

ORDINANCE 2009-01

OF THE TOWN COUNCIL OF LEO-CEDARVILLE, INDIANA

**AN ORDINANCE REVISING THE NOISE CONTROL POLICY OF
THE LEO-CEDARVILLE CODE OF ORDINANCES**

1. Section 92.03 of the Leo-Cedarville Code of Ordinances as it existed immediately prior to the enactment of this Ordinance is hereby replaced.
2. As of the adoption of this Ordinance, Section 92.03 of the Leo-Cedarville Code of Ordinances shall read as follows:

(A) PUBLIC POLICY AND PURPOSE

It is declared to be the public policy of the Town of Leo-Cedarville to promote the health, safety, and welfare of persons within the Town by reducing unreasonable noise from all sources subject to the town's police power. Noises above certain levels and unduly repetitive noises may be detrimental to the health, safety, and welfare of the citizenry and in the public interest shall be systematically regulated and proscribed by the Town as authorized by I.C. 36-8-2-4.

(B) SCOPE

As authorized by I.C. 36-8-2-13, this ordinance shall apply to the control of all noise within the town's corporate boundaries and all territory within one (1) mile of the Town's corporate boundaries, as those boundaries now exist or as they may hereafter be modified.

(C) LOUD AND UNNECESSARY NOISE PROHIBITED

A person or entity who knowingly, intentionally, or recklessly makes an unreasonable noise and continues to do so after being asked to stop violates this ordinance. A person or entity who knowingly, intentionally, or recklessly allows an unreasonable noise to be made or continue to be made in or on any property owned by or controlled by the person or entity after being asked to stop the noise by a law enforcement officer or a town official shall also be in violation of this ordinance.

As used in this section, a noise is "unreasonable" if, considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature and the location of the noise, the location of third persons, and the time of day or night, the conduct involves a gross deviation from the standard of conduct that a reasonable person would follow in the same situation.

A determination of a violation of this ordinance may not be based on the content of any message conveyed during the creation of any noise or on the identity of any person responsible for or associated with the creation of the noise, except as necessary to prove that the person had prior knowledge of the unreasonableness of the noise or to prove the person was previously asked to stop the noise.

(D) ENUMERATION OF CERTAIN PROHIBITED ACTS

In addition to the foregoing, any person who performs any of the acts enumerated in this subsection, or who causes or allows the performance of any such act in or upon any property owned or controlled by him, shall violate this ordinance:

(1) Playing, using, or operating, or permitting to be played, used, or operated, any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any machine or device for producing or reproducing sound in a manner that makes a noise which can be heard:

a. From any place other than the property on which the sound source is located between the hours of 10:00 p.m. and 6:00 a.m.;

b. From a distance greater than fifty (50) feet from the sound source of the machine or device when it is located in any public street or public place of the town.

(2) Using or operating machinery, equipment, tools or vehicles between the hours of 10:00 p.m. and 6:00 a.m. when the sound of such machinery, equipment, tools, or vehicles can be heard from any place other than the property on which the source of the sound is located, or more than fifty (50) feet of the machinery, equipment, tool, or vehicle if it is located on a road, street, alley or public right-of-way.

(3) The continuous or repeated sounding of any horn, siren or signal device when not used as a danger signal or call for help. Continuous shall be defined to mean the sounding of a horn, siren or signal device for more than three (3) seconds. Repeated shall mean the sounding of a horn, siren or signal more than three (3) times.

(4) The use of any motor vehicle with or without the attachment of various appurtenance thereto so as to create loud or unnecessary grating, grinding, rattling or other noise or noises. This shall include the use of any vehicle said use of which causes excessive noise as a result of a defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine, or tire squeal, if such noise is not corrected within seven days of notice of the violation.

(E) EXEMPTIONS

The following shall be exempted from the provisions of this chapter:

(1) Sound emitted from sirens of authorized emergency vehicles.

(2) Lawn mowers, garden tractors, and similar home power tools when properly muffled, between the hours of 6:00 a.m. and 10:00 p.m.

(3) Burglar alarms or other warning devices when properly installed on publicly or privately owned property, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time.

(4) Celebrations on the Fourth of July, and other legal holidays between the hours of 8:00 a.m. and 12:00 midnight (except to 12:30 a.m. on New Year's Day)

(5) Permitted parades or festivals, between the hours of 8:00 a.m. and 12:00 midnight, Sunday through Thursday; and between 8:00 a.m. and 1:00 a.m. Friday through Saturday.

(6) Attendant noise connected with the actual performance of athletic or sporting events and practices related to them between the hours of 8:00 a.m. and 11:00 p.m.

(7) The emission of sound for the purposes of alerting persons to the existence of an emergency.

(8) In the case of motor vehicles, where the noise is the result of a defective or modified exhaust system, if the cause is repaired or otherwise remedied within seven calendar days.

(9) Noises associated with legal consumer fireworks used during the time that the Indiana Code prohibits regulation by municipalities. At the time of the adoption of this ordinance, these times are:

(a) June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, July 9 between the hours of 5:00 p.m. to two hours after sunset;

(b) Day before Memorial Day, Memorial Day, July 4, day before Labor Day and Labor Day between the hours of 10:00 a.m. and 12:00 midnight;

(c) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.

(10) Construction operations and related activities occurring after 6:00 a.m. and before 10:00 p.m.

(11) Motorized farming equipment, so long as all such equipment are operated with the manufacturer's mufflers and noise reducing equipment in place and in proper working order.

(F) PENALTIES

Any person who violates this ordinance shall be subject to a fine in the amount of fifty and no/100 Dollars (\$50.00) for each offense.

(G) MISCELLANEOUS

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

In the event any section, subsection, clause, phrase or portion of this chapter is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this chapter. It is the legislative intent of the council that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made.

This ordinance shall be in full force and effect from and after its passage and approval by the Town council, and after publication required by State law.

Passed and adopted by the Town Council of the Town of Leo-Cedarville, Indiana on this 17 day of March, 2009.

FOR THE TOWN OF LEO-CEDARVILLE:

R. Paul Steffens
Council President

John Eastes
Council Member

John Clendenen
Council Vice-President

Mike Young
Council Member

Gordon Liechty, Jr.
Council Member

Attestation of Clerk-Treasurer

I, Pamela Spannuth, the Clerk-Treasurer for the Town of Leo-Cedarville, Indiana, hereby attest that the ordinance set forth above was adopted by the legislative body of the Town of Leo-Cedarville on March 17, 2009 and signed by the Executive for the Town of Leo-Cedarville, and properly executed in my presence on _____.

Pamela Spannuth
Clerk-Treasurer