

**GARDEN TOWNSHIP
ORDINANCE NO. 2016-1**

**ORDINANCE TO AMEND ORDINANCE NO. 2015-3
GARDEN TOWNSHIP NUISANCE NOISE ABATEMENT ORDINANCE**

GARDEN TOWNSHIP ORDAINS:

Section 1. Amendment of Ordinance No. 2015-3

Ordinance No. 2015-3, Nuisance Noise Abatement Ordinance, is hereby amended to read as follows in its entirety:

GARDEN TOWNSHIP

EXCESSIVE NOISE ABATEMENT ORDINANCE

An ordinance to protect and secure the public health, safety and general welfare of the residents by regulating the level of sound permitted within Garden Township, Delta County, Michigan.

GARDEN TOWNSHIP ORDAINS:

Section 1. Title—

This Ordinance shall be known as the “Garden Township Excessive Noise Ordinance.”

Section 2. Findings and Purpose—

The Township makes the following findings underlying this Ordinance:

- A. The Township Board has determined that unregulated offensive, annoying, unpleasant, or obnoxious sound detrimentally affects the public health, safety, and welfare and that reasonable regulations are necessary to abate and mitigate the adverse effects of such sound.
- B. The Township is authorized by 1945 Public Act 246, as amended (now MCL §41.181 et. seq.), to adopt an ordinance regulating, among other things, the public health, safety and welfare of persons and property in the Township, and the Township Board has determined that the

regulation of offensive, annoying, unpleasant or obnoxious sound is a valid exercise of its police powers.

Section 3. Definitions—

As used in this Ordinance, the following terms have the following meanings:

- A. “ANSI” means the American National Standards Institute.
- B. “Background Sound Level” means the Sound Pressure Level exceeded 90% of the time or L90 during the quietest period the noise sources are expected to operate. It shall be measured following the procedures of ANSI S12/.9, Part 3, (R2013) Section 7. Determining the background sound.
- C. “dB(A)” means the Sound Pressure Level on an “A” weighted scale defined by ANSI.
- D. “Decibel” means the unit of measure used to express the magnitude of Sound Pressure and sound intensity.
- E. “Excessive” means an offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeated invasion of any physical characteristic of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things including but not limited to, sound.
- F. “Excessive Noise” means Sound Pressure Level from any activity, device or machine in excess of 41 dB(A) between the hours of 10:00 pm to 6:00 am measured at the dwelling of the affected party. However, if the Background Sound Level exceeds 41 dB(A) between the hours of 10:00 pm and 6:00 am, Excessive Noise means the Background Sound Level plus 5 dB(A).
- G. “Owner” means and Person or Persons who own, control or are responsible for the day-to-day operation and maintenance of any property, activity, device or machine generating or producing Excessive Noise.
- H. “Person” or “Persons” means any individual, corporation, limited liability company, partnership, association, any other entity or any combination thereof.

- I. "Sound Pressure" means the average rate at which sound energy is transmitted through a unit area in a specified direction.
- J. "Sound Pressure Level" means the Sound Pressure mapped to a logarithmic scale and reported in decibels (dB).
- K. "Township" means Garden Township, Delta County, Michigan.

Section 4. Applicability and Scope—

The creation, generation and/or maintenance of Excessive Noise is a Nuisance Per Se. After the effective date of this Ordinance, creation, generation, and/or maintenance of Excessive Noise shall be prohibited. This Ordinance does not apply to activities protected by the Michigan Right to Farm Act (1981 Public Act 93).

Section 5. Public Inquiries and Complaints—

If a Person alleges that this Ordinance has been violated, the complaint resolution procedure shall be as follows:

- A. Complaints shall be submitted to the Township Clerk in writing from the affected Person and must include the Person's name, address and contact information.
- B. Upon receiving a complaint from an affected Person, the Township Clerk shall present the complaint to the Township Board for review at its next regular meeting or at a special meeting called for that purpose. Notice thereof shall be provided by first class mail to both the affected Person and the Owner at their last known addresses.
- C. The Township Board shall consider the complaint in an open meeting through a public hearing. Public comment shall be permitted as to the merits of the complaint, and both the affected Person and the Owner shall be permitted to address the Township Board either individually or through counsel.
- D. If the Township Board determines that there is no reasonable basis to believe that a violation of the Ordinance has occurred, the matter shall be dismissed.
- E. If the Township Board determines that there is a reasonable basis to believe that a violation of the Ordinance has occurred, the Township Board shall direct Township staff to obtain an independent investigation of the Complaint in accordance with Section 6(A) below.

Section 6. Investigation and Decision

- A. Upon electing to obtain an independent investigation of the complaint, the Township Board shall then give notice by first class mail to the Owner of its determination and of the impending independent investigation. The notice shall further advise the Owner of its obligation to deposit a surety bond or its equivalent within 10 days of its receipt of the notice in an amount determined by the Township Board sufficient to pay for an independent investigation of the complaint.
- B. All such independent investigations and analyses must be conducted by independent, qualified, third-party professionals selected by the Township to determine compliance with the requirements of this Ordinance. All Sound Pressure Level measurements shall be performed by an independent, qualified, third-party professional selected by the Township according to the procedures in the most current version of ANSI S12.9, Part 3, (R2013). All Sound Pressure Levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter.
- C. If the independent investigation concludes that a violation of this Ordinance has not occurred, the complaint shall be dismissed and the Owner's deposit returned with the Township being solely responsible for the costs of the independent investigation.
- D. If the independent investigation concludes that a violation of this Ordinance has occurred, the Township Board shall adopt the findings of the independent investigation and issue a violation against the Owner. In that instance, the Owner must then reimburse the Township for the investigation or analysis of the complaint and must take immediate action to abate the Excessive Noise. The Township may draw on any surety bond or its equivalent deposited with the Township in accordance with subsection (G) to reimburse the Township. If the Owner fails or refuses to abate the Excessive Noise, the Township may seek any relief at law or in equity to abate the Excessive Noise.
- E. An aggrieved party shall have a right to appeal to the Delta County Circuit Court pursuant to the Michigan Court Rules. In the event of an appeal, all future action under this Ordinance shall be stayed pending the result of the appeal.

Section 7. Penalties—

A. It is unlawful for any person or entity to violate any term of this Ordinance. In addition to any other rights and remedies provided to the Township in this Ordinance, any Owner violating this Ordinance shall be subject to the following penalties:

- i. First Offense: A civil infraction with a fine of \$250.00.
- ii. Second or Subsequent Offense: A misdemeanor punishable by a fine of not more than \$500.00, imprisonment for not more than 90 days, or both.

B. In addition to any remedy described above, the Township may sue any Owner who has violated this Ordinance in any court of competent jurisdiction for civil relief, including damages or injunctive relief. The Township may recover any relief ordered by a court, in addition to the Township's actual attorneys' fees, costs, and expenses incurred in bringing any case to enforce this Ordinance. The amount of such fees, costs, or expenses awarded by a court shall be a lien against the real property from which the Excessive Noise originated.

Section 8. Fee Schedule—

The Township Board may establish by resolution a fee schedule setting out the required escrow deposits and other applicable costs to carry out this Ordinance, including costs to defray the costs of inspection, review, enforcement, and administration of this Ordinance.

Section 9. Severability—

Should any portion of this Ordinance be found invalid for any reason, such finding does not impact the validity of the remaining parts of this Ordinance.

Section 10. Repealer Clause—

Any ordinances, resolutions (or parts of ordinances or resolutions), in conflict with this Ordinance are repealed only to the extent necessary to give this Ordinance full effect.

Section 11. Effective Date—

This Ordinance shall take effect at 12:01 a.m. on December 23, 2016

