

**GARDEN TOWNSHIP**

**ORDINANCE NO. 2014-1**

**NUISANCE NOISE ABATEMENT ORDINANCE**

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

**GARDEN TOWNSHIP ORDAINS:**

**Section 1. Title –**

This Ordinance shall be known as the Garden Township Nuisance Noise Abatement Ordinance.”

**Section 2. Findings and Purpose –**

The Township makes the following findings underlying this Ordinance:

A. The Township has conducted an extensive investigation into the effects of unregulated noise on the health, safety and welfare of Garden Township citizens, including, but not limited to, noise emitted by mining operations, race tracks, and/or industrial wind turbines. The investigation included review of citizen complaints made to Township Board Members, Heritage Energy officials, and Delta County officials both verbally and in writing since January of 2012. A Township-wide survey was also conducted, containing numerous complaints of nuisance noise created by existing wind energy facilities.

B. After a thorough review of the investigation results and supporting documents, the Township Board concludes that the nuisance noise detrimentally affects the health, safety and welfare of the Township’s residents.

C. Reasonable regulations regarding noise emissions are necessary to protect the health, safety and welfare of persons residing near emitters in the Township.

D. The Township is authorized by 1945 Public Act 246, as amended (now MCL 41.181 et seq.) , to adopt an ordinance regulating, among other things, the public health, safety and welfare of persons and property in the Township, and fire protection. Regulating the activity of the emission of nuisance noise is a valid exercise of its police powers. The Township adopts this Ordinance under 1945 Public Act 246.

E. The purpose of this ordinance is to regulate the noise emissions of noise emitters in the Township to protect the public health, safety and welfare of the residents of the Township.

F. The following reasonable police power regulations in this Ordinance have been developed with the intention of obtaining an appropriate balance between the existence of unregulated nuisance noise emissions in the Township and the need to protect the public health, safety and welfare of residents of the Township. The Township wishes to adopt this Ordinance to impose reasonable regulations to decrease hazards and negative impacts associated with nuisance noise, and to protect the health, safety and welfare of the residents of Garden Township.

### **Section 3. Definitions –**

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

- A. "ANSI" means the American National Standards Institute.
- B. "Background Sound Level" means the sound pressure level exceeded 90% of the time or L90 during the quietest period the noise sources are expected to operate. It shall be measured following the procedures of ANSI S12.9, Part 3, (R2013) Section 7. Determining the background sound.
- C. "dB(A)" means the sound pressure level in decibels. Refers to the "A" weighted scale defined by ANSI. A method for weighting the frequency spectrum to mimic the human ear.
- D. db(C): The sound pressure level in decibels. It refers to the "C" weighted scale defined by ANSI. A method for weighting the frequency spectrum to include low frequency sound excluded by dB(A).
- E. "Decibel" means the unit of measure used to express the magnitude of sound pressure and sound intensity.
- F. "Nuisance" means an offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeated invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things including but not limited to, noise;

- G. "Nuisance Noise" means noise that is offensive, annoying, unpleasant or obnoxious. Between the hours of 10:00 pm to 6:00 am, noise in excess of 35 dB(A) and/or 50 dB(C) measured at the property line of the person or persons receiving such noise shall be deemed to be a nuisance.
- H. "Occupied Building" means a building used for public gathering, such as a residence, school, hospital, church, or public library, and which is occupied or in use when the permit application is submitted.
- I. "Operator" means the entity responsible for the day-to-day operation and maintenance of the item or items generating the nuisance noise.
- J. "Sound Pressure" means the average rate at which sound energy is transmitted through a unit area in a specified direction. The pressure of the sound is measured at the receiver.
- K. "Sound pressure level" means the sound pressure mapped to a logarithmic scale and reported in decibels (dB).
- L. "Township" means Garden Township.

#### **Section 4. Applicability and Scope -**

This Ordinance applies to the creation, generation and/or maintenance of all nuisance noise generated in the Township after the effective date of this Ordinance. This ordinance does not apply to activities protected by the Michigan Right to Farm Act (1981 Public Act 93).

#### **Section 5. Sound Pressure Limits -**

##### **A. Nighttime Sound Pressure Limits**

Between the hours of 10:00 pm and 6:00 am, Sound Pressure from any activity or land use not protected by 1981 Public Act 93 shall not exceed 35 dB(A) and/or 50 dB(C) measured at the property line of the person or persons receiving such noise. If the background sound pressure exceeds 35 dB(A) or 50 dB(C), the standard shall be background sound level dB(A)/(C) plus 5 dB(A)/(C).

## **Section 6. Public Inquiries and Complaints.**

Should an aggrieved property owner allege he/she is the recipient of noise in excess of the requirements of this Ordinance, the complaint resolution procedure must be as follows:

A. Complaints must be submitted to the Township Clerk in writing from the affected property owner including their name, address and contact information.

B. Upon receiving a complaint from an affected property owner the Township Clerk must present the complaint to the Township Board for review at its next regular meeting or a special meeting called for that purpose. If the Township Board deems a complaint sufficient to warrant an investigation, the Township Board must advise the owner and operator facility generating the allegedly offending noise of the complaint.

C. Within 10 days of the date of notice, the owner or operator of the allegedly offending noise generator must deposit a surety bond or its equivalent in an amount determined by the Township Board sufficient to pay for an independent investigation of the complaint. All such independent investigations and analyses must be conducted by independent, qualified, third-party professionals selected by the Township to determine compliance with the requirements of this Ordinance. All sound pressure level measurements shall be performed by an independent, qualified, third-party professional selected by the Township according to the procedures in the most current version of ANSI S12.9, Part 3, (R2013). All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter.

D. If the Township Board determines, based on its investigation, that the noise generator is in violation of this Ordinance, the owner or operator of the noise generator must reimburse the Township from the deposit required in subsection (C) above for the investigation or analysis and must take immediate action to bring the noise generator into compliance. If the Owner or Operator fails or refuses to bring the noise generator into compliance, the Township may seek any relief at law or equity to abate the nuisance. Each violation for which the Owner or Operator are deemed responsible is subject to a \$500 fine. Each day of non-compliance must be a separate offense.

## **Section 7. Penalties -**

A It is unlawful for any person or entity to violate any term of this Ordinance. In addition to the rights and remedies provided to the Township in this Ordinance, any person violating this Ordinance is guilty of a misdemeanor and upon

conviction thereof must be fined in an amount not more than \$500 or be imprisoned in the county jail for a period of not more than 90 days, or both. Each day a violation is committed is a separate offense and punishable as such.

B. In addition to any remedy described above, the Township may sue any person or entity who has violated this Ordinance in any court of competent jurisdiction for civil relief, including damages or injunctive relief. If successful, the Township may recover any relief ordered by the Court and found proper, as well as the Township's attorneys' fees, costs, and expenses incurred in such a case from any person found to have violated this Ordinance.

**Section 8. Fee Schedule -**

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

**Section 9. Severability –**

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

**Section 10. Repealer Clause –**

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

**Section 11. Effective Date –**

This Ordinance must be effective 30 days after publication.

Resolution: Therefore, be it ordained that the Township Board of Garden Township adopts the NUISANCE NOISE ABATEMENT ORDINANCE 2014-1 for Garden Township, Michigan, at a meeting duly called and held on the 9<sup>th</sup> day of December, 2014. Roll call vote: Margaret-abstained, Janet-yes, Mary Ann-yes, Brenda-yes, Ray-yes.