

# SHOHOLA TOWNSHIP

PIKE COUNTY, PENNSYLVANIA

## Nuisance Ordinance

### Ordinance No. 74



AN ORDINANCE OF SHOHOLA TOWNSHIP, PIKE COUNTY, PENNSYLVANIA, DECLARING CERTAIN ACTIONS AS PUBLIC NUISANCES; REGULATING JUNK; PROHIBITING DANGEROUS PROPERTIES, STRUCTURES AND BUILDING AS PUBLIC NUISANCES AND PROVIDING FOR THE CORRECTION, REPAIR, VACATION OR DEMOLITION OF THE SAME; REGULATING CERTAIN TYPES OF BURNING, PROVIDING FOR THE ABEMENT OF OTHER ACTIVITIES AND PROPERTY CONDITIONS WHICH CONSTITUTE PUBLIC NUISANCES; AND PRESCRIBING PENALTIES FOR VIOLATIONS.

The Board of Supervisors of Shohola Township hereby enacts and ordains that this Ordinance, Which shall in all manners supplant and replace Nuisance Ordinance No. 65A, as follows:

**SECTION I. DEFINITIONS:** The following terms shall have the meanings as set forth herein and ascribed thereto:

**A. NUISANCE:** Upon written complaint, any use, activity or condition upon public or private property within Shohola Township that causes, creates or maintains one or more of the following:

1. Unreasonable annoyance or discomfort to person beyond the boundaries of such property;
2. Interference with the health and/or safety of persons beyond the boundaries of such property or of persons who could reasonably be expected to enter upon such property; and
3. Disturbance or interference with the peaceful use and enjoyment of persons or property of others within the Township surrounding property.

**B. SPECIFIC CONDITIONS CONSTITUTING NUISANCE:**

Specifically, “nuisance” shall be deemed to include the following, which constitute violations of this ordinance subject to the proscriptions and penalties set forth herein:

1. **GARBAGE:** Accumulation of garbage, rubbish, discarded or waste materials. However, nothing in this section shall be construed to render unlawful the otherwise lawful accumulation of leaves, grass, wood or brush pile, a compost heap of vegetable matter or the manure of animals for agricultural or horticultural purposes.
2. **JUNK MATERIAL:** Accumulation of, but not limited to, unused or abandoned machinery, equipment or appliances, and all forms for waste or refuse of any type of materials, including scrap metal, glass, industrial waste and other salvageable materials that can be seen from any public or private highway, street, avenue, lane or alley which is maintained by the township, private owner or Commonwealth of Pennsylvania.

3. **JUNK VEHICLES:**

a. The outside storage of one or more abandoned or junked motor vehicles, in such a manner as to constitute a nuisance in fact, which are visible from any point beyond the boundary of the subject property, and which are incomplete or visibly disabled, except those which are actively being built or repaired, or being used for parts for the repair of a like kind registered vehicle (see subpart (b));

b. The outside storage of more than two incomplete or visibly disabled motor vehicles, in such a manner as to constitute a nuisance in fact, which are visible from any point beyond the boundary of the subject property, and which are not actively being rebuilt or repaired, or being used for parts for the repair of a like kind registered vehicle. However, outside storage of any particular vehicle under this subsection may not exceed a period of one (1) year.

c. One (1) or more mobile/manufactured home, in such a manner as to constitute a nuisance in fact, which is visible from any point beyond the boundary of the subject property, and is in an uninhabitable, unusable condition, or is otherwise disabled or structurally unsound.

4. **ANIMALS:** Keeping or harboring of any dog, cat or other animal fowl which by barking, howling or making of other noise or odor which interferences with the peaceful enjoyment of adjacent property or persons, subject to the Right to Farm Act, 3P.S. § 951 et seq.

5. **DEBRIS AND ODORS:** Permitting, creating or performing any activity including open burning in a manner that permits unusual amounts of dirt, dust, debris, smoke, soot, cinders, fly ash, mud, noxious or offensive fumes, gases or odors, polluted liquids, waste or any hazardous substances being passed to or deposited on adjacent property or any public highway.

6. **LIGHT:** Any act which creates or permits light or glare to escape the originating premises in any manner or intensity which interferes with the reasonable enjoyment of adjacent or surrounding properties or which causes any safety hazard to any driver on any driver on any public or private road, or shines out onto any waterway beyond a property's boundary.

7. **HAZARDS:** Permitting, creating or maintaining any of the following unsafe conditions except when the property is secured to ensure the safety of persons or is on the property lawfully:

a. Unprotected open pits, wells or cisterns;

b. Building structures, damaged, destroyed or existing in a state of disrepair;

c. Placement of materials or equipment in such a manner as to create a hazard or dangerous condition; and

- d. Conditions which unreasonably promote the breeding and multiplication of insects and pests.

## C. NOISE

1. **Definitions:** The following definitions shall apply to this subpart:

- a. **Decibel** – A logarithmic unit of measurement abbreviated **dB** that is used to express the magnitude of sound pressure and sound intensity. For the purpose of this ordinance, decibels are measured on the "A-weighted" scale of a standard sound level meter having a minimum of American National Standards Institute (ANSI) S1.4 Type 2 specification. An A-weighted noise level measurement (abbreviated **dB(A)**) is a noise level that approximates the response of the human ear.
- b. **Ambient Sound Level:** The sound level, in decibels, measured at any specified point which is representative of the noise level of that environment including the sound(s) of the noise source.
- c. **Background Sound Level:** The sound level, in decibels, measured at any specified point which is representative of the total noise level of that environment, excluding the sound(s) of the noise source.
- d. **Noise Source:** A single piece of equipment, or a collection of equipment under the control and operation of a single person or entity, that produces noise as a consequence of its operation. A collection of equipment need not be connected or related to constitute a single noise source, if they are operated simultaneously. Noise sources including the following:
  - i. **Intentional Radiator:** A source of sound, or noise source, which is designated or operated with its primary function being to produce sound. For example, sirens, air horns, and loud speakers are all intentional radiators.
  - ii. **Unintentional Radiator:** A source of sound, or noise source, which is not designated or operated with its primary function to produce sound, but which does produce sound as an unintentional by-product of its operation. For example, chain saws, wood chippers, vacuum cleaners, leaf blowers, sand blasting and rock crushers are all unintentional radiators.
- e. **Impulse Noise:** Noise of short duration (generally less than one second) of high intensity, abrupt onset and rapid decay, and often rapidly changing composition.
- f. **Observable Excessive Noise:** any noise made between the hours of 10:00pm and 6:00am that is plainly audible by a person using his or her unaided hearing faculties at or beyond one-mile radius of the noise source.

**2 Noise Violations Defined:**

*A person or entity commits a violation of this ordinance by causing, transmitting, projecting, or permitting any sound from a noise source under their control on a particular property, public right-of-way, or public space where such sound:*

- a. Causes clear and obvious injury, damage, an unreasonable level of discomfort or otherwise unreasonably infringes upon the legitimate enjoyment of the personal or property rights of another due to the intensity, frequency, duration, location, lack of shielding or by any other reason related to the sound; or
- b. Constitutes an Observable Excessive Noise as defined here: or
- c. Exceeds the sound level limits set forth in Section I(C)(3). If the noise source is located upon a parcel of real property, the noise level shall be measured from any point beyond the boundaries of that property where the source is located.

**3. Noise Level Limitations**

*Noise levels in excess of those set forth herein constitute violations of this subpart, as they constitute such a high level of noise that they are presumed to interfere with the personal and property rights of others:*

- a. **Maximum allowable noise increase:** No person shall create, cause, transmit, project, or permit any sound which causes the sound level to exceed the background noise level by more than 10 dB(A) or greater during the daytime hours (6:00a.m. until 10:00p.m.) or more than five dB(A) or greater during nighttime hours (10:00p.m. until 6:00a.m.).
- b. **Maximum permissible noise level:** Notwithstanding the provision of subpart (a), noise levels may not exceed the absolute noise level limitations identified in Table 1.

TABLE 1 Maximum Permissible dB(A) on Boundary of Receiving Property		
Residential, Open Space Zones (RD, R, NC, OS)		Commercial Zones (GC)
6:00 am to 10:00 pm	10:00 pm to 6:00 am	All Times
63	50	65

- c. **Impulse Noise:** In the case of Impulse Noise, the maximum permitted noise levels, regardless of the type of noise radiator or receiving property, shall be 100 dB(A) from 6:00 am to 8:00 pm and 80 dB(A) at all other times.

**D. PROCEDURE FOR INVESTIGATING POTENTIAL NOISE VIOLATIONS**

1. Upon the receipt of a written complaint of a potential violation of this Ordinance, the investigating police or code enforcement officer shall:

- a. Make a preliminary determination as to whether a plainly audible noise is detectible from any point beyond the boundary of the subject property.
- b. If a plainly audible noise is present and meets the criteria set forth in Section I (c)(2)(a), the officer may issue a violation notice under that section.
- c. If a plainly audible noise is present, the officer may further, at his or her discretion, measure the noise level with the noise source in operation. The officer may then require that the noise be terminated for the purpose of measuring the background noise level. Sound levels shall be measured, in decibels, using the FAST response time and A-weighting.
- d. If the noise level exceeds the standards set forth herein, the investigating officer may issue a violation notice under Section 1 (c)(2)(c).
- e. If the investigating Officer issues a violation notice under Section I (c)(2)(c), the code enforcement officer shall then generate a written report of findings which shall include:
  - the instrument type, serial number, and field calibration date;
  - a description of the noise source in operation and its location;
  - the date and time of background noise level measurements, if applicable;
  - the result, in decibels, of background noise level measurements; if applicable;
  - the date and time of sound level measurements;
  - the result, in decibels, of sound level measurements;
  - a list of witnesses or other persons present during the measurements;
  - the written complaint submitted by the complainant; and
  - any written or oral statements of any person relative to the investigation.

**E. EXEMPTIONS:**

*This subpart pertains to Noise Only.*

1. The following noise sources or operations are exempt from the noise standards of this Section (but remain subject to all other sections of this ordinance):

- lawn mowers, leaf blowers, chain saws, chippers, string trimmers, tillers and any other small yard or garden maintenance equipment when operated on residential property during Daytime and Evening hours as set forth above.
- all emergency equipment and emergency operations

- unaided human voices
- firearms
- noises permitted pursuant to Temporary Exemption.

2. **Temporary Exemption:** The Township Supervisors, in their discretion, may issue a Temporary Exemption, exempting any person or entity from the provisions of this ordinance for a temporary use or event. An applicant shall state the nature of the use or event, its duration, its hours of operation, and shall identify the noise sources which would otherwise violate this ordinance. Notwithstanding the approval of a temporary exemption, noise source not identified in the application for Temporary Exemption shall not be exempt from the ordinance notwithstanding.

3. **Timing of Application for Temporary Exemption:** Application shall be made, in writing, to the Township at least forty-five (45) days prior to the proposed use or event. Such application shall be considered by the Supervisors at a public meeting occurring at least ten (10) days after the application is submitted. The applicant, or a duly authorized representative with knowledge of the application and proposed use or event shall be present at such public meeting.

## **SECTION II. CREATING, PERMITTING OR MAINTAINING NUISANCES UNLAWFUL**

It shall be unlawful and a violation of this Ordinance for any person, partnership, association, corporation, firm or other entity to create, permit or maintain any nuisance within Shohola Township.

## **SECTION III. REMOVAL OR ABATEMENT OF NUISANCES.**

Any person who shall create, continue, cause, maintain or permit any nuisance within Shohola Township shall, upon written notice from the Township, remove, abate and remediate such nuisance. In the event that appropriate action is not taken within the time limit set forth, the Township may, at its discretion, cause the removal, abatement or remediation of such nuisance, including entrance upon the premises upon which the nuisance is located. All costs and expenses incurred, together with a penalty as hereinafter provided, shall be charged against and collected from the person(s) violating the provisions of this Ordinance. The Board of Supervisors may further institute civil enforcement and collection proceedings in the Magisterial District Courts or the Court of Common Pleas of Pike County

## **SECTION IV. PENALTY AND PROCEDURES FOR VIOLATION AND ENFORCEMENT.**

Any person who shall violate any provision of this Ordinance, upon conviction thereof in summary proceedings brought before a Magisterial District Court shall be sentenced to pay a fine not less than \$300.00 and not to exceed \$1,000.00, together with the costs of prosecution including reasonable attorney's fees and on default thereof suffer such imprisonment as provided by law.

Each day a nuisance continues unabated, beyond the date set forth in the written notice, shall constitute a separate and distinct offense under this Ordinance.

**SECTION V. SEVERABILITY**

In the event that any provision, section, sentence, or clause of this Ordinance shall be held to be unconstitutional, superceded, preempted by State or Federal Laws, or is otherwise held unlawful, such invalidity shall not affect or impair any remaining part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.

**SECTION VI. MUNICIPAL LIABILITY**

Any liability or damage resulting from activities or conditions constituting a public nuisance is the sole responsibility of the owner and/or occupant of the property, or the person or persons responsible for said activity or condition. The failure to enforce the terms of this Ordinance shall not constitute a cause of action against Shohola Township or its agents, officials or representatives.

**SECTION VII. EFFECTIVE DATE**

This Ordinance shall become effective five (5) days after the adoption thereof.

**ORDINANCE ORDAINED AND ENACTED** this *9th* day of *August, 2012*, by the Board of Supervisors of Shohola Township, Pike County, Pennsylvania.

Chairman, George C. Fluhr  
Vice-Chairman, Gregory P. Hoyer  
Supervisor, Keith W. Raser

Attest     Diana Blume