosecution of the violation until the Board has rendered a decision. A hearing on the Request for Review shall be held by the Board within thirty (30) days of receipt of the Request. A fee of \$150.00, payable to the Township, shall be submitted with the request for review, provided that in the event the violation decision is overturned by the Board then the fee shall be refunded to the owner and/or occupant. This fee can be adjusted from time to time as needed by the Board of Supervisors at the annual Reorganization meeting as part of the Fee Schedule.
- F. Emergency Cases - (See definition in §4.) - Whenever the Code Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, welfare or safety, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately. The costs of such emergency correction shall be collected in the same manner as provided herein for other cases.

SECTION 9 -- VIOLATIONS; ENFORCEMENT REMEDIES; ACTION TO ABATE

- A. Compliance - Failure to comply with any provision of this Ordinance, and/or failure to comply with an order to abate an activity, use and/or condition, shall be a violation of this Ordinance and subject to criminal prosecution.
- B. Fine - Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magisterial District Judge be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) per day of violation, together with the costs of suit including reasonable attorney fees, and/or shall be committed to the Pike County Prison for a period not exceeding thirty (30) days. Each day of violation shall constitute a separate offense, for which a summary conviction may be sought. All judgments, administrative and other costs, interest and reasonable attorney fees collected for the violation of this Ordinance, shall be paid over to the Township.
- C. Other Remedies - The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- D. Abatement By Township and Recovery of Costs - In addition, if the owner and/or occupant or person in control of any dangerous premises, or act or condition constituting a violation of

this Ordinance, fails to respond to a notice of violation directing the removal or abatement of activity, use and/or condition, or correction of the violation within the time limit prescribed by the Board of Supervisors shall be empowered to cause such work of abatement to be commenced and/or completed by the Township, the Township may enter a municipal lien upon the premises to recover the cost and expense thereof.

SECTION 10 -- REPEALER

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

SECTION 11 -- SEVERABILITY

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of Lackawaxen Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 12 -- MUNICIPAL LIABILITY

Any liability or damages resulting from activities or conditions constituting a violation of this Ordinance are the sole responsibility of the owner and/or occupant of the property, or the person or persons responsible for said activity, use or condition. The failure to enforce the terms of this Ordinance shall not constitute a cause of action against Lackawaxen Township or its agents, officials or representatives.

SECTION 13 -- EFFECTIVE DATE

This Ordinance shall become effective five (5) days after the adoption thereof.

ORDINANCE ORDAINED AND ENACTED this ____ day of _____, 2009, by the Board of Supervisors of Lackawaxen Township, Pike County, Pennsylvania.