ORDINANCE NO. 14819

FILE OF CITY COUNCIL

BILL NO. 51 - 2010

INTRODUCED BY COUNCILPERSONS Schlossberg, D'Amore, Schweyer, Guridy, Donovan and O'Connell

AUGUST 18, 2010

AN ORDINANCE

Amending the Noise Control Ordinance by increasing the penalty for repeat offenders.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

Section One: That Article 710, Noise Control, Section 710.99, Enforcement, be amended to read as follows:

ARTICLE 710
NOISE CONTROL

710.01 Definitions
710.02 Powers and Duties of the Bureau of Health and the Department of Police
710.03 Prohibited Acts
710.04 Hearing Board
710.05 Exceptions, Variances and Extensions
710.06 Sound Levels by Receiving Land Use
710.99 Enforcement

[Ed. Note: 13388, passed and signed on March 25, 1996, gave the Department of Police certain enforcement powers and deleted the reference to standards created by the American National Standard Institute. 14657 §1 11/21/08, deleted Article 711 and 712, and authorized the City and APD the ability to issue SWEEP violations for noise disturbances.]
]

710.01 DEFINITIONS

The following words, terms and phrases when used in this Article shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning. (13388 §1 3/25/96)

1. **A-Weighted Sound Level**: - The sound pressure level in decibels as measured on a sound level meter using the A-weighing network. The level so read is designated dB(A).

2. **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.

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

4. **Emergency**: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.

5. **Emergency Work**: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

6. **Extraneous Sound**: A sound which is neither part of the neighborhood residual sound nor comes from the source under investigation.

7. **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.

8. **Motor Vehicle**: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, snowmobiles, amphibious crafts on land, dune buggies, racing vehicles, or motorcycles.

9. **Muffler or Sound Dissipative Device**: A device designed or used for abating the sound of escaping fluids from an engine or machinery system.

10. **Neighborhood Residual Sound Level**: That measured value which represents the summation of the sound from all of the discrete sources affecting a given site at a given time, exclusive of extraneous and transient sounds and the sound from the source of interest.

11. **Noise**: Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

12. **Noise Disturbance**: Any sound which (1) endangers or injures the safety of health of humans or animals, or (2) annoys or disturbs a reasonable person of normal sensitivities, or (3) endangers or injures personal or real property.

13. **Notice of violation** is a written document issued to a person in violation of a city ordinance which specifies the violation and contains a directive to take corrective action within a specified time frame or face further legal action. (14657 §1 11/21/08)

14. **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. "Person" shall include the owner or operator of the noise disturbance source, the owner, tenant or manager of real property from which the noise disturbance emanates and any other individual responsible for producing the noise disturbance or allowing said disturbance to occur.

15. **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.

16. **Public Right-of-Way**: Any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

17. **Public Officer** means any police officer, authorized inspector, or public official designated by the Mayor to enforce the City Ordinances. (14657 §1 11/21/08)

18. **Public Space**: Any real property or structures thereon which are owned or controlled by a governmental entity.

19. **Pure Tone**: Any sound which can be heard as a single pitch or a st of single pitches.

20. **Real Property Boundary**: Either (1), the imaginary line, including its vertical extension that separates one parcel of real property from another; or (2), the vertical and horizontal boundaries of a dwelling unit that is one in a multi-dwelling unit building.

21. **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.

22. **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.

23. **Sound Level**: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, such as A, B or C. (13388 §1 3/25/96)

24. **Sound Level Meter**: An instrument used to measure sound level. (13388 §1 3/25/96)

25. **Sound Pressure**: The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

26. **Sound Pressure Level**: The level of a sound measured in dB units with a sound level meter which has a uniform ("flat") response over the band of frequencies measured.

27. **Transient Sound**: A sound whose level does not remain constant during measurement.

28. **Vibration**: An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity or acceleration with respect to a given reference point.

29. **Violation Ticket** is a form issued by a police officer or public officer to a person who violates a provision of this Article. The violation ticket is an offer by the City of Allentown extended to a person to settle a violation by paying the fine in lieu of a citation being issued against the violator. (14657 §1 11/21/08)

30. **Weekday**: Any day, Monday through Friday, which is not a legal holiday.

31. **Zoning Classifications**: High Density Residential Zone R-H, Medium High Density Residential Zone R-MH, Medium Density Residential Zone R-M, Medium Low and Low Density Residential Zone R-ML and

R-L, Low Density Residential Conservation Zone R-LC, Parks (P-1), Institutional and Governmental (I & G) Neighborhood Business Zone B-I, Major Business Zone B-2, Highway Business Zone B-3, Shopping Center Business Zone, B-4, Air Park Industrial Zone I-1, Limited Industrial Zone I-2, and General Industrial Zone I-3; as specified in the "Zoning Ordinance of the City of Allentown" (Ordinance No. 11865) and its revisions and amendments. (13078 §1 9/18/91)

710.02
POWERS AND DUTIES OF THE BUREAU OF HEALTH AND THE DEPARTMENT OF POLICE

A. The noise control program established by this Article shall be administered by the Bureau of Health and the Department of Police.

B. Powers and Duties of the Bureau of Health

In order to implement and enforce this Article for the general purpose of sound and vibration control, the Bureau of Health shall have, in addition to any other authority vested in it, the power to:

1. Conduct studies and research related to noise and vibration control; public education programs regarding noise and vibration control; coordinate the activities of all municipal departments dealing with noise and vibration control; and cooperate to the extent practicable with all municipal, county, state and federal agencies involved with noise and vibration control.

2. Review the actions of other departments and request a responsible for any proposed or final standard, regulation, or similar action to consult on the advisability of revising the action, if there is reason to believe that the action is not consistent with this Article.

3. Review public and private projects, subject to mandatory review or approval by other departments, for compliance with this Article, if such projects are likely to cause sound or vibration in violation of this Article.

4. Enter upon presentation of a City issued identification card, badge or other sign of authority, and inspect any private property or place, and inspect any equipment or operation or any report or records of such equipment or operation when such equipment or operation may be reasonably suspect of being the source of a noise disturbance or the cause of excessive vibration. Such entry and inspection may be accomplished at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon showing or probable cause to believe that a violation of this Article may exist. Such inspections may include administration of any necessary tests.

5. Require the owner or operator of any commercial or industrial activity that may be reasonably suspect of being the source of a noise disturbance or the cause of excessive vibration to establish and maintain records (including time and duration) of equipment operations and other procedures.

6. Require the owner or operator of any noise source(s) to cease operation of that source(s) for a period not to exceed fifteen (15) minutes so that the neighborhood residual sound levels may be measured.

7. Develop and promulgate standards, testing methods, and procedures.

8. Investigate suspected violations and seek compliance with, and enforce Section 710.03(E).

C. Powers and Duties of the Department of Police

In order to implement and enforce this Article for the general purpose of sound and vibration control, the Department of Police shall have in addition to any other power vested in it, the power to:

1. Investigate suspected violations and seek compliance with, and enforce Section 710.03(C). (13078 § 9/18/91)

710.03 PROHIBITED ACTS

A. Noise Disturbance Prohibited

No person shall make, continue, or cause to be made or continued, any noise disturbance. Non-commercial public speaking and public assembly activities shall be exempt from the operation of this section.

B. Enforcement

The Department of Police shall have primary responsibility for the enforcement of Prohibited Acts under Section 710.03(C).

C. Specific Prohibitions

The following acts, and the causing thereof, are declared to be noise disturbances and therefore in violation of this Ordinance:

1. Radios, Tape Players, Television Sets, Musical Instruments, Electronic Amplification, Equipment 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:

a. At any time of the day in such a manner from any source as to create a noise disturbance across a real property boundary; or

b. In such a manner as to create a noise disturbance across any real property boundary when operated in or on a motor vehicle on a public right-of-way or public space; or

c. 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 on a common carrier; or

d. At such a sound intensity that the sound creates a noise disturbance in any public area, street or sidewalk of the City; when the sound source is in any public area, street or sidewalk of the City; or (14657 §1 11/21/08)

e. At any time unless used in connection with an earplug or earphone in West Park, Trexler Park, the Rose Garden, the Arts Park, or on the grounds of Trout Hall; or (14657 §1 11/21/08)

f. At any time unless used in connection with an earplug or earphone within the boundaries of the area bounded by West Linden Street and West Walnut Street from North 4th Street to North 12th Street. (14657 §1 11/21/08)

2. Stationary non-emergency signaling devices

a. Sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place, for more than one minute in any hourly period.

3. Emergency signaling devices

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection (b)(i) and (ii).

b. (i) Testing of a stationary emergency signaling device shall occur at the same time of the day each time such a test is performed, but not before 7 a.m. or after 10 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty seconds.

(ii) Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before 8 a.m. or after 6 p.m. The time limit specified in (i) shall not apply to such complete system testing.

c. Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within six minutes of activation.

4. Loudspeakers/Public Address Systems

Using or operating any loudspeaker, public address system, or similar device:

a. Such that sound therefrom creates a noise disturbance across a real property boundary, or

b. Between the hours of 10 P.M. and 7 A.M., the following day on a public right-of-way or public space.

5. Street Sales

Offering for sale or selling by shouting or outcry within any residential or commercial area of the City of Allentown except between the hours of 7:00 A.M. and 10:00 P.M.

6. Animals and Birds

Owning, possessing, harboring or controlling any animal or bird which barks, bays, cries, squawks or makes any other noise 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 physically 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 or for any other legitimate cause which teased or provoked the animal or bird.

7. Loading and Unloading

Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10:00 P.M. and 7:00 A.M. the following day in such a

manner as to cause a noise disturbance across a residential real property boundary. This section shall not apply to municipal or utility services in or about the public right-of-way.

8. 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.

9. Domestic Power Tools

Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device used outdoors in residential areas between the hours of 9:00 P.M. and 7:00 A.M. the following day so as to cause a noise disturbance across a residential real property line. Snow blowers shall be exempt from the provisions of this section. (13900 §1 4/19/01; 14150 §1 2/20/04)

10. Explosives, Firearms, and Similar Devices

The use or firing of explosives, fireworks, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a pubic right-of-way, without first obtaining a variance issued pursuant to Section 710.05(B). (14657 §1 11/21/08)

11. Powered Model Vehicles

Operating or permitting of powered model vehicles so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 9:00 P.M. and 7:00 A.M. the following day. (13900 §1 4/19/01)

12. Motor Vehicle Prohibitions

a. Exhaust System

Every motor vehicle shall be equipped with a muffler or other effective noise suppressing system in good working order and in constant operation and no muffler or exhaust system shall be equipped with a cutout, bypass or similar device so as to cause a noise disturbance.

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 a period longer than fifteen (15) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way of public space within 150 feet of a residential area.

c. Motor Vehicle Horns and Signaling Devices

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:

1. Such that sound therefrom creates a noise disturbance across a real property boundary; or

2. Between the hours of 9:00 P.M. and 7:00 A.M., the following day on a public right-of-way or public space. (13900 §1 4/19/01)

e. Sound Amplification Devices in Vehicles

No person, driver, or owner of any vehicle shall operate or permit operation of any sound amplifying system which causes a noise disturbance when the vehicle is on a public right-of-way or public space unless such system is being operated to request assistance or warn of a hazardous situation. This article does not apply to authorized emergency vehicles. (14657 §1 11/21/08)

D. The Bureau of Health and the Department of Police shall be responsible for the enforcement of Prohibited Acts under Section 710.03(E). (13388 §1 3/25/96)

E. Specific Prohibitions

The following acts, and the causing thereof, are declared to be noise disturbances and therefore in violation of this Ordinance.

1. Construction

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

a. Between the hours of 9:00 P.M. and 7:00 A.M. the following day on weekdays and Saturdays or at any time on Sundays or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary, except for emergency work. (13900 §1 4/19/01)

b. At any other time such that the sound level at or across a real property boundary exceeds 85 dB(A) unless a variance is obtained pursuant to Section 710.05(B).

c. This section shall not apply to the use of domestic power tools subject to Section 710.03(C)(9).

Places of Public Entertainment

Operating, playing, or permitting the operation of playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound within any place of public entertainment at a sound level greater than 90 dB(A) as read by the slow response on a sound level meter at any point that is normally occupied by a customer unless a conspicuous and legible sign is located outside such place, near each public entrance stating **"WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT"**. All places of public entertainment shall also be required to comply with Section 710.06(A), (B), and (C) of this article unless a variance is obtained pursuant to Section 710.05(B).

3. Concerts

Unless a variance is obtained pursuant to Section 710.05(c), band concerts, block parties, church carnivals, fairs or other similar activities publicly or privately sponsored and presented in any public or private space outdoors:

a. Shall not produce sound 10dB(A) in excess of the sound levels set forth in Table 1 of Section 710.06(A) of this Article; and

b. Shall be limited to ten (10) occasions in a single location within a single calendar year.

4. Vibration

Unless a variance is obtained pursuant to Section 710.05(B), operating or permitting the operation of any device that causes vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at fifty (50') feet from the source if the source is on a public space or public right-of-way. For the purpose of this Section, "vibration perception threshold" means the minimum ground-or structure-borne vibrational motion necessary to cause a person of normal sensitivities to be aware of the vibration by such direct means, but not limited to, sensation by touch or visual observation of moving objects.

5. Tampering

The following acts or the causing thereof are prohibited:

a. The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement of any noise control device or element of design or noise label of any product.

b. The removing or rendering inaccurate or inoperative any sound monitoring instrument or device positioned by the Bureau of Health, provided such device or the immediate area is clearly labeled, in accordance with noise control regulations, to warn of the potential illegality.

c. The use of a product which has had a noise control device or element of design or noise label removed or rendered inoperative, with knowledge that such action has occurred. (13078 §1 9/18/91)

710.04 HEARING BOARD

A. Establishment

A Hearing Board consisting of five (5) members to serve without compensation, shall be appointed by the Mayor of the City of Allentown with the advice and consent of the City Council, for the resolution of differences between the Bureau of Health or the Department of Police and persons aggrieved by the application of this Article.

B. Members

One member of the Board shall be a member of the City's Department of Community Development, one member shall be a professional audiologist or acoustician, one member shall be a representative of industry or manufacturing enterprise, one member shall be a lawyer and one member shall be at large (but none of the above) for his/her interest in accomplishing the objectives of this Article.

C. Terms

The initial appointments to the Board shall be for the following terms:

1. Community Development Representative - 5 years
2. Professional Audiologist or Acoustician - 4 years
3. Industrial Representative - 3 years
4. Legal Representative - 2 years
5. Representative at Large - 1 year

All succeeding terms shall be for a period of five (5) years. The Mayor of the City of Allentown, with the consent of City Council, shall appoint representatives to fill vacancies on the Board to complete unexpired terms. Interim appointments may be permitted to serve an additional full term on the Board.

D. Powers

Said Hearing Board shall have the following powers:

1. To hear appeals from and grant relief by variance or by extension in time to comply to any person aggrieved by the application of this Article. Any relief granted by the Hearing Board shall be limited to and consistent with the provisions of Section 710.05 of this Article.

2. To make rules with regard to conducting its hearings, such rules to be submitted to City Council for their advice and consent.

3. To make such findings of fact as may be required by the application of this Article.

4. To decide questions presented to it within sixty (60) days from receipt of application regarding that question. (13078 §1 9/18/91)

710.05 EXCEPTIONS, VARIANCES AND EXTENSIONS

A. EXCEPTIONS

The provisions of this Article shall not apply to:

1. Emergencies

The emission of sound for the purpose of alerting persons to the existence of an emergency or from the performance of emergency work.

2. Municipal and Utility Services

The emission of sound resulting from the repair or replacement of any municipal or utility installation(s) in or about the public right-of-way.

3. Places of Religious Worship

The sounding or permitting the sounding of any stationary bell or chime used in conjunction with places of religious worship.

4. Aircraft and Airport Operations

Normal aircraft and airport operations.

5. Interstate Railway Locomotives and Cars

The conduct of interstate railway transportation.

B. VARIANCES

1. The Hearing Board shall have the authority consistent with this section, to grant variances which may be requested.

2. Any person seeking a variance pursuant to this section shall file an application with the Hearing Board. The application shall contain information which demonstrates that bringing the sources of sound or activity for which the special variance is sought into compliance with this Article would constitute an unreasonable hardship on the applicant, on the community, or on other persons. (Notice of an application for a variance shall be published in a newspaper of general circulation at least once, at least three (3) days prior to any regularly scheduled Board meeting or at least once, one day prior to any special Board meeting.) Any individual who claims to be adversely affected by allowance of the special variance may file a statement with or appear personally before the Hearing Board. The Hearing Board shall hold public hearings to decide questions regarding applications for variances presented to it.

3. In determining whether to grant or deny the application, the Hearing Board shall balance the hardship to the applicant, the community and other persons of not granting the variance against the adverse impact on the health, safety and welfare or persons affected, the adverse impact on property affected, any other adverse impacts of granting the variance and the ability of the applicant to apply best practical noise control measures. Applicants for variances and persons contesting special variances may be required to submit any information the Hearing Board may reasonably require. In granting or denying an application, the Hearing Board shall place with the City Clerk a copy of the decision and the reasons for denying or granting the variance.

4. Variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. 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 Article regulating the source of sound or activity for which the variance was granted. Variances may be granted for a period of one (1) year. The person obtaining the variance may reapply for additional variance periods under terms set forth by the applicant and the Hearing Board.

5. The Hearing Board may issue Rules and Regulations (approved by the Mayor and City Council) defining the procedures to be followed in applying for a variance and the criteria to be considered in deciding whether to grant a variance.

C. EXTENSION FOR TIME TO COMPLY:

1. Any person seeking an extension in time in which to comply shall file an application with the Hearing Board. The application shall contain information which demonstrates that bringing the source of sound or activity for which the extension is sought into compliance with this Article prior to the date requested in the application would constitute an unreasonable hardship on the applicant, on the community, or on other persons. (Notice of an application for an extension in time to comply shall be published in a newspaper of general circulation at least once, at least three (3) days prior to any regularly scheduled Board meeting or at least once, at least one (1) day prior to any special Board meeting.) Any individual who claims to be adversely affected by allowance of the extension in time to comply may file a statement with or appear personally before the Hearing Board. The Hearing Board shall hold public hearings in order to decide questions regarding applications for Extensions for Time to Comply.

2. In determining whether to grant or deny the application, the Hearing Board shall balance the hardship to the applicant, the community, and other persons of not granting the extension in time to comply against the adverse impact on health, safety, and welfare of persons affected, the adverse impact on property affected and any other adverse impacts of granting the extension.

Applicants for extension(s) in time to comply and persons contesting extension(s) may be required to submit any information the Hearing Board may reasonably require. In granting or denying an application,

the Hearing Board shall place with the City Clerk a copy of the decision and the reasons for denying or granting the extension(s) in time to comply.

3. Extension(s) in time to comply shall be granted to the applicant containing all necessary conditions, including a schedule for achieving compliance. The extension(s) in time to comply shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the extension(s) shall terminate the extension(s) and subject the person holding it to those provisions of this Article for which the extension(s) was granted.

4. Application for extension of time limits specified in extension(s) in time to comply or for modification of other substantial conditions shall be treated like applications for initial variances under subsection (2), except that the Hearing Board must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

5. The Hearing Board may issue guidelines (approved by the Mayor and City Council) defining the procedures to be followed in applying for an extension(s) in time to comply and the criteria to be considered in deciding whether to grant an extension(s).

D. APPEALS: Appeals of an adverse decision of the Hearing Board shall be made within thirty (30) days of the Board's decision to the Court of Common Pleas of Lehigh County. The decision of the Hearing Board shall remain in force until such time as a judicial order of a court of competent jurisdiction supersedes the decision of the Hearing Board.

710.06 SOUND LEVELS BY RECEIVING LAND USE

A. Maximum Permissible Sound Levels by Receiving Land Use

Unless a variance is obtained pursuant to Section 710.05(B), no person shall operate or cause to be operated on public or private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth in the receiving land use category in Table 1 when measured at or within the property boundary of the receiving land use. Any noise source that produces sound in excess of those levels shall constitute a noise disturbance.

Table 1. Permissible Maximum Sound Levels by Receiving Land Use

Receiving Land Use	Sound Level Limit 7:00 A.M. – 10:00 P.M.	Sound Level Limit 10:00 P.M. – 7:00 A.M.
Residential (Zones R-H, R-MH,R-M, R-ML, R-L, R-LC)	57	52
Parks and Institutional and Governmental (Zone P-1 and I-G)	67	62
Institutional and Governmental (Zone I and G)	67	62
Business (Zones B-1, B-2, B-3, B-4)	67	62
Industrial (Zones I-1, I-2, I-3)	77	77

B. Excessive Neighborhood Residual Sound Levels

In the event that the background sound levels in an area of suspected noise disturbance exceed the levels set forth in Table 1 above, an intrusive noise source which causes a 10 dB(A) increase in sound level above that background level shall constitute a noise disturbance.

C. Correction for Character of Sound

For any source of sound which emits a pure tone or impulsive sound, the maximum sound level limits set forth in Section 710.06(A) shall be reduced 5 dB(A). (13078 §1 9/18/91)

710.07 REGULATIONS

The Director of Community and Economic Development or designee may publish regulations governing the procedures and enforcement of any provisions of this Article. (14657 §1 11/21/08)

710.99 ENFORCEMENT

A. Penalties

1. Any violation of the provisions of this Article may be cause for a citation, a violation ticket and/or a notice of violation to be issued to the violator.

2. A notice of violation or violation ticket shall be served upon a violator by handing it to the violator, by handing it to an adult member of the household or other person in charge of the residence at the residence of the person to be served, by leaving or affixing the notice or violation ticket to the property where the violation exists, by handing it at any office or usual place of business of the violator, to his/her agent or to the person for the time being in charge thereof, or by mailing the notice to the violator's address of record.

3. Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate fine may be imposed.

4. A public officer is authorized and empowered to cause a violation to be corrected.

5. If the City has effected the correction of the violation, the cost thereof may be charged to the owner of the property, tenant or offending party. The cost shall be determined by the Director of Community and Economic Development or designee in order that the City shall be compensated for both direct and indirect costs and expenses incurred.

6. Violation Ticket Appeals Process

a. A person in receipt of a violation ticket may appeal to the Hearing Officer designated by the Director of Community and Economic Development or designee by filing a request within ten (10) days of receipt of the violation ticket.

b. The Hearing Officer, designated by the Director of Community and Economic Development may uphold the Appeal, deny the Appeal or may modify the violation ticket and/or any associated costs, fines or penalty amounts.

7. Violation Ticket Fines

Violation tickets shall be issued in the amounts of Twenty-five ($25) Dollars on the first violation, Fifty ($50) Dollars on the second violation, One Hundred ($100) on the third violation and Two Hundred Fifty ($250) Dollars for each subsequent violation. ~~or One Hundred ($100) Dollars~~.

b. Any person who receives a violation ticket for any violation of this Article, may within ten (10) days, admit the violation, waive a hearing and pay the fine in full satisfaction ~~of twenty-five ($25) dollars or one hundred ($100) dollars,~~ as indicated on the violation ticket.

8. Violation Ticket Penalties

a. If the person in receipt of a twenty-five ($25) dollar violation ticket does not pay the fine or request a hearing within ten (10) days, the person will be subject to a ten ($10) dollar penalty for days eleven (11) through twenty (20).

b. If the person in receipt of a Fifty ($50) ~~one hundred ($100)~~ dollar violation ticket does not pay the fine or request a hearing within ten (10) days, the person will be subject to a twenty-five ($25) dollar penalty for days eleven (11) through twenty (20).

c. If the person in receipt of an one hundred ($100) dollar violation ticket does not pay the fine or request a hearing within ten (10) days, the person will be subject to a fifty ($50) dollar penalty for days eleven (11) through twenty (20).

d. If the person in receipt of a two-hundred fifty ($250) dollar violation ticket does not pay the fine or request a hearing within ten (10) days, the person will be subject to a one-hundred ($100) dollar penalty for days eleven (11) through twenty (20).

e. Failure of the person to make payment within twenty (20) days shall make the person subject to a citation. (14657 §1 11/21/08)

9. Citation Fines

a. Any person, firm or corporation who shall fail, neglect or refuse to comply with any of the terms or provisions of this Article, or of any regulation or requirement pursuant hereto and authorized hereby shall, upon conviction in a summary proceeding, be ordered to pay a fine not less than One Hundred ($100.00) Dollars, on the first violation, Fifty ($50) Dollars on the second violation, One Hundred ($100) on the third violation and Two Hundred Fifty ($250) Dollars for each subsequent violation.~~nor more than One Thousand ($1,000) Dollars on each offense~~ or imprisoned no more than ninety (90) days, or both.

b. The Magisterial District Judge may order the violator to make restitution for damage to any real or personal property or for any remediation or abatement expense (14657 §1 11/21/08)

10. This Article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law. (14657 §1 11/21/08)

B. Notice of Violation

In lieu of issuing a citation as provided in Section 710.99(c), the Bureau of Health or Department of Police may issue an order requiring abatement of any source or vibration alleged to be in violation of this Article within a reasonable time period not to exceed thirty (30) days.

C. Citation

Except where a person is acting in good faith to comply with a notice of violation issued pursuant to Section 710.99(B) violation of any part of this Article shall be cause for a citation to be issued by the Bureau of Health or the Department of Police.

D. Severability

If any provision of this ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

E. Immediate Threats to the Health and Welfare

1. The Bureau of Health shall order an immediate halt to any sound which exposes any person, except those excluded pursuant to subsection (2) to continuous sound levels in excess of those shown in Table 2. If, following the issuance of such an order, the order is not obeyed, the Bureau of Health may apply to the appropriate court for an injunction to enforce the order or may undertake any and all lawful action to effect an immediate halt to continuous sound levels in excess of those shown in Table 2.

2. No order pursuant to subsection (1) shall be issued if the only persons exposed to sound levels in excess of those listed in Table 2 are exposed as a result of (a) trespass; (b) invitation upon private property by the person causing or permitting the sound; or (c) employment by the person or a contractor of the person causing or permitting the sound.

3. Any person subject to an order issued pursuant to subsection (1) shall comply with such order until (a) the sound is brought into compliance with the order, as determined by the Bureau of Health; or (b) a judicial order has superseded the Bureau's order.

Table 2. Continuous Sound Levels which Pose an Immediate Threat to Health and Welfare (Measured at Receiver).

Sound Level Limit (dBA)	Duration (Hours)
85	8
90	4
95	2
100	1
105	1/2
110	14

(13078 §1 9/18/91)

SECTION TWO: That this Ordinance will take effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

	Yea	Nay
W. Michael Donovan	X	
Jeanette Eichenwald	X	
Julio A. Guridy	X	
Ray O'Connell	X	
Michael Schlossberg	X	
Peter G. Schweyer	X	
Michael D'Amore, President	X	
TOTAL	7	0

Motioned to Table 2 - 5 (Eichenwald, Guridy)

I hereby certify that the foregoing Ordinance was passed by City Council on September 15th and signed by the Mayor on September 17th, 2010.

Michael P. Walsh

CITY CLERK