

ORDINANCE NO. 06- 520

AN ORDINANCE AMENDING ORDINANCE NO.
06-100 RELATIVE TO THE CONTROL OF NOISE
IN THE UNINCORPORATED AREAS OF ELKHART
COUNTY, INDIANA

WHEREAS, on the 6th day of March, 2006 the Board of Commissioners of the County of Elkhart, Indiana, as the legislative body for Elkhart County Government ("Commissioners"), adopted Ordinance No. 06-100, labeled "Ordinance Providing for the Control of Noise in the Unincorporated Areas of Elkhart County, Indiana;"

WHEREAS, since adopting such Ordinance, the Commissioners have received feedback and suggestions from the general public, those concerned about noise pollution and the control thereof, and the Elkhart County Sheriff's Department, as to appropriate amendments or alterations to Ordinance No. 06-100;

WHEREAS, the Commissioners find it to be in the best interests of Elkhart County and its citizens to make amendments to Ordinance No. 06-100, and by virtue of such amendments, to totally restated Ordinance No. 06-100, with such amendments included therein;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA as follows:

Section 1. Title. This Elkhart County Ordinance may be referred to as the "Elkhart County Noise Control Ordinance," as updated as of September 5, 2006.

Section 2. Definitions. For purposes of this Ordinance, the following definitions shall apply:

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

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

(C) NOISE LEVEL. The A-weighted sound level produced by a motor vehicle.

(D) SOUND LEVEL METER. An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter and weighting networks used to measure sound pressure levels. Such instrument shall be used for measurement of the intensity of sound and calibrated in decibels as standardized by the American National Standards Institute (ANSI). Readings shall be made on a dB(A) scale.

(E) TERMINATION REQUEST. An oral or written request of any person (to specifically include, but not to be limited to, a police officer with general, specific, or limited police powers within the County Area), reasonably addressed to or presented to a person making, continuing, or causing to be made or continued, or permitting, any noise that is reasonably deemed by the requesting person to be contrary to the "General Rule" (defined below), which request seeks that the person to whom it is presented cease, continue, or cause to be stopped or terminated, the making, causing, or permitting of such noise.

Section 3. Loud Noises Prohibited.

(A) General Rule. No person shall make, continue, or cause to be made or continued any loud, raucous, improper, unreasonable, offensive or unusual noise which disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others persons within the unincorporated areas of Elkhart County, Indiana ("County Area").

(B) Specific Prohibitions. The following acts, among others, are declared to be loud, raucous, or disturbing noises in violation of this Section 3, but such enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn, whistle or signaling device ("Signaling Device") on any automobile, motorcycle, or other vehicle on any street or public place except as a danger warning; the creation by means of any such Signaling Device of any continuous or repeated unreasonably loud or raucous sound; the use of any Signaling Device or other device operated by engine exhaust creating any continuous or repeated unreasonably loud or raucous sounds; and/or the use of any such Signaling Device

when motor vehicle traffic upon a public way is for any reason held up, stalled, or delayed, for any reason other than as a danger warning. The operation of any such Signaling Device in such a manner as to be plainly audible at a distance of 50 feet from the vehicle in which it is located after a Termination Request shall be *prima facie* evidence of a violation of this subsection (1), though no Termination Request shall be required for the issuance of a citation under Section 6 of this Ordinance if the operation of any Signaling Device is constant, continued or repeated except as a danger warning. Further, the operation of any such Signaling Device which shall violate the “Decibel Base Prohibition” standards of Subsection (C) below shall be *prima facie* evidence of a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(2) Using, operating, or permitting to be played, used, or operated, any radio receiving set, musical instrument, phonograph, boom box, or other machine or device for the producing or reproducing of sound (“Sound Machine”) in such an unreasonable manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or at any time create or cause louder volume than is necessary for convenient hearing for the person(s) who is a voluntary listener and who is in the room, vehicle, or chamber in which such Sound Machine is operated. The use, operation, or permitting of its use or operation, of any such Sound Machine in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located after a Termination Request shall be *prima facie* evidence of a violation of this subsection (2), though no Termination Request shall be required for the issuance of a citation under Section 6 of this Ordinance if the use, operation, or permitting of any such use or operation, of such Sound Machine is constant, continued, or repeated. Further, the use, operation, or permitting of the use or operation of any such Sound Machine in contravention of the Decibel Base Prohibition of Subsection (C) below, shall be *prima facie* evidence if a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(3) Using, operating, or permitting to be played, used, or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other

machine or device for the producing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure ("Public Address Device") in a continuous or repeated unreasonably loud and raucous manner AFTER a Termination Request. The use, operation, or the permitting of the use or operation of such Public Address Device in such a manner to be plainly audible at a distance of 50 feet from the building, structure, vehicle, or other site in which it is located after a Termination Request shall be *prima facie* evidence a violation of this Subsection (3). Further, such use, operation, or permitted use or operation of such a Public Address Device in contravention of the Decibel Base Prohibition of Subsection (C) below, shall be *prima facie* evidence of a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(4) The keeping of any animal which by causing unreasonable frequent or long-continued noise shall disturb the comfort or repose of any person in the County Area AFTER a Termination Request.

(5) The use of any automobile, motorcycle, or other vehicle ("Motor Vehicle") so out of repair, to include a failed, broken, or defective muffler or exhaust system, or so loud, or in any other way misused or defective, so as to create an unreasonable sound and/or unnecessary engine noise, or grating, grinding, rattling, or other noise. The use of any such Motor Vehicle in such a manner or condition such that the noise created by such use shall be plainly audible at a distance of 50 feet from the vehicle after a Termination Request shall be *prima facie* evidence of a violation of this Subsection (5), though no Termination Request shall be required for the issuance of a citation under Section 6 of this Ordinance if the noise emanating from such Motor Vehicle is constant, continued, or repeated. Further, such operation of any such Motor Vehicle creating a noise which shall violate the Decibel Base Prohibition standards of Subsection (C) below shall be *prima facie* evidence of a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(6) The operation of any Motor Vehicle in such a manner as to create an unreasonable or excessive noise by the squealing of tires, the rapid acceleration of the

vehicle, or the revving of the engine. Further, such operation of any such Motor Vehicle creating a noise which shall violate the Decibel Base Prohibition standards of Subsection (C) below shall be *prima facie* evidence of a violation of this Ordinance.

(7) The creation of an unreasonably loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers AFTER a Termination Request. The creation of any such noise in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located after a Termination Request shall be *prima facie* evidence of a violation of this Subsection (7). Further, the creation of any such noise which shall violate the Decibel Base Prohibition standards of Subsection (C) below shall be *prima facie* evidence of a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(8) The creation of any unreasonably loud or raucous noise on any street or in any area adjacent to a school, institution of learning, church, court facility, or hospital or medical facility ("Institution"), while the same is in use, which noise unreasonably interferes with the workings of such Institution, or persons or patients thereat, provided conspicuous signs are displayed in adjoining streets and/or area to the Institution stating a prohibition on such noise, AFTER a Termination Request. The creation of any such noise in the area of an Institution in such a manner as to be plainly audible at a distance of 50 feet from the point of creation of the same after a Termination Request shall be *prima facie* evidence of a violation of this Subsection (8). Further, the creation of such noise impacting an Institution which shall violate the Decibel Base Prohibition standards of Subsection (C) below shall be *prima facie* evidence of a violation of this Ordinance, irrespective of whether a Termination Request has been made or presented.

(C) Decibel Based Prohibition. In addition to the prohibitions at subsections (1) through (8) above, the following acts are declared to be loud, raucous, or disturbing noises in violation of this Section 3, based on Decibel (dB):

(1) Any noise that exceeds a level of 83 dBA based on a distance from the noise source of not less than 15 feet, and irrespective of the 50 feet standard set forth in

subsections (1) through (8) above, shall be *prima facie* evidence of a noise prohibited by this Section 3. All provisions of the immediately preceding sentence to the contrary notwithstanding, noise that creates fewer decibels than 83 dBA from 15 feet also constitutes noise prohibited by this Section 3 if such noise otherwise constitutes a prohibited noise stated in this Section 3. Further, there is not any decibel measurement requirement necessary to prove the existence of a noise prohibited by Section 3.

(D) Additional Prohibitions Unrelated to Termination Request or dBA Level.

(1) The operation by a business of outdoor public address systems within five hundred (500) feet of any residence.

(2) The idling of a tractor as defined by Indiana Code §9-13-2-180, as from time to time amended, between the hours of 9:00 P.M. and 6:00 A.M. within five hundred (500) feet of any residence.

(E) Control of Property. It shall be the duty of every home owner, hotel manager, tavern or inn keeper, the owner or manager of any business in the County, or motor vehicle driver to prevent persons using property under their control from violating this Section 3.

Section 4. Exemptions. The provisions of Section 3 shall not apply to the emission of sound:

(A) For the purpose of alerting persons to the existence of an emergency;

(B) In the performance of work to prevent or alleviate physical or property damage threatened or caused by a public calamity or other emergency;

(C) As part of outside school activities sponsored by a school located within the County Area;

(D) As part of outside sporting events, concerts, festivals, fairs, or other public events which are sponsored, permitted, or authorized by any governmental entity;

(E) From equipment or operations utilized for agricultural purposes within a County Area zoned for agriculture;

(F) From equipment or operations utilized for permitted or authorized manufacturing purposes within a County Area zoned for, or subject to a special use permit or variance for, such permitted manufacturing purposes.

Section 5. Permits for Special Uses.

(A) The Elkhart County Board of Zoning Appeals shall have the authority to issue permits that allow deviation from the requirements of Section 3 for:

(1) Holidays, celebrations, concerts, parades, or other special events, public or personal; or

(2) Persons who demonstrate that bringing the source of sound or activity for which the permit is sought into compliance with the provisions of Section 3 would constitute an unreasonable hardship on the applicant, the community, or other persons; and that the adverse impact on the health, safety, and welfare of persons affected by the permit has been outweighed by the hardship. Permits may contain any conditions, including a time limit, that are necessary to limit the adverse impact of the activity.

(B) Noncompliance with any condition of the permit shall terminate and subject the person holding it to the provisions of this subsection.

(C) The Board of Zoning Appeals shall issue guidelines defining the procedures to be followed in applying for a permit and the specific criteria to be considered in deciding whether to issue a permit. The Board of Zoning Appeals shall also determine the fees for those permits to be issued.

Section 6. Enforcement and Penalties.

(A) Ordinance violations shall be enforced under proceedings brought pursuant to Indiana Code §34-28-5 et seq., as amended, in a manner similar to that of infractions with complaint and summons described in Indiana Code §9-30-3-6, as amended, issued by the Elkhart County Sheriff's Department or other police agency. Prior to issuing a citation under this Section 6, the Elkhart County Sheriff's Department may issue a warning in an effort to achieve compliance without the necessity of legal action.

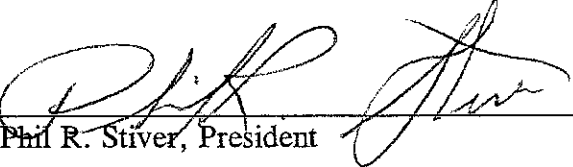
(B) Any person adjudged to have violated any provision of this Ordinance by engaging in conduct prohibited or declared unlawful in Section 3 shall be fined no less than Two Hundred Fifty Dollars (\$250) but no more than Two Thousand Five Hundred Dollars (\$2,500) and shall be responsible for all applicable Court costs.

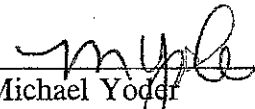
Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after the last to occur of (a) date of passage of this Ordinance by the Elkhart County

Commissioners, (b) October 1, 2006, and (c) publication of the adoption of this Ordinance according to law.

Adopted and passed this 5th day of September, 2006.

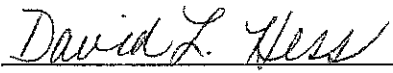
BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By  _____
Phil R. Stiver, President

By  _____
Michael Yoder

By  _____
Terry Rodino

ATTEST:

 _____
David L. Hess,
Elkhart County Auditor