

ORD# 6-2004

SWOYERSVILLE NOISE CONTROL ORDINANCE

§301. INTENT AND PURPOSE.

The Council of the Borough of Swoyersville, finding that excessive levels of sound are detrimental to the physical, mental and social well being of the people as well as to their comfort, living conditions, general welfare and safety and being therefore a public health and welfare hazard, hereby declares it to be necessary to provide for the greater control and more effective regulation of excessive sound and the sources of excessive sound within the Borough of Swoyersville.

§302. SHORT TITLE.

This Part shall be known as the "Swoyersville Noise Control Ordinance."

§303. DEFINITIONS.

The following words, terms and phrases when used in this Part shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning. All terminology used in this Part, not defined below, shall be in conformance with the applicable publications of the American National Standards Institute (ANSI S1.1 - 1960 (R1971) and its revisions) or its successor body.

A. WEIGHTED SOUND LEVEL - the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dB(A).

AMBIENT NOISE - the all encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

CONSTRUCTION OPERATION - the erection, repair, renovation, demolition or removal of any building or structure; and the excavation, filling, grading and regulation of lots in connection therewith.

DECIBEL dB - a unit for measuring the sound pressure level, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (20 micronewtons per square meter).

EMERGENCY - any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.

EMERGENCY WORK - any work performed for the purposes of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

IMPULSIVE SOUND - sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of impulsive sound include explosions, drop forge impacts and the discharge of firearms.

MUFFLER OR SOUND DISSIPATIVE DEVICE - a device designed or used for decreasing or abating the level of sound escaping from an engine or machinery system.

NOISE - any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE - any sound which is in excess of the sound levels by zoning districts established in §305.

PERSON - any individual, association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state. Whenever used in any clause prescribing and imposing a penalty, "person" includes the individual members, partners, officers and managers, or any of them, of partnerships and associations, and as to corporations, the officers and managers thereof or any of them.

POWERED MODEL VEHICLE - any self-propelled airborne, waterborne or landborne plane, vessel or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

PUBLIC RIGHT-OF-WAY - any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

PUBLIC SPACE - any real property or structures thereon which are owned or

controlled by a governmental entity, church or civic organization.

PURE TONE - any sound which can be heard as a single pitch or a set of single pitches. For the purpose of this Part, a pure tone shall exist if the one-third (1/3) octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous octave bands by 5dB for center frequencies of 500 Hz and above and by 8dB for center frequencies between 160 and 400 Hz and by 15dB for center frequencies less than or equal to 125 Hz.

PROPERTY LINE (BOUNDARY) - an imaginary line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses and duplexes owned, rented or leased by different persons, a demarcation or a line of separation of properties, and also, for any two (2) or more buildings sharing common grounds, the line drawn midway between any two (2) said buildings. All areas devoted to public right-of-way shall be deemed to be across the property line. For the purpose of this regulation, the property line includes all points on a plane formed by projecting the property line in a manner deemed appropriate by the enforcing police officer.

REAL PROPERTY - all land whether publicly or privately owned, whether improved or not improved, with or without structures, exclusive of any areas devoted to public right-of-way.

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

SOUND LEVEL - the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C, as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1974, or the latest revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER - an instrument which includes a microphone, amplifier, RMA detector, integrator or time average, output meter and any applicable weighting network used to measure sound pressure levels which meets or exceeds the

requirement for a Type I or Type II sound level meter as specified in ANSI Specification S1.4-1974. The manufacturer's published indication of compliance with such specifications shall be prima facie evidence of such compliance.

ZONING DISTRICTS - means the land use districts established by the Zoning Ordinance of the Borough of Swoyersville; (Chapter 93) and all subsequent amendments:

§304. PROHIBITED ACTS.

1. Noise Disturbance Prohibited. No person shall make, continue, or cause to be made or continued, any noise disturbance.
2. Specific Prohibitions In addition to noise disturbances prohibited under §304(1) above, the following acts, and the causing thereof, are declared to be noise disturbances and therefore in violation of this Part 3:
 - A. Radios, Television Sets, Musical Instruments and Similar Devices.
Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, automobile radio, automobile stereo or high fidelity equipment or similar device which produces, reproduces or amplifies sound:
 - (1) At any time in such a manner as to cause a noise disturbance across a property line (boundary), or between the hours of 9:00 P.M. and 8:00 A.M. so as to be plainly audible across a property line (boundary).
 - (2) In such a manner as to create a noise disturbance across a property line (boundary) or at fifty (50) feet from such device, whichever is less, when the device is operated in or on a motor vehicle, or hand carried, on a public right-of-way or public space.
 - (3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger or a common carrier.
 - B. Yelling and Shouting, Etc. Engaging in loud yelling, shouting, hooting, whistling or singing:
 - (1) At any time in such a manner as to cause a noise disturbance across a

property line (boundary).

(2) Between the hours of 9:00 P.M. and 8:00 A.M. so as to be plainly audible across a property line (boundary).

(3) On the public streets between the hours of 9:00 P.M. and 8:00 A.M.

Construction. Operating or permitting the operation of any tools or equipment used in construction operations, drilling or demolition work:

(1) Between the hours of 9:00 P.M. and 7:00 A.M. the following day on weekends and Saturdays or at any time on Sundays or legal holidays, such that the sound therefrom creates a noise disturbance across a residential real property line (boundary), except for emergency work.

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(2) At any other time such that the sound level at or across a real property line (boundary) exceeds 85 dB(a) for a period of one (1) hour.

(3) This Section shall not apply to the use of domestic power tools subject to §304(2) (D).

D. Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snowblower, or similar device used outdoors in residential areas (see Table 1 §305 (1)) between the hours of 9:00 p.m. and 8:00 a.m. so as to cause a noise disturbance across a residential property line (boundary).

E. Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 9:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance across a residential property line (boundary). This Section shall not apply to municipal or utility services in or about the public right-of-way or to licensed refuse haulers.

F. Animals and Birds.

(1) Owning, possessing, harboring or controlling any animal or bird which howls, barks, meows, squawks or makes other sounds continuously

and/or incessantly for a period of ten (10) minutes or makes such noise intermittently for one-half (1/2) hour or more to the disturbance of any person at any time of the day or night regardless of whether the animal or bird is situated in or upon private property; provided, however, that at the time the animal or bird is making such noise, no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated on for any other legitimate cause which teased or provoked the animal or bird.

- (2) This subsection only applies when two (2) or more persons file complaints about the animal or bird. However, prior to filing the complaint, the complainants must first request the person owning, possessing, harboring or controlling the animal or bird take action to prevent the animal or bird from creating a noise disturbance. If after making the request to the person owning, possessing, harboring or controlling the animal or bird, the noise disturbance continues, a complaint may be filed.
- G. Powered Model Vehicles. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential property line (boundary) between the hours of 9:00 p.m. and 8:00 a.m.
- H. Street Sales. Offering for sale or selling by shouting or outcry or by any other amplified or unamplified sound within any residential or commercial area (see Table 1, §(1)) of the Borough of Swoyersville except between the hours of 8:00 a.m. and 9:00 p.m. and at no time in such a manner as to violate §305(1) of this Part.
- I. Tampering. The following acts or the causing thereof are prohibited.
- (1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any muffler or sound dissipative device or element of design or noise label of any product.
 - (2) The use of a product which has had a muffler or sound dissipative device or element of design or noise label removed or rendered inoperative, with

knowledge that such action has occurred.

- J. Vehicle, Motorboat or Aircraft Repairs and Testing. Repairing, rebuilding or testing any motor vehicle, motorcycle, motorboat or aircraft in such a manner as to cause a noise disturbance across a residential real property line (boundary).

3. Motor Vehicle Prohibitions.

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- A. Motor Vehicle and Motorcycles on Public Rights-of-way. No person shall operate or cause to be operated a public or private motor vehicle or motorcycle, or any equipment attached to such a vehicle, on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle, or any equipment attached to such a vehicle, exceeds the level set forth in Title 67, Chapter 450, of the Pennsylvania Department of Transportation Regulations (Established Sound Levels).
 - B. Standing Motor Vehicles. No person shall operate or permit the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle, for period longer than fifteen (15) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, anywhere within one hundred fifty (150) feet of any residence in such a manner as to cause a noise disturbance across a residential property line (boundary).
 - C. Unnecessary Horn Blowing. No person shall at any time sound the horn or other warning device of a vehicle except when absolutely necessary as a warning while actually driving such vehicle.
 - D. Sound Trucks. No person shall operate sound amplifying equipment mounted on or attached to any motor vehicle at any time in such a manner as to exceed the maximum permissible motor vehicle noise emissions as set forth in §304(3)(a) of this Part.
4. Prima Facie Violation. The noise from any of the aforesaid prohibited acts that disturbs two (2) or more residents who are in general agreement as to the times

and durations of the noise and who reside in separate residences (including apartments and condominiums) located across a property line (boundary) from the property on which the source of the noise is generated, shall be prima facie evidence of a noise disturbance.

§305. SOUND LEVEL BY ZONING DISTRICTS.

1. Maximum Permissible Sound Levels by Zoning Districts. No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth in the zoning designations category in Table 1 when measured at or across the property line (boundary) from the noise source. Any sound source that produces sound in excess of those levels shall constitute a noise disturbance.

Table 1 - Sound Levels by Zoning Districts

Zoning District of the Property on which the source of the noise is located	<u>Sound Level Limit, dB(A)</u>	
	8:00 a.m. - 9:00 p.m.	9:00 p.m. - 8:00 a.m.
Residential (Zoning Districts R-L, R-M, R-T)	57	52
Commercial (Zoning Districts C-N, C-G)	60	55

2. When Exceeded. The sound level limits set forth in Table 1 shall be exceeded when any one (1) or more of the following occur:
 - A. The sound at any one (1) point in time exceeds any of the established zone limits in Table 1 by a measured sound level of fifteen (15) dB(a).
 - B. The sound exceeds any of the established zone limits in Table 1 by a measured sound level of ten (10) dB(A) for a cumulative total on one (1) minute or more out of any ten (10) minutes period.
 - C. The sound exceeds any of the established zone limits in Table 1 by a measured sound level of three (3) dB(a) continuously for a period of five

(5) minutes or a total of five (5) minutes out of any ten (10) minute period.

3. Ambient Sound. In the event the background ambient sound levels in an area of suspected noise disturbance exceed the levels set forth in Table 1, the sound level of the intrusive sound source shall be measured with the ambient background sound level being substituted as the Table 1 sound level limit.
4. Where Measured. For the purposes of this Section, sound shall be measured at or beyond the property line (boundary) of the property on which the noise source is located.
5. Pure Tone and Impulsive Sound. For any source of sound which emits a pure tone or impulsive sound, the limits set forth in Table 1 shall be reduced by five (5) dB(a).
6. Adjustment of Nonconforming Uses. Any noise which occurs on property which, according to the Borough of Swoyersville Zoning Code [Chapter 93], is being used in a legally nonconforming manner, and which noise related to said use, shall be judged as if the property bore a zoning designation under which the use would be conforming.
7. Measuring Instrument. All sound measurements shall be made on a sound level meter calibrated in the manner required by the manufacturer's specifications.

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8. Exemptions from Sound Level Limits. The provisions of this Section shall not apply to:
 - A. Activities covered by the following sections: §304(2)(c), "Construction"; §304(2)(D), "Domestic Power Tools", or any emergency signaling device used because of an emergency.
 - B. Motor Vehicles.

§306. EXEMPTIONS.

The following sounds are exempted from the provisions of this Part:

1. Amplified Announcement. Electronically amplified announcements at athletic events.
2. Blasting. Blasting, under permit by the Police Department. Such blasting may occur only between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, unless specifically authorized by permit.
3. Concerts, etc.. Band concerts, block parties, church carnivals, festivals or other performances or similar activities publicly or privately sponsored and presented in any public space outdoors shall be exempt from the provisions of this Part provided:
 - A. Such activities do not produce sound 15 dB(A) in excess of the sound levels set forth in Table 1 of §305(1) of this Part.
 - B. Such activities do not occur between the hours of 10:00 p.m. and 8:00 a.m.
4. Emergency Work. Sounds caused by the performance of emergency work, or by the ordinary and accepted use of emergency apparatus and equipment.
5. Municipal and Utility Services. Sounds resulting from the repair or replacement of any municipal or utility installation in or about the public right-of-way.
6. School and Public Activities. Sounds not electronically amplified, created by organized school related programs, activities, athletic and entertainment events, or other public programs, activities or events, other than motor vehicle racing events.
7. Warning Devices. Sounds made by warning devices operating continuously for three (3) minutes or less, except in the event of an actual emergency, the time limitation shall not apply.

§307. VARIANCES AND NOISE CONTROL BOARD.

1. Variances.
 - A. Authority. The Noise Control Board shall have the authority to grant variances, consistent with the provisions of this Section, after public hearing, upon application of any person who owns, controls or operates any sound source which does not comply with the provisions or standards of this Part.

- B. Application. The application shall state the standard or provision from which the variance is being sought, the period of time and reasons for which the variance is sought, shall contain information which demonstrates that bringing the sources of sound or activity for which the variance is sought into compliance with this Part would constitute an unreasonable hardship on the applicant and shall contain any other supporting information which may reasonably be required.
- C. Public Notification. Public notice of an application and the date, time and place of the public hearing to be held thereof for a variance shall be given by publishing notice thereof in a newspaper of general circulation in the Borough at least once, not less than three (3) days prior to the scheduled public hearing and by, if practicable, conspicuously posting the premises that is the source of the sound for which the variance is sought.
- D. Hearing. The Noise Control Board shall hold a public hearing to decide variance applications presented to it. Any person who claims to be affected by allowance of the variance may become a party to the hearing.
- E. Review Standards. In determining whether to grant or deny the application, the Noise Control Board shall balance the hardship to the applicant versus the adverse impact to the public health, safety and welfare and shall consider at a minimum the following conditions:
- (1) The physical characteristics of the emitted sound.
 - (2) The times and duration of the emitted sound.
 - (3) The geography, zone and population density of the affected area.
 - (4) Whether the public health and safety is endangered.
 - (5) Whether the sound source predates the receiver(s).
 - (6) Whether compliance with the standard(s) from which the variance is sought would produce hardship without equal or greater benefit to the public.
- F. Decision. The Noise Control Board shall render a written decision in granting or denying the application for variance and, if denied, shall state

the reasons therefore. The Board's decision shall be made available to the applicant and any other person who requests it in writing. In granting a variance the hearing board may attach reasonable condition including, but not limited to, placing a time limit on the permitted activity and/or establishing a time schedule within which the source of sound or activity for which the variance was sought must be brought into compliance with this Part. Where the grant of a variance is conditioned, the variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate it and subject the person holding it to those provisions of this Part regulating the source of sound or activity for which the variance was granted. Variances may be granted for a period of up to one (1) year. The person obtaining the variance may reapply for additional variance periods under terms set forth by the applicant and the Noise Control Board.

- G. Appeals. Appeal from an adverse decision of the Noise Control Board shall be made to the Court of Common Pleas of Luzerne County.
2. Special Variances. The Chief of the Police Department, or his designee, may, upon application and guided by the standards for review set forth in subsection (1)(E), grant special variances for infrequent noise events or activities which do not exceed twenty-four (24) hours in duration. Such special variances are note renewable except by action of the Noise Control Board pursuant to subsection (1).
3. Noise Control Board. The Noise Control Board for the purpose of this Part shall be the Zoning Hearing Board of the Borough of Swoyersville, which Board shall have full authority to carry out the duties of the Noise Control Board, as set forth in this Part. All applications to the Board shall be filed through the Zoning Officer and shall be accompanied by an application fee to be established from time to time by resolution of Borough Council, to be held to cover all fees incurred by the use of a court reporter, attorney, etc. Any funds remaining will be returned to the appellant. The hearing shall be held in a reasonable time as

fixed by the Board following the filing of the application and the decision thereon rendered within forty-five (45) days of the last hearing in the case before the Board.

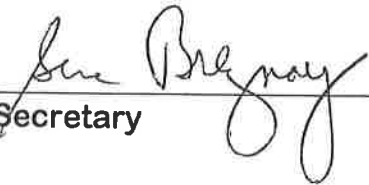
§308. ENFORCEMENT.

1. Authority for Enforcement. This Part shall be enforced by the Police Department of the Borough of Swoyersville.
2. Penalties. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than five hundred (\$500.00) plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this Part continues shall constitute a separate offense.
3. This Part and the foregoing penalties shall not be construed to limit or deny the right of the Borough or any person to such equitable or other remedies as may otherwise be available with or without process of law.
4. Conflict with other regulations. In any case where the provisions of this ordinance impose a higher standard than that set forth in any other ordinance or law, then the standards as set forth herein shall prevail, but if the provisions of this ordinance impose a lower standard than any other ordinance or law, then the higher standard contained in such other ordinance or law shall prevail.

ADOPTED this 1st day of November, 2004 at a regular meeting of Swoyersville
Borough Council, held this 1st day of November, 2004.



Council President

ATTEST: 

Secretary

Approved this 1st day of November, 2004



Mayor