

RESOLUTION 2000-10

To Establish a Noise Control Resolution in Concord Township

WHEREAS, the Lake County Sheriff has recommended that the Board of Trustees of Concord Township enact a Noise Control Resolution in Concord Township; and

WHEREAS, the Board of Trustees of Concord Township, after thoughtful consideration of the information provided to them, declare there is a need for a Noise Control Resolution in Concord Township.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Concord Township, Lake County, Ohio, that we, on behalf of its residents, do hereby adopt a noise Control Resolution for the Township as follows:

Section I	Definitions
Section II	Noise Disturbances Prohibited
Section III	Specific Prohibitions
Section IV	Motor Vehicle Noise
Section V	Inspections
Section VI	Special Variances
Section VII	Notice of Violation
Section VIII	Other Remedies
Section IX	Exceptions
Section X	Applicability
Section XI	Use of Radios or Other Sound-Making Devices or Instruments in Vehicles
Section XII	Penalty

Section One DEFINITIONS

All definitions and terminology used in this Resolution not defined below shall be in conformance with applicable publications of the American National Standards Institute (ANSI) of its successor body.

As used in this Resolution:

A. Modified Exhaust System

An exhaust system in which the original noise abatement devices have been physically altered causing them to be less effective in reducing noise or the original noise abatement devices have either been removed or replaced by noise abatement devices which are not as effective in reducing noise as the original devices, or devices have been added to the original noise abatement devices such that noise levels are increased.

- B. Commercial Area**
Any B-1, Restricted Retail; B-2, General Business; or S, Special Interchange district as set forth in the Concord Township Zoning Resolution, including any parcel or real property located within a business district.
- C. Construction**
Any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition, for or on public or private right-of-ways, structures, utilities or similar property.
- D. D Permit**
A category of permits issued to liquor establishments by the State of Ohio Division of Liquor Control. A list of D permits is included as Attachment "A".
- E. Demolition**
Any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.
- F. Emergency**
Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss, which demands immediate action.
- G. Emergency Work**
Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- H. Light Motor Vehicle**
Any automobile, van, recreational vehicle, motorcycle, motor driven cycle, motor scooter, dune buggy, snowmobile, all-terrain vehicles, go-carts, personal water craft, mini-bike or trucks with gross vehicular weight of less than 8,000 pounds.
- I. Motor Vehicle**
Every vehicle defined as a motor vehicle in the Ohio Revised Code.
- J. Motorcycle**
Every vehicle defined as a motorcycle in the Ohio Revised Code.
- K. Motorized Bicycle**
Every vehicle defined as a motorized bicycle in the Ohio Revised Code.
- L. Noise**
Any sound which annoys or disturbs persons of normal sensibilities or which causes or tends to cause an adverse psychological or physiological effect on persons.
- M. Noise Disturbance**
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Any sound which endangers or injures the safety or health of humans or animals; annoys or disturbs a reasonable person of normal sensitivities; or, endangers or injures personal or real property.

N. Permitted Hunting or Target Shooting

Hunting or target shooting by an individual, or individuals, on designated public hunting lands, or having the written permission of a private landowner, with that individual, or individuals, having also secured the proper license(s) and while hunting within the permitted season(s) as designated by the Ohio Department of Natural Resources - Division of Wildlife, unless said individual, or individuals, are hunting on land that they own; or are a qualified tenant or manager of land that they rent and whose annual income is primarily derived from agricultural production conducted on said land; or are grandchildren, under the age of eighteen (18), hunting on land owned by their grandparent(s).

O. Person

Any individual, association, partnership or corporation and including any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

P. Place of Public Entertainment

Any commercial facility open to the general public for purposes of entertainment.

Q. Powered Model Vehicle

Any self-propelled air-borne, water-borne, or land-borne plane, vessel or vehicle which is not designed to carry persons, including but not limited to, any model airplane, boat, car or rocket.

R. Public Right-of-Way

Any street, avenue, boulevard, highway, sidewalk, alley, or other roadway.

S. Real Property Boundary

An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

T. Residential Area

Any R-1, Residential; R-2, Residential; R-3, Multi-family; R-4, Residential; R-5, Senior Residential Community; R-6, Residential; or R-8, Rural Residential and Recreational district classification, or any other designated residential district.

U. Sound

An oscillation in pressure, particle displacement particle velocity, or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Section Two

NOISE DISTURBANCES PROHIBITED

In addition to the specific prohibitions outlined in this Resolution, no person shall unreasonably make, continue or cause to be made, continued or permitted, any noise disturbance.

This Resolution shall not apply to noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way.

This Resolution applies to all liquor establishments to which a D Permit has been issued by the Ohio Division of Liquor Control.

Section Three

SPECIFIC PROHIBITIONS

The following acts and the causing or permitting thereof, are declared to be in violation of this Resolution:

A. Air Conditioners

Maintaining any refrigeration machinery or air conditioning, consisting of air compressors or rotating or reciprocating machinery, in such a manner as to create a noise disturbance across a residential real property boundary.

B. Construction

Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work between the hours of 11:00 p.m. and 7:00 a.m. such that the sound therefrom creates a noise disturbance across a residential real property boundary, except for emergency work of public service utilities or by special variance. This paragraph shall not apply to the use of domestic power tools subject to subsection (C) hereof.

C. Domestic Power Tools

Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawnmower, or other similar device used outdoors, other than powered snow removal equipment, outdoors between the hours of 11:00 p.m. and 7:00 a.m. on weekdays, or on Saturday or Sunday before the hour of 8:00 a.m.

D. Emergency Signaling Devices

The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this Resolution. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 7:00 a.m. or after 11:00 p.m. or the closing time of a commercial establishment, whichever shall occur later. Any such testing shall use only the minimum cycle test time. In

no case shall such time exceed sixty (60) seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device and the personnel response to the signaling device, shall not occur before 7:00 a.m. or after 11:00 p.m. In no case shall such test exceed ten (10) seconds.

E. Explosives, Firearms, and Similar Devices

The using or firing of explosives, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance across a residential real property boundary or on a public space or right-of-way, without first obtaining a special variance, shall be prohibited. This Resolution shall not apply to permitted hunting or target shooting.

F. Loading and Unloading Materials

Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to cause a noise disturbance across a residential real property boundary.

G. Loudspeakers/Public Address System

1. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom on a public right-of-way or public space for any commercial purpose, without a special variance, shall be prohibited.
2. Using, operating or permitting for any noncommercial purpose any loudspeaker, public address system, mobile sound vehicle, or similar device between the hours of 11:00 p.m. and 7:00 a.m. such that the sound therefrom creates a noise disturbance across a residential real property boundary.

H. Powered Model Vehicles

Operating or permitting the operation of a powered model vehicle or vehicles so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 11:00 p.m. and 7:00 a.m.

I. Vehicle or Motorboat Repairs and Testing

Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, motorized bicycle or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary between the hours of 11:00 p.m. and 7:00 a.m.

Section Four

MOTOR VEHICLE NOISE

- A. No person shall cause noise levels, which constitute a noise disturbance as defined, from the operation of any motor vehicle as defined below:

Motor Vehicle, Motorcycle, and Motorized Bicycle Noise

Vehicle Class

Motor vehicles, with a manufacturer's gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 8,000 pounds or more or any combination of vehicles towed by such motor vehicle.

Light Motor Vehicles

- B. No person shall operate a motor vehicle which causes excessive noise levels, as a result of a defective or modified exhaust system, as a result of an unnecessary rapid acceleration, deceleration, engine revving, tire squealing, or as the result of the operation of audio devices such as, but not limited to radios, phonographs, tape players, or compact disk players.

Section Five INSPECTIONS

Any Deputy Sheriff, in addition to any other authority vested in him, has the power, upon presentation of proper credentials, to enter and inspect any dwelling, multi-family dwelling, building, structure or premises within the Township as may be necessary to enforce the provisions of this Resolution provided permission is obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused, or is otherwise unobtainable, a search warrant must be obtained upon the showing of probable cause to believe that a violation of this Resolution may exist, before such entry or inspection is made.

Section Six SPECIAL VARIANCES

- A. The Concord Township Board of Trustees or their designated representative shall have the authority, consistent with this Resolution, to grant special variances.
- B. Any person seeking a special variance pursuant to this Resolution shall file an application with the Board of Trustees, or their designated representative. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this Resolution would constitute an unreasonable hardship on the applicant, on the community, or other persons. Notice of an application for a special variance shall be given by the Board of Trustees or their representative to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the Board of Trustees or their representative containing any information to support his or her claim.
- C. Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances.

- D. The Concord Township Board of Trustees, or their designated representative, may issue guidelines approved by the Board of Trustees, defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.
- E. Enforcement of this Resolution shall be stayed as to any person filing an application for a special variance pursuant to this Resolution, until such time as the application is acted upon by the Board of Trustees or their designated representative.

Section Seven **NOTICE OF VIOLATION**

Violation of any provision of this Resolution shall be cause for a notice of violation to be issued by any Deputy Sheriff.

Section Eight **OTHER REMEDIES**

No provision of this Resolution shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this Resolution or from other law.

Section Nine **EXCEPTIONS**

The provisions of this Resolution shall not apply to the following:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of emergency work.
- B. Organized school-related programs, activities or parades or other public programs, activities or events authorized by the Concord Township Board of Trustees or their designated representative.
- C. Agriculture activities as defined in Ohio Revised Code, Section 1.61, are exempt from the provisions of this resolution.

Section Ten **APPLICABILITY**

Nothing in this Resolution shall be construed to permit conduct prohibited by any other statute, resolution, or regulation or to prohibit the enforcement thereof.

Section Eleven **USE OF RADIOS OR OTHER SOUND-MAKING DEVICES
OR INSTRUMENTS IN VEHICLES**

- A. It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, compact

disk player, or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is:

1. Plainly audible at a distance of 100 feet or more from the motor vehicle; or
 2. Louder than necessary for convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.
- B. The provisions of this Resolution shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency or public safety vehicle equipped with any communication device necessary in the performance of any emergency procedures.
- C. The provisions of this Resolution do not apply to motor vehicles used for business or political purposes, which, in the normal course of conducting such business, use sound-making devices.
- D. The provisions of this Resolution do not apply to the noise made by a horn or other warning device required or permitted by State law or these Resolutions.
- E. As used in this Resolution, "**plainly audible**" means any sound produced by a radio, tape player, compact disk player, or other mechanical or electronic sound-making device or instrument, from within the interior or exterior of a motor vehicle, including sound produced by a portable sound-making device, that can be clearly heard outside the vehicle by a person using his or her normal hearing faculties, at a distance of 100 feet or more from the motor vehicle.
- F. A Deputy Sheriff who hears a sound that is plainly audible, as defined herein, shall be entitled to measure the sound according to the following standards:
1. The primary means of detection shall be by means of the Deputy's ordinary auditory senses, so long as the Deputy's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
 2. The Deputy shall have a direct line of sight and hearing to the motor vehicle producing the sound so that he or she can readily identify the offending motor vehicle and the distance involved.
 3. The Deputy need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating-type sound is sufficient to constitute a plainly audible sound.
- G. The motor vehicle from which the sound is produced shall be located upon (stopped, standing, or moving) any street or highway within the Township. Parking lots and driveways are included when any part thereof is open to the public for purposes of vehicular traffic.
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- H. The standards set forth in subsection (G) hereof, shall also apply to the detection of sound that is louder than necessary for the convenient hearing of persons inside the motor vehicle in areas adjoining churches, hospitals, or parks.
- I. Whoever violates any of the provisions of this Resolution is guilty of a Minor Misdemeanor for each offense and shall be subject to the penalty provided in Section Twelve.

Section Twelve PENALTY

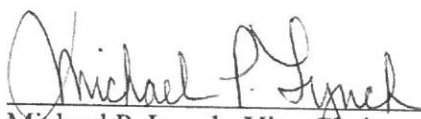
- A. Whoever violates any regulation or order adopted under this Resolution is guilty of a Minor Misdemeanor. Fines levied and collected under this Resolution shall be paid into the Township General Revenue Fund.
- B. If the offender has previously been convicted of violating any provision of this Resolution, then the offender shall be guilty of a Misdemeanor of the Fourth Degree. When the offense is continuous or repetitious in nature, then each day that violation continues or is repeated shall be deemed a repetition of the offense and shall be punished as a separate distinct offense.
- C. Any person allegedly aggrieved by another person's violation of a regulation or order adopted under this Resolution may seek, in a civil action, a declaratory judgment (or), an injunction, or other appropriate relief against another person for committing the act or practice that violates that resolution or order. The court involved in the civil action may award to the prevailing party (a) reasonable attorney's fee(s) limited to the work reasonably performed.

Adopted this sixth day of July, 2000.

Vote: _____ Ayes

 1 Nays


Caroline N. Luhta, Chairman


Michael P. Lynch, Vice Chairman


John W. Sherwood

I, the undersigned, hereby certify, that the foregoing is a true and correct copy of the resolution adopted by the Board of Trustees at their meeting held on the sixth day of July, 2000 and that I am duly authorized to execute this certificate.

Peggy A. Cusick
Peggy A. Cusick

Clerk
Title

ATTACHMENT "A"

D PERMITS BY TYPE:

RESTAURANT

- D1 ORC 4303.13 Beer only for on premises consumption or in sealed containers for carry out.
- D2 ORC 4303.14 Wine and certain prepackaged mixed drinks for on premises consumption or in sealed containers for carry out.
- D2X ORC 4303.141 Beer only for on premises consumption or in sealed containers.
- D3 ORC 4303.15 Spirituous liquor for on premises consumption only until 1:00 a.m.
- D3X ORC 4303.151 Wine only for on premises consumption only until 1:00 a.m.
- D3A ORC.4303.16 Extend issued pennit privileges until 2:30 a.m.

PRIVATE CLUB

- D4 ORC 4303.17 Beer and any intoxicating liquor to members only, for on premises consumption only until 1:00 a.m.
- D4A ORC 4303.171 Airline club only-Beer and any intoxicating liquor to members and guests until 2:00 a.m.

NIGHTCLUB

- DS ORC 4303.18 Spirituous liquor for on premises consumption only, beer and wine for on premises consumption, or off premises consumption in original sealed containers until 2:30 a.m.
- DSC ORC 4303.181 (Same as D5)
- DSD ORC 4303.181 (Same as D5) located at airport.

HOTEL AND MOTEL

- DSA ORC 4303.181 (Same as D5) for hotel or motel with fifty (50) or more rooms for transient guests.
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D5B ORC 4303.181 (Same as 05) for enclosed shopping mall.

RIVERBOATS

D5E ORC 4303.181 Beer and intoxicating liquor for on premises consumption only until 2:30 a.m. (Historical riverboat owned by charitable organization only.)

MARINAS

D5F ORC 4303.181 Beer and intoxicating liquor by the glass or container for on premises consumption only until 2:30 a.m. (Marina restaurant only.)

NATIONAL SPORTS MUSEUM

DSG ORC 4303.181 Beer and intoxicating liquor by the glass or container for on premises consumption only until 1:00 a.m. (National sports museum only.)

FINE ARTS MUSEUM

D5H ORC 4303.181 Beer and intoxicating liquor by the glass or container for on premises consumption only until 1:00 a.m. (Fine arts museum only.)

SPECIAL RESTAURANTS

D5I ORC 4303.181 Beer and intoxicating liquor by the glass or container for on premises consumption only until 1:00 a.m. (Restaurant meeting certain criteria.)

COMMUNITY ENTERTAINMENT DISTRICT

D5J ORC 4303.181 Spirituous liquor for on premises consumption only, beer and wine for on premises and off premises consumption in original sealed containers, until 2:30 a.m. (For a community entertainment district.)

SUNDAY SALES

D6 ORC 4303.182 Sale of intoxicating liquor on Sunday between the hours of 1:00p.m. and Midnight.

OTHER

D7 ORC 4303.183 Beer and any intoxicating liquor by the glass or container for consumption on the premises only until 2:30 a.m.

Source: The Ohio Division of Liquor Control Website:
[http; //www.ohio.gov/com/liquor4.htm](http://www.ohio.gov/com/liquor4.htm) (6/13/2000)