

## ORDINANCE 3899

### NOISE CONTROL ORDINANCE

Whereas, the Common Council determines that the creation of excessive noise and sound within the city limits of Goshen is a detriment to the public health, safety and welfare and the quality of life of the citizens of the city,

Whereas, the citizens of the city have a right to an environment free from excessive noise and sound that may jeopardize their health, safety and welfare or degrade their quality of life,

Whereas, it is therefore the policy of the City of Goshen to prevent excessive noise and sound in order to preserve, protect and promote the health, safety and welfare and the quality of life of its citizens.

Now, therefore, be it ordained by the Common Council of the City of Goshen, Indiana, that:

#### **Section 1. Definitions**

For the purposes of this ordinance, the following words, terms and phrases shall have the meanings set forth:

- A. *Commercial area* shall mean any parcel of land zoned as B-1, B-2, B-3 or B-4 under the Zoning Ordinance.
- B. *dB(A)* shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter using the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.
- C. *Decibel* shall mean a unit measure of sound level. The symbol is dB.
- D. *Domestic power equipment* shall mean any equipment or device rated at 20 horsepower or less and used for home or building repairs and grounds maintenance.
- E. *Emergency work* shall mean any activities performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by existing or imminent peril.
- F. *Industrial area* shall mean any parcel of land zoned as M-1 or M-2 under the Zoning Ordinance.

- G. *Person* shall mean any individual, association, partnership or corporation.
- H. *Property line* shall mean the real or imaginary line and its vertical extension which separates the real property owned, leased or occupied by any person from contiguous real property owned, leased or occupied by any other person.
- I. *Public property* shall mean all real property which is owned or controlled by a governmental entity, and shall include any public rights-of-way, public buildings, parks and waterways.
- J. *Public right-of-way* shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.
- K. *Residential area* shall mean any parcel of land zoned as R-1, R-1S, R-2, R-3, R-4 or A-1 under the Zoning Ordinance.
- L. *Sound amplification system* shall mean any apparatus used for the amplification of sounds from any radio, tape player, cassette player, compact disc player, loudspeaker, sound amplifier, alarm or other sound-generating device, including any apparatus for the amplification of the human voice.

**Section 2. Community Noise Level Standards (Excluding Motor Vehicles and Sound Amplification Systems on Public Property)**

A. Sound Levels by Receiving Land Use.

- 1. No person shall create, cause to be created, permit to be created, or otherwise generate any source of sound in a manner that creates a sound level which exceeds the following limits for the receiving land use category when measured at or within the property line of the receiving land use.

<b>TABLE 1 SOUND LEVEL LIMITS BY RECEIVING LAND USE</b>		
<b>Receiving Land Use Category</b>	<b>Time</b>	<b>Sound Level Limit</b>
Residential Area	7:00 a.m. to 10:00 p.m.	65 dB(A)
	10:00 p.m. to 7:00 a.m.	55 dB(A)
Commercial Area	7:00 a.m. to 10:00 p.m.	75 dB(A)
	10:00 p.m. to 7:00 a.m.	65 dB(A)
Industrial Area	All Times	80 dB(A)

2. When a noise source can be identified and its sound measured in more than one land use category, the sound level limit of the most restrictive land use category shall apply.
- B. Measurement Procedure. The sound level meter shall be operated according to the instrument manufacturer's instructions and as follows:
1. *Microphone Orientation.* The microphone shall be pointed toward the allegedly offensive noise source, unless the instrument manufacturer's instructions specifically indicate otherwise.
  2. *Meter Setting.* The meter shall be set for the A-weighted network and "slow" response mode.
  3. *Calibration.* An external calibration check and battery check shall be made before and after each use.
  4. *Meter Readings.* The recorded reading shall be the highest sound level obtained with the allegedly offensive noise source in operation, disregarding unrelated peaks due to extraneous ambient noises.
  5. *Ambient Conditions.* Measurements shall be made only when the A-weighted ambient sound level, including wind effects and all sources other than the noise source being measured, is at least 10 dB(A) lower than the sound level of the noise source being measured, provided however that no source shall emit noise in excess of 86 dB(A) when measured 25 feet or more from the source.
  6. Sound levels shall be measured at the approximate location of the property line or the boundary of the public property, at a height of at least four feet above the immediate surrounding surface.
  7. In no case shall the operator or observer be closer than two feet from the system's microphone, nor shall he locate himself between the microphone and the noise source being measured.
- C. Specifically Excluded. This section does not apply to motor vehicles or sound amplification systems operated on public property.

**Section 3. Noise Level Standards for Motor Vehicles and Sound Amplification Systems on Public Property**

- A. Sound Levels by Sound Amplification System. No person shall play, use, operate or permit to be played, used or operated any sound amplification system if it is located in or on any of the following:

1. Any public property, including, but not limited to, any street, alley, highway, sidewalk, park or other public property; or
2. Any motor vehicle on a public street, alley, highway, park or other public property; if the sound generated is plainly audible to any other person measured at a distance at least 100 feet from the sound amplification system.

**B. Sound Levels by Motor Vehicles.**

1. No person shall operate any motor vehicle on a public street, alley, highway, park or other public property in which the engine, muffler, exhaust and/or other noise control equipment have been altered, removed or maintained in such disrepair as to generate a sound plainly audible to any other person measured at a distance at least 100 feet from the motor vehicle.
2. No person operating a motor vehicle containing a jake brake shall apply the jake brake within the city limits.

**C. Measurement Procedures. Measurement of the audible sound shall be by the auditory senses and based upon direct line of sight.**

**Section 4. Exemptions.**

The sound levels in sections 2 and 3 shall not apply to sounds emitted from:

- A. Authorized emergency vehicles, public safety vehicles or from public safety officials acting in the scope of their authority.
- B. Vehicle horns, sirens or other devices used as a warning of danger or an emergency.
- C. Passing trains.
- D. Properly operating building alarms or vehicle alarms.
- E. Stationary emergency signaling devices, such as severe weather sirens.
- F. Any emergency work.
- G. Communication of any message in any public forum between the hours of 8:00 a.m. and 8:00 p.m.
- H. Any activity authorized by the Board of Public Works and Safety, Board of Parks and Recreation, or any other governmental body having jurisdiction and control over the property, including parades, festivals, sporting events, concerts or firework displays.
- I. Any recreational and educational activity including, but not limited to, school bands and neighborhood ball games. Any recreational and educational activity taking place between

the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in sections 2 or 3.

- J. Any construction equipment operated during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment shall be equipped with a properly installed muffler in good working order. Construction equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in sections 2 or 3.
- K. Any detonation of explosives used to fragment rock for mining, quarrying, excavation and construction.
- L. Any domestic power equipment operated during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment does not exceed a sound level of 80 dB(A) when measured at a minimum of 25 feet from the noise source. Domestic power equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in sections 2 or 3.
- M. Licensed refuse collection vehicles operated during the time period between 7:00 a.m. and 10:00 p.m. Sounds emitted from licensed refuse collection vehicles operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in sections 2 or 3.
- N. Aircraft.
- O. Noise sources within multi-family dwellings, offices, apartment complexes, condominiums, and similar structures occupied by more than one tenant which impact only those persons within the same dwelling, office, complex or building.

## **Section 5. Undue Hardship**

- A. Applications for a permit for relief from the sound level limits designated in this ordinance may, on the basis of undue hardship, be made to the Board of Public Works and Safety. Any permit granted by the Board of Public Works and Safety hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Board of Public Works and Safety may grant the relief as applied for only if it is found that:
  - 1. Additional time is reasonably necessary for the applicant to alter or modify his activity or operation to comply with this ordinance; or
  - 2. The activity, operation or noise source will be of a temporary duration, and cannot be done in a manner that would comply with this ordinance; and
  - 3. No other reasonable alternative is available to the applicant, and

4. The applicant represents and the Board of Public Works and Safety find that the noise source as permitted will not violate recognized safety standards. The Board of Public Works and Safety may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

**Section 6. Enforcement and Penalties**

- A. A citation may be issued for a violation under this ordinance, subjecting the violator to a fine up to Five hundred Dollars (\$500.00). Each day that a violation occurs is a separate offense.
- B. The citation shall be filed with the City of Goshen Ordinance Violations Bureau or with any court of competent jurisdiction in Elkhart County, Indiana.
- C. For the purposes of this ordinance, the violator shall be the person or persons who created, caused to be created, permitted to be created or otherwise generated any source of sound in a manner that creates a sound level exceeding the limits for the receiving land use category as established by this ordinance; the person or persons in possession of a sound amplification system played, used or operated in violation of this ordinance; or the person in control of a motor vehicle operating in violation of this ordinance.

**Section 7. Other Ordinances**

All other ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict. This ordinance specifically repeals Ordinance 935.

**Section 8. Severability**

If any provision, clause, sentence or portion of this ordinance is held invalid by a court of law, such invalidity shall not affect other provisions of the ordinance which can be given effect without the invalid provisions.

**Section 9. Effective Date**

This ordinance shall be in full force and effect from and after its passage by the Common Council, approval by the Mayor and publication according to the laws of the State of Indiana.

This ordinance is duly passed by the Common Council of the City of Goshen, Indiana on July 20, 1999.

*/s/ Allan Kauffman*

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Presiding Officer

Attest:

*/s/ Nancy Hoke*

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Nancy Hoke, Clerk-Treasurer

This ordinance, having been passed by the Common Council, is presented by me to the Mayor for his approval on July 22, 1999.

*/s/ Nancy Hoke*

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Nancy Hoke, Clerk-Treasurer

This ordinance, having been passed by the Common Council and presented to me is approved by me and duly adopted on July 22, 1999.

*/s/ Allan Kauffman*

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Allan Kauffman, Mayor