

**AGENDA**  
**BOYNE CITY PLANNING COMMISSION**  
Monday, April 21, 2014, 5:00 p.m.  
Boyne City Hall



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click on Boards & Commissions for complete  
agenda packets & minutes for each board

1. Call to Order
2. Roll Call - Excused Absences
3. Consent Agenda

*The purpose of the consent agenda is to expedite business by grouping non-controversial items together to be acted upon by one Commission motion without discussion. Any member of the Commission, staff, or the public may ask that any item(s) on the consent agenda be removed to be addressed immediately following action on the remaining consent agenda items. Such requests will be respected.*

Approval of minutes from March 17, 2014 Boyne City Planning Commission meeting.

4. Hearing Citizens Present *(Non-Agenda Items)*
5. Reports of Officers, Boards, Standing Committees
6. Unfinished Business
7. New Business
  - A. Food Truck presentation
  - B. Noise Ordinance discussion
8. Staff Report
9. Good of the Order
10. Adjournment – Next Meeting May 19, 2014

*Individuals with disabilities requiring auxiliary aids or services in order to participate in municipal meetings may contact Boyne City Hall for assistance: Cindy Grice, City Clerk/Treasurer, 319 North Lake Street, Boyne City, MI 49712; phone (231) 582-0334*

**Meeting of  
March 17, 2014**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday, March 17, 2014 at 5:00 pm.

**Call to Order**

Chair MacKenzie called the meeting to order at 5:00 p.m.

**Roll Call**

Present: George Ellwanger, Chris Frasz, Jane MacKenzie, Lori Meeder, Tom Neidhamer and Aaron Place

Absent: Jason Biskner, Jim Kozlowski and Joe St. Dennis

**2014-3-17-02**

**\*\*MOTION**

**Meeder moved, Place seconded, PASSED UNANIMOUSLY**, a motion to excuse the absence of Biskner, Kozlowski and St. Dennis

**Meeting Attendance**

City Officials/Staff: Planning Director Scott McPherson, and Recording Secretary Pat Haver

Public Present: Two

**Consent Agenda**

**\*\*MOTION**

**2014-3-17-03**

**Neidhamer moved, Ellwanger seconded, PASSED UNANIMOUSLY**, a motion to approve the consent agenda; approval of the Planning Commission minutes from February 17, 2014 as presented.

**Comments on  
Non-Agenda Items**

None

**Reports of Officers, Boards  
and Standing Committees**

The Trail Town committee has met and is making progress on the draft plan, which could be presented to the City Commission soon for comment and adoption.

**Unfinished Business**

None

**New Business**

Planning Director McPherson reviewed his report in the agenda packet. Family Fare presented the board with an option for signage for the newly renovated store. The proposal is for the free standing sign in the parking lot along with signage on the structure. Planning Director McPherson reviewed the history of variances for additional signage by Glen's Market. The existing free standing sign is nonconforming as it exceeds maximum height and area. The requested signage does exceed the ordinance criteria, and the pre-existing board of appeals variance request. This commission does have the ability to approve signs that exceed ordinance standards, under the section that grants variances in height and area based on circumstances. At your place at the table, is a submitted smaller revised proposal dated 3-17-14, received and filed.

**Signage request for Family  
Fare Market**

**Gary Gebhardt: Signs by Crannie** - Presented the company's request for Family Fare, Starbucks and the pharmacy drive through signs. With the restrictive nature of the city's sign codes, would like the board to remember that there are (2) additional separate stores that are operating within the building; Starbucks and the pharmacy drive through. The pylon sign looking at replacing the Glen's face with Family Fare, and the former credit union spot, would put up the Starbucks sign. This background will be opaque at night, only the green letters and logo would illuminate. The sign will be LED lit, not bright or flashing.

**Place** - With the free standing sign, you are replacing with brand new panels?

**Gebhardt** - Yes and painting the cabinet.

**Place** – The lower part, how can that be used for this, as a different business.

**McPherson** – The Family Fare sign is replacing a pre-existing sign panel, and when the credit union left after 90 days, their space was considered no longer approved for any permitted signs. This board would have to give them relief after findings in order to put up the Starbucks sign.

**Liddy Frasz** – Are there going to be lights shining down or coming up?

**Gebhardt** – Internal LED lights

**Frasz** – You said the white will be opaque?

**Gebhardt** – Yes, the logo will illuminate and the green letters will illuminate. White background will not illuminate. Red will be opaque above, only the letters of Family Fare will illuminate at night.

**McPherson** – It is a non-conforming sign already, to increase signage, relief will need to be granted. They have 130 sq ft for Family Fare with the addition of Starbucks will be another 42 sq ft.

**Gebhardt** – The only other alternative is to leave the black box?

**McPherson** – That is correct

**Neidhamer** – If they incorporate the Starbucks and Family Fare in the upper sign, can they eliminate the lower box?

**Place** – Under the non-conforming section of the sign ordinance, you are not allowed to change/alter to extend the life of the sign. I'm concerned that is what is going to happen.

**McPherson** – Past practice has allowed the face of signs to be changed, as it is considered normal maintenance. If they were going to rebuild the structure, that would not be allowed.

**Frasz** – With the credit union gone, does the city have any standing to remove the rectangular box?

**McPherson** – The city can not require them to remove that part of the structure.

The board further discussed the building sign proposal dated 02-19-14 that was included in the agenda packet. The lettering on the building was submitted at 35" for Family Fare, there is a proposed Starbucks logo at 16 sq. ft, and the pharmacy drive thru sign at approximately 11.43 sq. ft. for a total of 124.47 sq ft. They felt that the sign proposal dated 03-17-14 was better even if the building lettering was proposed at 20" instead of 35", they felt with the large sign in the parking lot, would give them indication as to a grocery store, pharmacy and Starbucks inside the building. They also continued the discussion on the pylon sign in the parking lot with the removal of the blank triangular box and giving relief by allowing the Starbucks logo only, to be adhered directly to the sign structure.

After board discussion, **motion by Frasz, seconded by Neidhamer**, to approve a requested sign proposal by Family Fare Supermarkets: (1) to grant relief to the free standing sign to allow the addition of the Starbuck logo to be placed within the surface of the sign post, removing the triangle sign structure; (2) accept the revised 03-17-14 wall signage as presented totaling under 100 square feet of surface; (3) that the pharmacy signage is not directional; and (4) offering relief to Starbuck to have a sign logo on the current structure as merit of a separate business within the building.

**\*\*MOTION**

**2014-3-17-7A**

**Roll Call:**

Aye: Ellwanger, Frasz, MacKenzie, Meeder, Neidhamer and Place

Nay: None

Absent: Biskner, Kozlowski and St. Dennis

**Motion Carries**

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**Review 2014 Goal Setting  
Survey Results**

Planning Director McPherson reviewed the 2014 goal setting summary that was included in the agenda packet. This information is useful, as it is a summary of the various public input sessions, on line survey and additional public input. This can be a useful tool in deciding the direction that the city will be working towards and future Master Plan revisions. The board discussed the summary and was impressed with the various comments that were made by the citizens.

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**Staff Report**

- Annie Doyle has been working on Food Trucks. She has facilitated a couple of public informational sessions, and is compiling the feedback that has been given for a presentation to the City Commission, which could be as early as the 25<sup>th</sup> of March.
  - The city was not selected for the first round of the SAW Grants; unsure when future funding is possible.
  - City staff, school administrators and the Health Department are working on the Safe Route to school program. There is upwards of \$200,000 in grants possible for each school, elementary and middle school for sidewalks.
  - Presented tonight is the RRC updated report; received and filed. The city has completed many of the items, and the remaining items can be completed within the next 12 month period of time. A presentation to the City Commission for the findings will be done at an evening meeting in the near future.
  - Environmental Architects, the firm selected to do the city facilities, have begun the process of looking at the current facilities. They will be meeting with different groups and staff to discuss needs in order to accurately access the needs, wants and wishes.
  - Tomorrow is scheduled as the budget work session. All are invited to attend.
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**Good of the Order**

- Place provided the commission with current slides of the progress of the various bike racks that will be placed around the city. They are very attractive, and will be a great asset to the community.
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**Adjournment**

The next meeting of the Boyne City Planning Commission is scheduled for April 21, 2014 at 5:00 pm in the Auditorium.

**2014-3-17-10**

**\*\*MOTION**

**Meeder moved, Place seconded, PASSED UNANIMOUSLY** a motion to adjourn the March 17, 2014 meeting at 6:15 p.m.

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Jane MacKenzie, Chair

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Pat Haver, Recording Secretary

## CITY OF BOYNE CITY

**To:** Chair Jane MacKenzie and fellow Planning Commissioners

**From:** Scott McPherson, Planning Director

**Date:** April 21, 2014

**Subject:** Food Truck Presentation



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### Background Information

To date, the Planning Department has had several inquiries from individuals interested in operating food trucks in Boyne City during the spring and summer of 2014. Currently, the City does not have a policy or set of requirements specifically regulating this type of business. Last December the issue was brought to the City Commission for discussion. At that meeting the Commission authorized staff to research the topic further, obtain community input, and bring back findings, alternatives and recommendations.

Over the past several months assistant planner Annie Doyle has been collecting public input through presentations and facilitated meetings. At each of the meetings attendees were requested to complete a survey after a short presentation and open discussion. Data was collected from a total of 67 surveys. The survey origins were as follows:

Food Truck Meeting #1	18 Surveys
Food Truck Meeting #2	21 Surveys
Lion's Club Meeting	7 surveys
Main Street Board Meeting	5 surveys
BCHS Government Class	16 surveys

All of the data has been compiled and incorporated into the attached summary.

### Recommendation

Review the compiled community input and proposed ordinance components and make a recommendation to the City Commission supporting the development of a food truck ordinance consistent with the proposed ordinance components as provided.

## Proposed Food Truck Ordinance Components

### Definitions

Mobile Food Vending shall mean vending, serving, or offering for sale food and/or beverages from a mobile food vending unit.

Mobile Food Vending Unit shall mean any motorized or non-motorized vehicle, trailer, cart or other device designed to be portable and not permanently attached to the ground from which food is vended, served, or offered for sale.

Vendor shall mean any individual engaged in the business of Mobile Food Vending; if more than one individual is operating a single stand, cart or other means of conveyance, then Vendor shall mean all individuals operating a single stand, cart or other means or conveyance.

Operate shall mean all activities associated with the conduct of business, including set up and take down and/or actual hours where the Mobile Food Vending Unit is open for business.

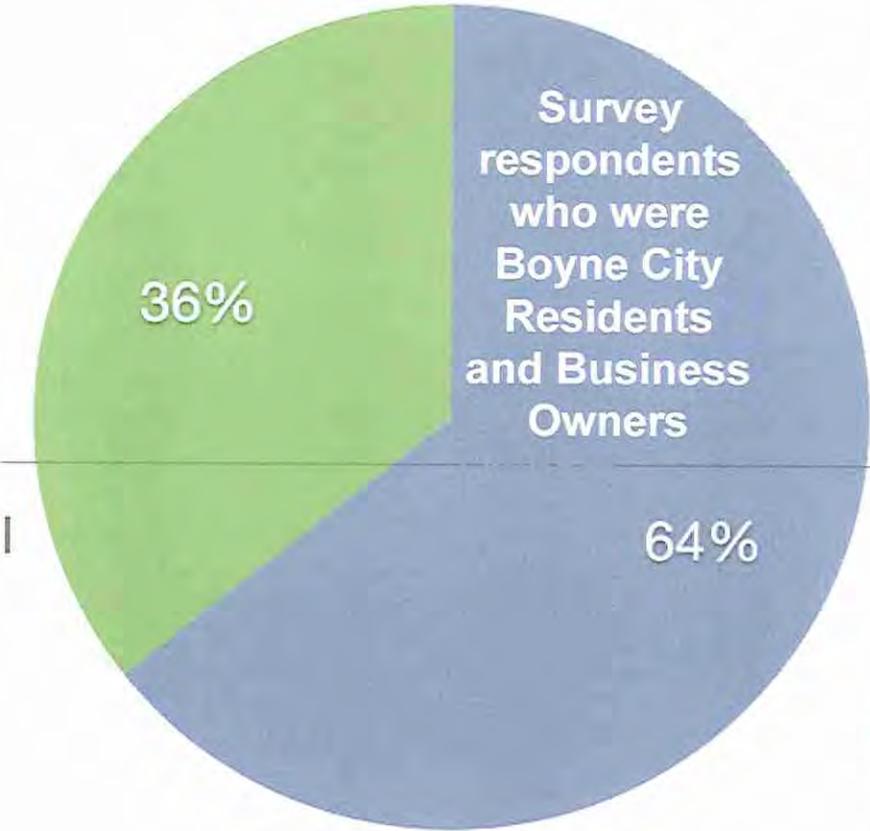
### Ordinance Parameters

- 1) Exempt local non-profit mobile food vending (such as Lions Food Trailer) from local requirements under this ordinance.
- 2) Allow community events (4<sup>th</sup> of July, Mushroom Festival, SOBO Arts Festival, Evenings at the Gazebo, Stroll the Streets, Farmers Market, Antique Car Show, Labor Day Car Show, etc.) that reserve public spaces under City policies to include mobile food vending as part of their event, under their rules, exempt from the local requirements under this ordinance.
- 3) Allow mobile food vending on commercially zoned private property where restaurants are a permitted use.
- 4) Allow a maximum of four mobile food vendors to operate at any one time on pre-approved city-owned locations.
- 5) An annual permit fee will be charged per vendor per location on private property. No permit fee will be charged if a Boyne City based food service establishment.
- 6) An annual permit fee will be charged per vendor on public property. (This fee will be greater than the amount charged to vendors on private property.)
- 7) An additional \$25 non-refundable application fee shall be required for each application.
- 8) Each mobile food vendor shall make provision for the proper collection and disposal of all trash and generated by their facility.
- 9) No mobile food vendor shall not utilize any electricity, water and other utilities without the prior written authorization of the power customer; no cable, hoses or similar

devices shall be extended across any city street, alley, or sidewalk unless approved in advance by the City.

- 10) Within the designated Mobile Food Vending Areas, a mobile food vendor may only operate between the hours of 7:30 a.m. and 10:30 p.m.
- 11) In city-owned designated Mobile Food Vending Areas, no mobile food vending unit may be left unattended for more than 2 hours; and any mobile food vending unit not in operation shall be removed between the hours of 10:30 p.m. and 7:30 a.m.
- 12) Mobile food vendors and mobile food vending units will not use any flashing or blinking lights or strobe lights.
- 13) Mobile food vendors and mobile food vending units will not use music, amplification devices or "crying out" or any other audible methods to gain attention.
- 14) Permits will be renewed annually. Applications to operate mobile vending units will be accepted at any time City Hall is open for normal operations.
- 15) Prior to the commencement of operations on public property the mobile food vendor shall provide to the City proof of general liability insurance in the amount of \$1,000,000 naming the City as an additional insured.
- 16) The mobile food vending unit must comply with all applicable City codes and ordinances.
- 17) The mobile food vending unit must comply with all applicable federal, state and county regulations.
- 18) The City shall revoke the permit of any vendor engaged in Mobile Food Vending who ceases to meet any requirement of this code or violates any other federal, state, or local regulation, makes a false statement on their application, or conducts activity in a manner that is adverse to the protection of the public health, safety and welfare. Immediately upon such revocation, the City shall provide written notice to the permit holder by certified mail to their place of business or residence as indicated on the application. Immediately upon such revocation, the permit shall become null and void.

# Food Truck Citizen Survey Respondents

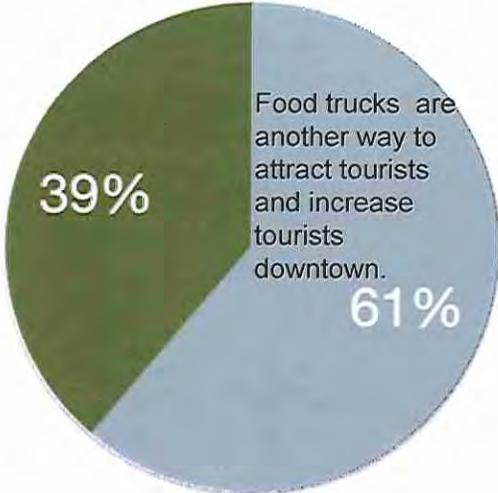
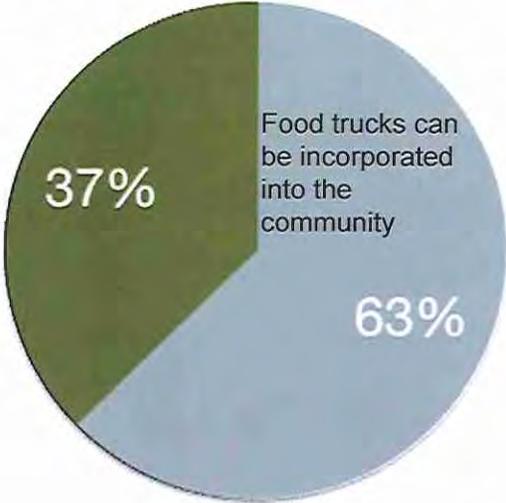
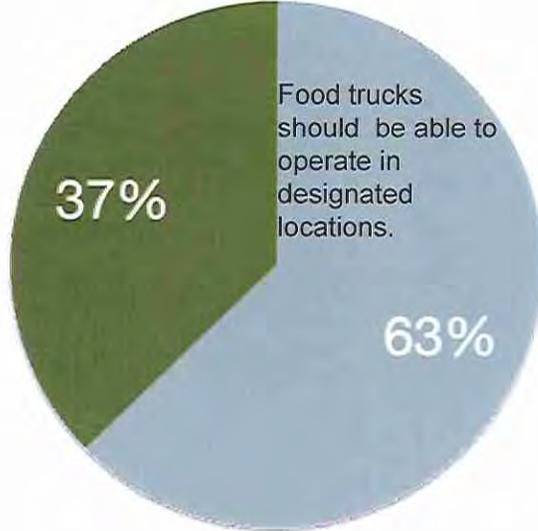
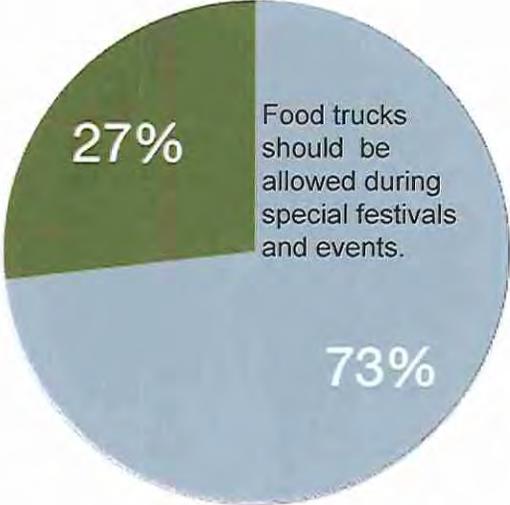
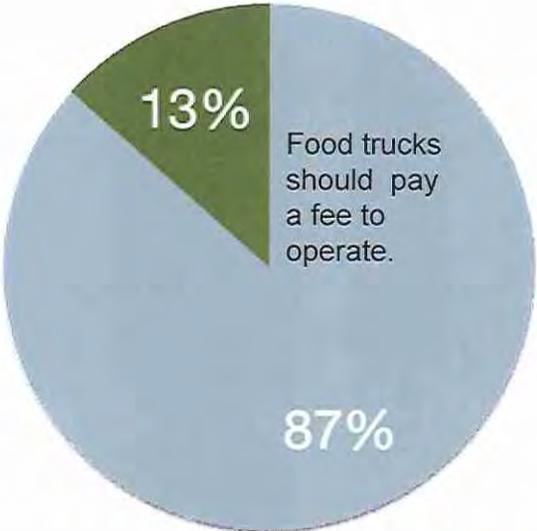


Data was collected from a total of 68 surveys. More than half of respondents were Boyne City business owners and residents. 27 respondents stated they were Boyne City business owners and 46 stated they were Boyne City residents.

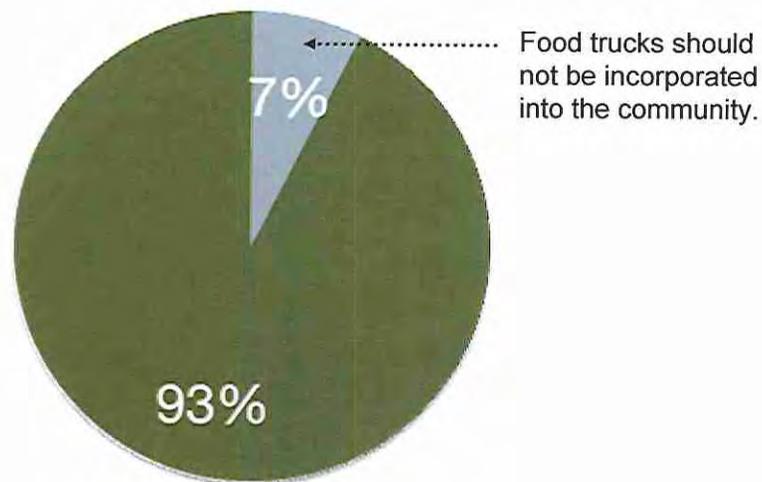
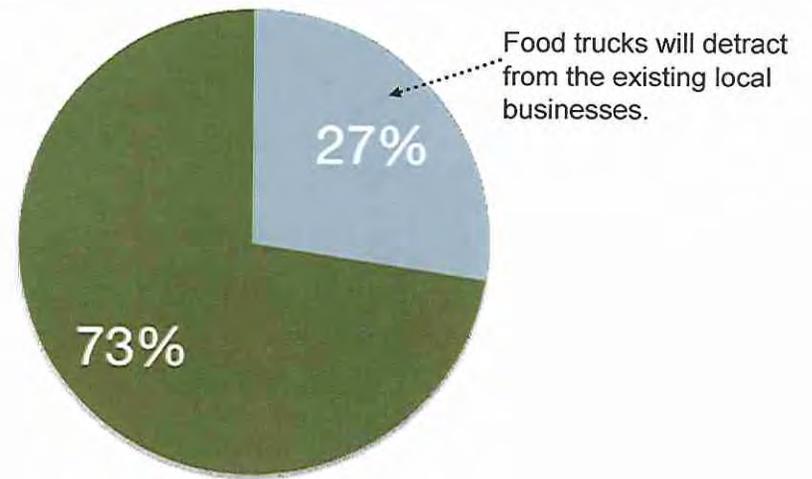
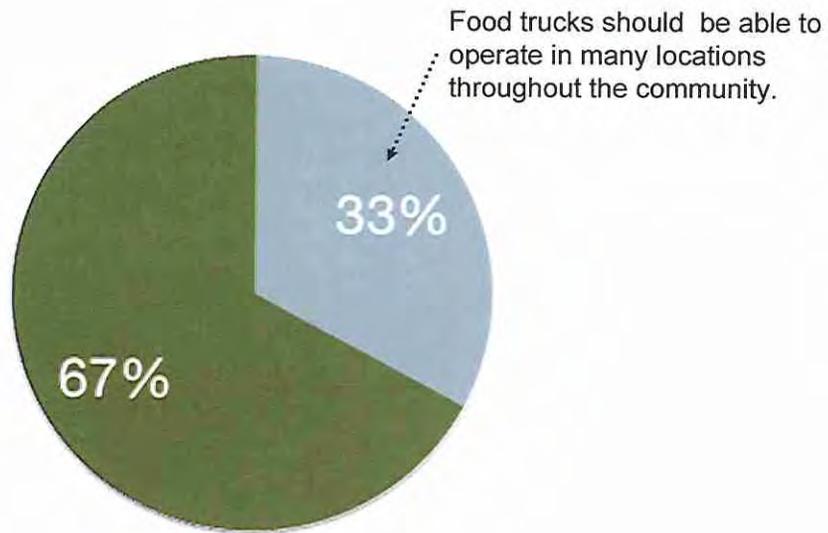
### Survey origins:

- Food truck meeting #1 (18 surveys)
- Food truck meeting #2. (21 surveys)
- Lion's Club meeting (7 surveys)
- Main Street Board meeting (6 surveys)
- BCHS Government class. (16 surveys)

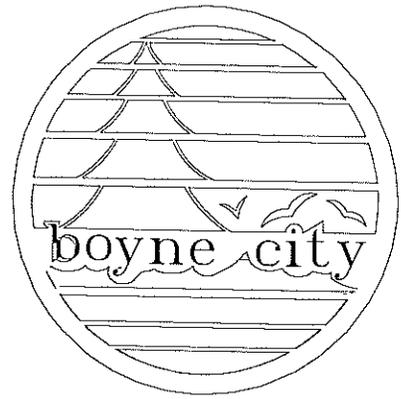
# Over Half of all respondents thought:



# Less than half of all respondents thought:



## CITY OF BOYNE CITY



**To:** Chair Jane MacKenzie and fellow Planning Commissioners

**From:** Scott McPherson, Planning Director

**Date:** April 21, 2014

**Subject:** Noise Ordinance

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### Background

For many years the City has had a noise ordinance in effect. The ordinance can be found in Article V, Offenses Involving Public Peace and Order, Section 31.141 Noise. In 2009 in response to complaints stemming from music being played at what was then 220 Lake Street, a citation was issued to Chris Theil for violation of the noise ordinance. A hearing on the matter was held in the Charlevoix County District Court in September of 2009. In the Court's opinion the noise ordinance was unconstitutionally vague due to the subjective nature violations were determined and the Court dismissed the City's claims against Mr. Theil. Given this opinion the Boyne City Police Department has not issued any subsequent citations for violation of section 31.141 Noise. For your reference a copy of the existing Boyne City Noise Ordinance has been provided.

### Discussion

The Boyne City Police Department does receive noise complaints on a regular basis. Noise complaints compiled by the BCPD from 2008 to 2013 show that on average there are 61 noise complaints per year. Most complaints are due to music with an average of 28 complaints per year followed by neighbor complaints at 14 per year, dogs and vehicle complaints at 7 per year and complaints about loud parties at 6 per year. The BCPD has also logged noise complaints about the canon and noise from the industrial park.

	Music	Vehicles	Party	Neighbor	Canon	Industrial	Dogs	Total
2008	38	2	11	14	1		3	69
2009	39	7	6	15		1	8	75
2010	25	13	6	22			10	76
2011	15	9	3	16		1	2	46
2012	24	4	7	11			9	55
2013	27	4	1	4			8	44
<b>Total</b>	<b>168</b>	<b>39</b>	<b>34</b>	<b>82</b>	<b>1</b>	<b>2</b>	<b>40</b>	<b>365</b>

It should be noted the many complaints about the noise from Kirtland products were received by the Planning Office and are not included in these statistics.

Since the district court decision on the City's noise ordinance the City Commission has received requests from the public for the City to adopt a new noise ordinance. Given the statistics provided by the BCPD it appears there is a need for some type of noise ordinance that can be applied to these types of complaints.

City staff has researched and reviewed a variety of noise ordinances. Types of noise ordinances can be classified into two general categories: Ordinances that establishes specific decibel limits for various districts and ordinances that identify the violations by types of activities and rely on officer's discretion to determine a violation.

Ordinances that establish decibel thresholds typically identify maximum decibel limits for various districts. These districts are classified as the receiving zones. The basic concept is that it does not matter what zone a noise is produced, if it is above the maximum limit allowed in any receiving zone the producer of the noise would be in violation of the ordinance. To enforce this ordinance noise monitoring equipment is required and training for the enforcing officer is recommended.

The other type of common noise ordinance stipulates that it is a violation to make continued excessive or unusually loud noise that annoys disturbs or injures and it lists various types of activities and noises that are in violation of the ordinance. This type of ordinance relies on the discretion of the officer

Both types of ordinance can be found in northern Michigan communities. For your reference a sample of each type of ordinance has been attached for your review.

### **Recommendation**

Given the noise complaint statistics provided by the BCPD there is a need for a some type of noise ordinance. Given the nature of the complaints that have been logged and the costs and requirements necessary to administer an ordinance that defines decibel limits an ordinance identifies the specific violations and uses the officers discretion is the preferred option.

Boyne City, Michigan, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 34 - OFFENSES AND MISCELLANEOUS PROVISIONS >> ARTICLE V. - OFFENSES INVOLVING PUBLIC PEACE AND ORDER >>**

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**ARTICLE V. - OFFENSES INVOLVING PUBLIC PEACE AND ORDER**

Sec. 34-141. - Noise.

Sec. 34-142. - Use of loudspeakers; permit requirement.

Sec. 34-143. - Public intoxication.

Sec. 34-144. - Breach of the peace; unnecessary, loud and disturbing noise.

Sec. 34-145. - Obscene conduct.

Sec. 34-146. - Jostle, roughly crowd or push.

Sec. 34-147. - Loitering.

Sec. 34-148. - Prohibited use of language.

Sec. 34-149. - Creating disturbance or contention in a public place.

Secs. 34-150—34-166. - Reserved.

**Sec. 34-141.- Noise.**

- (a) It shall be unlawful for any person, firm, corporation or entity to make, assist in creating, continue, or cause to be made or continued, any loud, unnecessary or unusual noise tending to unreasonably disturb the peace and quiet of persons in the vicinity thereof, or any noise which either unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the city, including, but not limited to, the noises enumerated in this section.
- (1) *Construction noises.* The erection (including excavation), demolition, alteration or repair of any building, or the excavation of streets and highways, other than between the hours of dawn to dusk is unlawful, unless permission is first obtained in writing from the city manager.
  - (2) *Motors.* The use and/or operation of a motor, blower, power fan, dryer or similar mechanism that creates or emits an unreasonable sound from any point at least 50 feet beyond the property boundary of such use and/or operation is unlawful.
  - (3) *Antinoise regulations.* Any authorized city official (as that term is defined in division 2, article V of chapter 2, municipal civil infractions), upon receipt of a complaint, may deem any loud, unnecessary, unusual or unreasonable noise as a violation of this division, based on any reasonable criteria.
- (b) None of the prohibitions herein shall apply to or be enforced against:
- (1) Any authorized emergency vehicle, when responding to an emergency call;
  - (2) Necessary excavations or repairs of bridges, streets or highways by or on behalf of the city, county or state during the night, when the public safety, welfare and convenience renders it impossible to perform such work during the day; and
  - (3) The reasonable use of stationary amplifiers or loudspeakers in the course of public addresses.
- (c) Persons who violate this section are responsible for a municipal civil infraction.

*(Comp. Ords. 1986, § 35.013)*

**Sec. 34-142.- Use of loudspeakers; permit requirement.**

- (a) The use of loudspeakers to broadcast by radio or phonograph or other amplifier upon the public streets of this city, or through open windows, doors, transoms, or other openings within 200 feet of any other dwelling, place of business, pleasure or education, shall not be permitted except upon a written permit obtained through the office of the city manager, and then shall only be operated in accordance with the permission granted in such permit. Such a permit shall be granted upon a showing that there will be compliance with all laws and ordinances and a further showing that the activity for which the permit is sought will not result in a disturbance of the peace.
- (b) The chief of police or electrical inspector of this city, or any other person authorized in writing by either of them, shall at all reasonable times have the right to enter upon any premises for the purpose of inspecting the installation or operation of any and all electrical appliances coming within the intent of this division; and it shall be unlawful for any person to interfere with such inspection, or to refuse entrance to the premises for such purposes at any reasonable time.
- (c) Persons who violate any of the provisions of this section are responsible for a municipal civil infraction.

*(Comp. Ords. 1986, §§ 20.702, 20.705)*

**Sec. 34-143.- Public intoxication.**

A person who is intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance is guilty of a misdemeanor.

*(Comp. Ords. 1986, § 20.761(b))*

*State law reference— Similar provisions, MCL 750.167(1)(e); local ordinances punishing public intoxication, MCL 324.6523.*

**Sec. 34-144.- Breach of the peace; unnecessary, loud and disturbing noise.**

It is a misdemeanor for any person to make any breach of the peace, either by making any unnecessarily, loud and disturbing noise or by causing any other public disturbance.

*(Comp. Ords. 1986, § 20.761(r))*

**Sec. 34-145.- Obscene conduct.**

It is a misdemeanor for any person to engage in any obscene or other conduct in any street, alley, or other public place that is reasonably likely to provoke an immediate breach of the peace.

*(Comp. Ords. 1986, § 20.761(c))*

*State law reference— Public indecency or obscenity, MCL 750.167(1)(f).*

**Sec. 34-146.- Jostle, roughly crowd or push.**

It is a misdemeanor for any person to jostle, roughly crowd or push any person unnecessarily in any street, alley, or other public place.

*(Comp. Ords. 1986, § 20.761(h))*

*State law reference— Similar provisions, MCL 750.167(1)(l).*

**Sec. 34-147.- Loitering.**

It is a misdemeanor for any person to loiter on any street, sidewalk, bridge, overpass or public place. For the purpose of this section, the term "loitering" is defined as the act of standing or idling in or about any street, sidewalk, bridge, overpass or public place so as to hinder or impede or tend to hinder or impede the passage of pedestrians or vehicles.

*(Comp. Ords. 1986, § 20.761(i))*

**Sec. 34-148.- Prohibited use of language.**

It is a misdemeanor for any person to use any language reasonably calculated to cause an immediate breach of the peace in any public place.

*(Comp. Ords. 1986, § 20.761(k))*

**Sec. 34-149.- Creating disturbance or contention in a public place.**

It is a misdemeanor for any person to create any disturbance or contention in any tavern, hotel, manufacturing establishment or any other business place, or in any public street, alley, park, public building, or at any election or other public meeting where citizens are lawfully and peacefully assembled.

*(Comp. Ords. 1986, § 20.761(p), (u))*

*State law reference— Disturbing public meetings, MCL 750.170.*

**Secs. 34-150—34-166.- Reserved.**

## Mason, MI Code of Ordinances

**ARTICLE II. NOISE\***

**\*Charter References:** Nuisance abatement, § 2.2(m).

**Cross References:** Loud noises prohibited, § 42-82.

**DIVISION 1.  
GENERALLY****Sec. 22-31. Legislative findings.**

(a) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city is a condition which has existed for some time; and the extent and volume of such noises is increasing.

(b) The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(c) The necessity in the public interest for the provisions and prohibitions contained and enacted in this article is declared as a matter of legislative determination and public policy; and it is further declared that the provisions and prohibitions contained and enacted in this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

(Ord. No. 107, § 1, 5-5-1980)

**Sec. 22-32. Unlawful noise prohibited.**

It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

(Ord. No. 107, § 2, 5-5-1980)

**Sec. 22-33. Prima facie violations.**

The making of any of the specific noises set forth in section 22-34 which are plainly audible at a distance of 50 feet from the source, or which are plainly audible within any neighboring private residence, hospital or court, shall constitute prima facie evidence of an unlawful noise in violation of this article.

(Ord. No. 107, § 3, 5-5-1980)

**Sec. 22-34. Specific noises prohibited.**

The following acts, among others, are declared to be loud, disturbing, injurious, and unnecessary noises in violation of this article; but this enumeration shall not be deemed to be exclusive:

(1) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time.

(2) *Radios, phonographs, etc.* The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners. The operation of any such set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 7:00 a.m. 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 shall be prima facie evidence of a violation of this section.

(3) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

(4) *Animals, birds, etc.* The keeping of any animal or bird which by loud or frequent barking or by causing frequent or long-continued noise shall disturb the comfort or repose of any persons in the vicinity.

(5) *Steam whistles.* The blowing of any steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon the request of proper city authorities.

(6) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is used upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises. The provisions of this section shall not apply to motor vehicles operated on a highway or public street and subject to the noise regulations of Sections 707a--707e of the Michigan Motor Vehicle Code (MCL 257.707a--257.707e) or comparable provisions of the Uniform Traffic Code; and in such case, violations shall be enforced under the procedures set forth in such codes for civil infractions.

(8) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise or so as to disturb the peace and quiet of streets or other public places.

(9) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(10) *Construction or repairing of buildings, streets or utilities.* The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building official, which permit may be granted for a period not to exceed three days while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the building official should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building within the hours of 7:00 p.m. and 7:00 a.m., and if the official shall further determine that substantial loss or inconvenience would result to any party in interest, he may grant permission for such work to be done between the hours of 7:00 p.m. and 7:00 a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work. The construction, alteration or repair of public streets or utilities shall not be conducted other than between the hours of 7:00 a.m. and 7:00 p.m. unless the director of public works or a bona fide public utilities service employee determines that an emergency exists which requires such work, or determines that the public health and welfare will not be adversely affected by such work.

(11) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while they are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.

(12) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(13) *Drums.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(14) *Blowers.* The operation of any noise creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(Ord. No. 107, § 4, 5-5-1980)

#### **Sec. 22-35. Retaliation.**

If there is any evidence of retaliation by any offender against any complainant or witness, such evidence shall be communicated to the district court magistrate and any standard fine schedule adopted by the court for a violation of this article shall thereafter be suspended. In sentencing any violator, the district court or magistrate shall first examine the evidence of retaliation, and if such be shown, shall consider such acts and sentence the violator accordingly.

(Ord. No. 107, § 11, 5-5-1980)

#### **Sec. 22-36. Regulations.**

The commercial and noncommercial use of sound amplifying equipment shall be subject to the following regulations:

- (1) The only sounds permitted shall be either music or human speech, or both.
- (2) The operation of sound amplifying equipment shall only occur between the hours of 10:00 a.m. and 10:00 p.m. each day. No operation of sound amplifying equipment for commercial purposes shall be permitted on Sundays or legal holidays.
- (3) No sound emanating from sound amplifying equipment shall exceed a volume adequate to serve its purpose as determined by the regulating authority.
- (4) The volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitiveness within the area of audibility.
- (5) The user of sound amplifying equipment shall comply with such additional requirements and regulations as shall be promulgated by the city administrator and approved by the city council.

(Ord. No. 107, § 9, 5-5-1980)

**Secs. 22-37--22-60. Reserved.**

## **DIVISION 2. SOUND EQUIPMENT REGISTRATION**

### **Sec. 22-61. Registration of sound equipment.**

It shall be unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the city a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purposes of giving instructions, directions, talks, addresses or lectures, or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park, place or public property without first filing a registration statement and obtaining approval as set forth in this division.

(Ord. No. 107, § 5, 5-5-1980)

### **Sec. 22-62. Registration requirements and duties.**

Every user of sound amplifying equipment shall file a registration statement with the city clerk 21 days prior to the date on which the sound amplifying equipment is intended to be used, which statement shall contain the following information:

- (1) The name, address and telephone number of both the owner and user of the sound amplifying equipment.
- (2) The maximum sound producing power of the sound amplifying equipment, which shall include the wattage to be used, the volume in decibels of sound which will be produced, and the approximate distance for which sound will be audible from the sound amplifying equipment.

- (3) The license and motor number if a sound truck is to be used.
- (4) The purpose for which the sound amplifying equipment will be used.
- (5) Such other information as may be required under registration standards and administrative regulations promulgated by the city administrator and approved by the city council.

(Ord. No. 107, § 6, 5-5-1980)

**Sec. 22-63. Registration approval or disapproval.**

(a) The city clerk shall return to the applicant an approved copy of the registration statement unless:

(1) The conditions of the motor vehicle movement are such that use of the equipment would constitute a detriment to traffic safety;

(2) The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or

(3) The city administrator determines that the equipment will create unreasonable or unnecessary noise contrary to subsections (a)(1) and (2) of this section, or violates the regulations of section 22-36.

(b) If after advertising for comments on the proposed registration objections are raised by more than 50 percent of the households within hearing range (as stated in section 22-62), the registration will be denied.

(c) If the application is disapproved, the city clerk will endorse upon the application the reasons for disapproval and return it to the applicant.

(Ord. No. 107, § 7, 5-5-1980)

**Sec. 22-64. Fees.**

Prior to the issuance of the registration statement, a fee in the amount established by resolution shall be paid to the city.

(Ord. No. 107, § 8, 5-5-1980)

**Secs. 22-65--22-80. Reserved.**

# CHAPTER 652

## Noise Control

652.01 Findings; application of chapter.  
652.02 Definitions.

652.03 Authority of noise control officer.  
652.04 Prohibitions.  
652.05 Exceptions and variances.  
652.06 Continuous and impulsive sound levels threatening health and welfare; orders to abate.

652.07 Civil actions.  
652.08 Tampering with measuring devices  
652.09 Retaliation.  
652.10 Appearance tickets.  
652.99 Penalty.

### CROSS REFERENCES

Disorderly persons - see MCLA Sec. 750.167  
Disturbing meetings - see MCLA Secs. 750.169; 750.170  
Noise from watercraft - see SU & PS 1062.04(f), (g)  
Muffler noise - see MCLA Sec. 257.707(a) through (e)

### 652.01 FINDINGS; APPLICATION OF CHAPTER.

Excessive sound and vibration are a serious hazard to the public health, welfare, safety and quality of life, and a substantial body of science and technology exists by which excessive sound and vibration may be substantially abated. The people have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health, welfare or safety or degrade the quality of life. The damage and discomfort caused to the people arises both from stationary and from non-stationary sound and vibration and this chapter shall apply to both. (Ord. 505. Passed 8-7-00.)

### 652.02 DEFINITIONS.

All terminology used in this chapter and not defined in this section shall be in conformity with applicable publications of the American National Standards Institute (ANSI) or its successor body. In addition, as used in this chapter:

- A. **Commercial area** means land primarily being used as office, governmental, retail, or other commercial type uses.
- B. **Decibel (dB)** means a unit of measuring the volume of sound, equal to twenty times the logarithm of the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).
- C. **Industrial area** means land primarily being used as a manufacturing or industrial site, including airports.
- D. **Multi-Family area** means land primarily being used for structures housing three or more families. If a multiple family use occurs as a mixed use with commercial uses, the primary use of the property will be determined by the ground floor.
- E. **Noise Control Officer** means the Chief of Police and his or her agents who have lead responsibility for the enforcement of this chapter.
- F. **Noise disturbance** means any sound which either exceeds the maximum permissible sound levels of this chapter or which endangers or injures the safety or health of humans

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or animals, annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

- G. **Noise sensitive zone** means areas in the City which contain noise sensitive activities, such as schools, libraries, churches, hospitals and nursing homes, as designated by resolution of the City Commission.
- H. **Pure Tone** means a single or compact range of frequency that may be perceived as a whine, hum, squeal, or buzz. The measured sound levels must not fluctuate by more than plus or minus 3 dB. Such sound sources include, but are not limited to: heating, ventilating or air-conditioning units; refrigeration units; and transformers.
- I. **Real property boundary** means the imaginary line which represents the legal limits of property (including an apartment, condominium, room, or other dwelling unit) owned, leased, or otherwise occupied by a person, business, corporation or institution. In cases involving sound from an activity on a public street or other public right of way, the "real property boundary" shall be the nearest boundary of the public right-of-way.
- J. **Residential area** means land primarily being used as a one or two family dwelling and located adjacent to or near other such residentially used land.
- K. **Sound level meter means** an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels and that meets the standards of ANSI S-14 1983 or its successor.
- L. **Weighted sound level** means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

(Ord. 505. Passed 8-7-00. Ord. 582. Passed 10-21-02.)

### 652.03 AUTHORITY OF NOISE CONTROL OFFICER.

- (a) **Powers.** This chapter shall be administered and enforced by the Noise Control Officer. In order to implement and enforce this chapter, and for the general purpose of noise abatement and control, the Noise Control Officer shall have, in addition to any other authority vested in him or her, the power to:
  - 1. Conduct or cause to be conducted research, monitoring and other studies related to sound and vibration; and
  - 2. Upon presentation of proper credentials, enter and inspect any private property or place and inspect any report or record 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 a showing of probable cause to believe that a violation of this chapter may exist. Such inspection may include the administration of any necessary tests.
  - 3. Promulgate rules and procedures to establish techniques for measuring noise, and to provide for clarification, interpretation, and implementation of this chapter; and
  - 4. Review at least every three (3) years the provisions of this chapter and recommend revisions consistent with technology to reduce noise, or to address new sound sources within the City.
- (b) **Duties.** In order to implement and enforce this chapter effectively, the Noise Control Officer shall, within a reasonable time after the effective date of this chapter:
  - 1. Investigate and pursue possible violations of this chapter;

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2. Delegate functions, where appropriate, under this chapter, to personnel within the Police Department and to other agencies or departments, subject to the approval of the City Manager; and
  3. Prepare recommendations, to be approved by the City Commission, for the designation of noise sensitive zones.
- (c) Enforcement. The administration and enforcement of noise control shall be controlled by the following standards:
1. The primary means of detection of a noise disturbance shall be by means of the Noise Control Officer's and other properly delegated enforcement officials' ordinary auditory senses of hearing not enhanced by any mechanical device, such as a microphone or hearing aid.
  2. An enforcing officer or other witness need not determine the particular words or phrases being produced or the name of any song or artist producing the sound.
  3. The detection of any rhythmic base or reverberating type of sound is sufficient to constitute a plainly audible sound which may constitute a noise disturbance.

(Ord. 505. Passed 8-7-00.)

### **652.04 PROHIBITIONS.**

- (a) Generally. No person shall unreasonably make or continue, or cause to be made or continued, any noise disturbance.
- (b) Radios, Musical Instruments and Similar Devices. No person shall operate or play, or permit the operation or playing of, any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to:
  1. Create a noise disturbance on public property or streets, across a real property boundary, or within a noise sensitive zone. If such a device is plainly audible on the property of another or within a building other than that within which the device is located, and if a complaint is made to the Noise Control Officer regarding annoyance or disturbance as a result of such device, this shall serve as prima-facie evidence of a violation.
  2. Create a noise disturbance when operated in or on a motor vehicle on a public right of way, public space or space open to the general public, or in a boat on public waters. If such a device is plainly audible at a distance of 50 feet in any direction, between the hours of 10 p.m. and 7 a.m. or 100 feet in any direction between the hours of 7 a.m. and 10 p.m., this shall serve as prima facie evidence of a violation.
- (c) Loudspeakers. No person shall use or operate for any noncommercial purpose any loudspeaker, public address system or similar device between 10:00 p.m. and 7:00 a.m. of the following day so that the sound there from creates a noise disturbance across a residential area or multi-family area boundary or within a noise sensitive zone. No person shall use or operate for any commercial purpose any loudspeaker, public address system or similar device so that the sound there from creates a noise disturbance across a real property boundary or within a noise sensitive zone, or between 10:00 p.m. and 7:00 a.m. of the following day on a public right of way or public space.
- (d) Sound Amplifiers. No person shall operate any sound amplifying device for the purpose of advertising announcing an event, or attracting the attention of the public. However, a school, governmental unit, or bona fide nonprofit organization may secure a permit from the Noise Control Officer to use such a device. No permit will be granted for such use on

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- a Sunday or at any other time or duration or under any other conditions which, in the opinion of the Noise Control Officer will constitute a nuisance.
- (e) Heavy Equipment. Except for work on essential services, no person shall use any pile driver, shovel, hammer, derrick, hoist, tractor, roller or other construction apparatus between 10:00 p.m. and 7:00 a.m. of the following day, within 600 feet of a residential area, multi-family area, or noise sensitive zone.
  - (f) Loading and Unloading. No person shall load, unload, open, close or otherwise handle boxes, crates, containers, building materials, garbage trucks, garbage cans or similar objects between 11:00 p.m. and 6:00 a.m. of the following day in such a manner as to cause a noise disturbance across the boundary of a residential area or multi-family area, or within a noise sensitive zone.
  - (g) Stationary Non-emergency Signaling Devices. No person shall permit the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle or similar device intended primarily for nonemergency purposes. Such devices, when used in conjunction with places of religious worship, shall be exempt from this subsection.
  - (h) Maximum Permissible Sound Levels by Receiving Land Use. No person on private property shall create a continuous sound which exceeds the limits set forth for the receiving land category in the following table when measured at or within the property boundary of the receiving land which source of sound shall be deemed prima-facie to be a noise disturbance. "Continuous sound" means any sound having a duration of one second or more. For any source of sound which emits a pure tone, the maximum sound level limits set forth in the following table shall be reduced by five dBA.

**MAXIMUM SOUND LEVELS TABLE**

<u>Receiving Land Category</u>	<u>Sound Level Limit (dBA)</u>	<u>A-weighted Time</u>
Residential area	10:00 p.m. to 7:00 a.m.	60
Multi-Family area	7:00 a.m. to 10:00 p.m.	65
Commercial area	10:00 p.m. to 7:00 a.m.	65
	7:00 a.m. to 10:00 p.m.	70
Industrial area	10:00 p.m. to 7:00 a.m.	70
	7:00 a.m. to 10:00 p.m.	75
Noise sensitive areas	10:00 p.m. to 7:00 a.m.	Established by Resolution
Noise sensitive areas	7:00 a.m. to 10:00 p.m.	

- (i) Impulsive Sound. Impulse sounds may exceed the permissible limits in the above Table by ten decibels if they occur less than ten times in any hour between 7 a.m. and 10 p.m., or less than four times in any hour between 10 p.m. and 7 a.m. If any impulsive sound exceeds these frequencies, then the permissible limits in the Table apply. "Impulsive sound" means any sound having a duration of less than one second.

(Ord. 505. Passed 8-7-00. Ord. 581. 10-21-02.)

**652.05 EXCEPTIONS AND VARIANCES.**

- (a) Emergencies. This chapter shall not apply to creating sound for the purpose of alerting persons to the existence of an emergency or to creating sound in the performance of emergency work.

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- (b) Lawn Maintenance Equipment. Customary lawn maintenance equipment for residential use, such as lawn mowers, leaf blowers and chain saws, from 8:00 a.m. to 9:00 p.m., if in good working order and if used only as needed, may exceed the maximum sound levels established above.
- (c) Residential Snow Removal. Snowblowers for residential use if in good working order and if used only as needed may exceed the maximum sound levels established above.
- (d) Commercial Snow Removal. Snow removal from commercial or industrial property by any internal combustion device is permitted at all times if the snow removal equipment has a properly functioning muffler. However, commercial or industrial property within 600 feet of a residential area or multi-family area shall not have snow removal undertaken by commercial equipment in excess of 15,000GVW prior to 6:00 a.m., unless permission is granted by the owners of that residential or multi-family area.
- (e) Municipal, School District and Hospital Equipment. This chapter shall not apply to sound made by municipal street and sidewalk maintenance equipment or snow removal equipment used by the City, a school district, a hospital or their agents.
- (f) Special Variances.
  - 1. The Noise Control Officer may, consistent with this section, grant special variances which may be requested.
  - 2. Any person seeking a special variance pursuant to this section shall file an application with the Noise Control Officer. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. Any individual who claims to be adversely affected by the allowance of the special variance may file a statement to that effect with the Noise Control Officer containing any information to support his or her claim. If the Noise Control Officer finds that a sufficient controversy exists regarding an application, a public hearing may be held.
  - 3. In determining whether to grant or deny an application, the Noise Control Officer shall balance the hardships of the applicant, the community and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impacts of granting the special variance. Applicants for a special variance and persons contesting the special variance may be required to submit any information the Noise Control Officer may reasonably require. In granting or denying an application, the Noise Control Officer shall place on public file a copy of the decision and the reasons for denying or granting the special variance.
  - 4. Special variances shall be granted by notice to the applicant containing all necessary conditions, including the time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to the provisions of this chapter regulating the source of sound or activity for which the special variance was granted.

(Ord. 505. Passed 8-7-00. Ord. 583. Passed 10-21-02.)

### **652.05.1 CONTINUOUS AND IMPULSIVE SOUND LEVELS THREATENING HEALTH AND WELFARE; ORDERS TO ABATE.**

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- (a) The Noise Control Officer shall order an immediate halt to any sound which exposes any person, except those excluded pursuant to subsection (b) hereof, to continuous sound levels or to impulsive sound levels which endanger or injures a person's health or safety. Following the issuance of such an order, the Noise Control Officer may remove or modify the source of the noise.
- (b) No order pursuant to subsection (a) hereof shall be issued if the only person exposed to dangerous sound levels is exposed as a result of trespass, invitation upon private property by persons causing or permitting the sound or employment met by the person or by a contractor of the person causing or permitting the sound.
- (c) Any person subject to an order issued pursuant to subsection (a) hereof shall comply with such order until the sound is brought into compliance with the order, as determined by the Noise Control Officer, or until a judicial order has suspended the Noise Control Officer's order. No person shall violate an order issued pursuant to this section.

(Ord. 505. Passed 8-7-00.)

### **652.07 CIVIL ACTIONS.**

Any person aggrieved by a violation of this chapter may commence a civil action on his or her own behalf against any person who is alleged to be in violation of Section 652.04. No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.

(Ord. 505. Passed 8-7-00.)

### **652.08 TAMPERING WITH MEASURING DEVICES.**

No person shall damage, interfere with or tamper with any sound measuring device used to enforce this chapter.

(Ord. 505. Passed 8-7-00.)

### **652.09 RETALIATION.**

If there is any evidence of retaliation by any offender against any complainant or witness, such evidence shall be communicated to the District Court. When sentencing any violator, the District Court shall first examine the evidence of retaliation, and if such is shown, shall consider such acts and sentence the violator accordingly.

(Ord. 505. Passed 8-7-00.)

### **652.10 APPEARANCE TICKETS.**

The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCL 764.9c(2); MSA 28.868(3)(2)). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.

(Ord. 505. Passed 8-7-00.)

### **652.99 PENALTY.**

- (a) A person found in violation of this chapter shall be guilty of a civil infraction and shall be fined not less than \$100 nor more than \$500.
- (b) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

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- (c) The minimum fine shall be doubled for a second violation and tripled for a third violation within any 90 day period.  
(Ord. 505. Passed 8-7-00.)