

Board of Trustees
Liberty Township
Fairfield County, Ohio
November 6, 2006

RESOLUTION NO. 11-C-06

The Board of Township Trustees of Liberty Township, Fairfield County, Ohio (the "Board"), met in regular session this sixth day of November 2006 at the Liberty Township Hall, 816 W. Market St. Baltimore, Ohio, with the following members present:

Mr. Tim Linkhorn
Ms. Nancy Montell
Mr. Ivan Ety

Nancy Montell introduced and moved to adopt the following Resolution:

**A RESOLUTION TO REGULATE NOISE WITHIN THE UNINCORPORATED
TERRITORY OF LIBERTY TOWNSHIP, FAIRFIELD COUNTY, OHIO, PURSUANT
TO OHIO REVISED CODE SECTION 505.172**

PREAMBLE

WHEREAS, it is the opinion of this Liberty Township Board of Trustees that unnecessary noise in residential areas of this township is detrimental to the public health and safety and constitutes a public nuisance, and

WHEREAS, this Board of Trustees also recognizes that certain levels of noise are unavoidable, and

WHEREAS, it is the opinion of this Board of Trustees that the elimination of noise beyond that which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS, it is the intent of this Resolution to prohibit noise that is unnecessary in residential areas of this township, and

WHEREAS, Section 505.172 of the Ohio Revised Code authorizes a board of township trustees to adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any area zoned for residential use;

NOW THEREFORE, BE IT RESOLVED, BY THE BOARD OF TOWNSHIP TRUSTEES OF LIBERTY TOWNSHIP, FAIRFIELD COUNTY, OHIO, THAT:

Section 1. Definitions

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

D Permit – A category of permits issued to liquor establishments by the State of Ohio Division of Liquor Control.

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 secured also the proper license(s) from the Ohio Department of Natural Resources and while hunting within the permitted season(s) as designated by the Ohio Department of Natural Resources Division of Wildlife, unless said individual is or individuals are hunting on land that he, she or they own; or said individual is a qualified tenant or manager of land that he or she rents and whose annual income is primarily derived from agricultural production conducted on said land; or said individual is a grandchild under the age of eighteen (18) hunting on land owned by his or her grandparent(s).

Plainly Audible – Any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties.

Private Construction Activities – Activities related to the building of structures, additions to structures, or renovation, remodeling, repair or maintenance thereof.

Section 2. Certain Noise Prohibited

No person in the unincorporated territory of Liberty Township shall make and no landowner or lawful occupant of land shall make or permit at any premises to which a D permit has been issued by the Ohio Division of Liquor Control or that is zoned for residential use, any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities who is not a resident of the property from which the noise or sound emanates. No person, owner, occupant, employee, or person in charge of any premises within the unincorporated territory of Liberty Township to which a D permit has been issued by the Ohio Division of Liquor Control or any property zones for residential use shall allow, permit, make, continue or cause to be generated or permit to be generated any noise or sound which annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities who is not a resident of the property from which the noise or sound emanates, including, but not limited to, noise or sound emanating from any radio, phonograph, television, tape player, compact disc player, loud speaker or any other sound amplifying device, or by any horn, drum, piano or other musical or percussion instrument. Any noise or sound prohibited by this Section must be plainly audible at a distance of one hundred (100) feet or more from the property from which the noise emanates. It shall be a prima facie violation of this Resolution when any noise or sound prohibited by this Section can be heard at a distance of one hundred (100) feet or more from the property from which the noise emanates.

Section 3. Examples of Noises

The following noises or sounds, which constitute a non-exclusive list, may be considered a violation of this Resolution if they violate Section 2 of this Resolution.

- A. Horns; Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such signaling unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such signaling device as a warning of danger.
- B. Radios, Phonographs, Etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.
- C. Yelling, Shouting. Yelling, shouting, hooting, whistling, or singing.
- D. Musical Instruments. The use of any drum or other musical instrument or device with or without electronic amplification.
- E. Internal Combustion Engines or Other Power Equipment. The operation of any internal combustion engine or other piece of power equipment excluding power mowers, trimmers, chain saws, or tillers.
- F. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

Section 4. Noise from Motor Vehicles

No person while operating or occupying a motor vehicle within the unincorporated territory of Liberty Township within any area zoned for residential use or at any premises to which a D permit has been issued by the Ohio Division of Liquor Control shall operate or amplify the noise or sound produced by a radio, tape player, or other soundmaking device or instrument from within one hundred (100) feet or more from the motor vehicle. It shall be a prima facie violation of this Resolution when any noise or sound prohibited by this Section can be heard at a distance of one hundred (100) feet or more from the motor vehicle from which the noise emanates.

Section 5. Exceptions

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

- A. The emission of noise or sound made by a horn or other warning device required or permitted by state law, when used in accordance with state law.

- B. Any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.
- C. The emission of noise or sound for the purpose of alerting persons to the existence of an emergency or for the performance of emergency work.
- D. Organized school-related programs, activities or parades or other public programs, activities or events authorized by the Liberty Township Board of Trustees or their designated representative.
- E. Noncommercial public speaking and public assembly activities conducted on any public space or public right of way.
- F. Agricultural activities as defined in the Ohio Revised Code, Section 1.61, are exempt from the provisions of this Resolution.
- G. Any person who engages in coal mining and reclamation operations as defined in division B of Section 1513.01 of the Ohio Revised Code or surface mining as defined in division A of Section 1514.01 of the Ohio Revised Code is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.
- H. Noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering or storage of crude oil or natural gas is exempt from the provisions of this Resolution.
- I. Private construction activities, except between the hours of 9:00 p.m. and 7:00 a.m. Eastern Standard Time, 9:00 p.m. and 6:30 a.m. Daylight Savings Time, and Sundays before 10:00 a.m.
- J. Permitted hunting or target shooting.

Section 6. Enforcement

- A. Violation of any provision of this Resolution shall be enforced by the Office of the Fairfield County Sheriff or any other appropriate law enforcement agency in a manner consistent with the sheriff's or agency policy for misdemeanor offenses of the second degree.
- B. The Liberty Township Board of Trustees shall seek a civil injunction against a person who violates this Resolution.

Section 7. Law Enforcement Determination of Source

Any law enforcement personnel who hears a sound that is plainly audible as defined herein shall be entitled to measure the sound according to the following standards:

- A. The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
- B. Regarding Section 4 of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he can readily identify the offending motor vehicle and the distance involved.

- C. The officer need not determine any particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- D. Any motor vehicle from which the sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the township in an area zoned for residential use or on any premises to which a D permit has been issued by the division of Liquor Control. Parking lots and driveways are included.

Section 8. Incidental noise.

Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction, repairs or the maintenance of houses, outbuildings, accessory buildings, or yards.

Section 9. Penalty.

Pursuant to Division (D) of Section 505.172 of the Ohio Revised Code, whosoever violates Section 2 or Section 4 of this Resolution shall be guilty of a misdemeanor of the second degree. Fines levied and collected pursuant to this Resolution shall be paid into the township General Revenue Fund.

Section 10. Private Civil Action.

Pursuant to division (E) of Section 505.172 of the Ohio Revised Code, any person aggrieved by another person's violation of this regulation may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

Section 11. 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 12. Severability.

In the event that a court of competent jurisdiction declares a section of this Resolution invalid and unenforceable, then the remaining sections of this Resolution shall remain in full force and effect.

Section 13. Open Meeting

It is found and determined that all formal actions of this Board concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board, and that all deliberations of the Board and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 14. Effective Date

This Resolution shall take effect and be in force at the earliest time permitted by law.

Ivan Ety seconded the motion, and the roll being called upon the question of passage, the vote resulted as follows:

Mr. Ety	_____yes_____
Ms. Montell	_____yes_____
Mr. Linkhorn	_____yes_____

The motion carried and the resolution was adopted.

**BOARD OF TRUSTEES,
LIBERTY TOWNSHIP
FAIRFIELD COUNTY, OHIO**

[signature]

Tim Linkhorn

[signature]

Nancy Montell

[signature]

Ivan Ety

CERTIFICATE

I, Daniel W. Alt, Fiscal Officer of the Board of Trustees, Liberty Township, Fairfield County, Ohio, hereby certify the foregoing to be a true and exact copy of excerpts from the minutes of a meeting of the Board on November 6, 2006.

[signature]

Daniel W. Alt
Fiscal Officer of the Board of Trustees
Liberty Township
Fairfield County, Ohio