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LOWER MACUNGIE TOWNSHIP
Lehigh County, Pennsylvania

ORDINANCE 2020-02
(Duly adopted June, 4 2020)

AN ORDINANCE OF LOWER MACUNGIE TOWNSHIP AMENDING CHAPTER 6 OF THE LOWER MACUNGIE TOWNSHIP CODE OF ORDINANCES BY ADDING A NEW PART 3, BUSINESS OPERATIONS, TO ESTABLISH, DEFINE AND PROHIBIT SOUND/NOISE DISTURBANCES AT LICENSED ESTABLISHMENTS; SET FORTH HOURS OF OPERATION AND MITIGATION REQUIREMENTS FOR LICENSED ESTABLISHMENTS; PROVIDE PENALTIES FOR VIOLATIONS; AND PROVIDE FOR AN EFFECTIVE DATE

WHEREAS, Lower Macungie Township is a First Class Township organized and operating under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Board of Commissioners of Lower Macungie Township may, under the general authority of the First Class Township Code, enact ordinances that regulate business activities; and

WHEREAS, the Board of Commissioners of Lower Macungie Township wish to allow businesses the opportunity to provide outdoor amenities, dining and entertainment in the Township of Lower Macungie, within established guidelines, for the enjoyment of residents and patrons; and

WHEREAS, this Ordinance aims to ensure that the public health, safety and welfare will not be abridged by the making and creating of public nuisances from disturbing, excessive or offensive sound/noises from licensed establishments in Lower Macungie Township; and

WHEREAS, to achieve the intent and purpose of the Board of Commissioners of the Lower Macungie Township, this Ordinance regulates sound/noise in three manners: (1) through an objective, reasonable person standard of annoyance; (2) through the establishment of hours of operations for licensed establishments; and (3) requiring certain licensed establishments to implement mitigation measures to mitigate the impacts of noise on adjoining residential properties; and

WHEREAS, noncompliance with any of these three methods of sound/noise control constitutes a violation of this Ordinance, and is subject to the penalties provided herein; and

WHEREAS, the Board of Commissioners of Lower Macungie Township has determined that the health, safety, and general welfare of the citizens of Lower Macungie Township will be promoted and served by enacting this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF COMMISSIONERS OF LOWER MACUNGIE TOWNSHIP that Chapter 6 of the Lower Macungie Township Code of Ordinances (hereinafter the "Code) is amended by adding a new Part 3, "Business Operations," as follows::

Article I CHAPTER 6, CONDUCT

Chapter 6 of the Code is hereby amended by the addition of a new Part 3, "Business Operations."

SECTION 6-301. DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the meanings hereinafter indicated:

AMPLIFED SOUND.
Sound whose volume is increased by any electric, electronic, mechanical, or motor powered means.

EMERGENCY.
Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.

EMERGENCY VEHICLE.
A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

ENFORCEMENT PERSONNEL.
The person or persons authorized by the Township Manager of the Township of Lower Macungie to enforce this chapter. If no other person has been authorized, the Township Manager shall have the authority to enforce this chapter.

LICENSED ESTABLISHMENT.
A place of business or public or private institution in possession of a valid license to serve alcohol issued by the Pennsylvania Liquor Control Board.

NIGHTTIME.
10:00 p.m. to 11 a.m. the following day.

NOISE DISTURBANCE.
Any sound which:

(1) Disrupts or injures the comfort, repose, health, hearing, peace or safety of persons;

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(2) Annoys, disturbs or perturbs a reasonable person with normal sensitivities; or

(3) Endangers or injures personal or real property.

PERSONS.

Any individual, association, partnership or corporation, user, owner or operator and includes any officer, employee, department, agency or instrument of a state or any political subdivision of a state. Whenever used in any clause prescribing and imposing a penalty, "person" includes the individual members, partners, officers and managers of any or any of them of partnerships and associations, and as for corporations, the officers and managers thereof or any of them and, in their absence, the shareholders.

SOUND.

An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium or the superposition of such propagated oscillation which evokes an auditory sensation. The description of sound may include any characteristics of such sound, including duration, intensity and frequency.

TOWNSHIP.

The Township of Lower Macungie, Lehigh County, Pennsylvania.

SECTION 6-302. SOUND/NOISE DISTURBANCE PROHIBITED.

A. General prohibition. It shall be unlawful and a violation of this chapter for any licensed establishment to make or cause, or allow the making of, a noise disturbance during the nighttime.

B. Exemptions. The following uses and activities shall be exempt from section 3.A.:

(1) Non-amplified human voice from any licensed establishment, except yelling, shouting, whistling, hooting, singing or generally creating a raucous such that it creates a noise disturbance during the nighttime

(2) Any emergency vehicle when responding to an emergency call or acting in time of emergency at any licensed establishment.

C. Rebuttable Presumption. Noise from any licensed establishment during nighttime that disturbs two or more residents who are in general agreement as to times and duration of the noise and who reside in separate residences, including apartments and condominiums located across a property line (boundary) from the licensed establishment on which the source of the noise is generated, shall create a presumption that there has been a noise disturbance. The presumption may be rebutted by clear and convincing evidence that the noise from the licensed establishment did not result in a noise disturbance.

SECTION 6-303. HOURS OF OPERATION FOR OUTDOOR ENTERTAINMENT.

There shall be no outdoor amplified sound from a licensed establishment during the nighttime.

SECTION 6-304. SOUND MITIGATION.

A. All outdoor dining areas, outdoor beer gardens, outdoor public gathering spaces at a licensed establishment shall provide for adequate buffering in conformity with the Lower Macungie Township Zoning Ordinance and Design Guidelines [Chapter 27], when abutting residential or other non-commercial properties.

B. All on-site functional or decorative lighting at a licensed establishment shall be designed and operated in conformity with the Lower Macungie Township Zoning Ordinance [Chapter 27].

C. All garbage and refuse collection and storage areas at licensed establishments shall be in conformity with the Lower Macungie Township Zoning Ordinance and Design Guidelines [Chapter 27], and located in areas that will prevent a noise disturbance.

SECTION 6-305. ENFORCEMENT ORDER; TIME TO COMPLY.

A. A violation of this chapter shall be cause for a citation to be issued directly to the person or persons in charge of or in control of the licensed establishment.

B. Enforcement personnel may verbally communicate with the on-site staff to request that sound levels be decreased. Enforcement personnel shall have the power to shut down amplified sound during the nighttime if two complaints are received for the same event from unrelated parties.

SECTION 6-306. LICENSED ESTABLISHMENTS.

A. It is the intent of the Board of Commissioners of Lower Macungie Township to enforce noise locally for licensed establishments located in the Township.

B. Licensed establishments shall comply with the Liquor Code for local enforcement per Act 2012-116 (July 5, 2012)

SECTION 6-307. VIOLATIONS AND PENALTIES.

Any person who violates any provision of this chapter, upon conviction in a summary proceeding, shall be subject to a fine of $150 for the first violation, $250 for the second violation, $375 for the third violation, and for each offense thereafter, a minimum fine of $500 not to exceed a maximum amount of $1,000 per incident, plus the costs of prosecution. If the violation is of a continuing nature, each day during which the violation occurs shall constitute an additional, separate, and distinct offense.

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ARTICLE II Severability

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance. It is hereby declared as the intent of the Board of Commissioners of Lower Macungie Township that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

ARTICLE III Repealer

All ordinances, resolutions, or parts thereof which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

ARTICLE IV Effective Date

This Ordinance shall become effective one (1) day after enactment or upon recordation of this Ordinance within the Township's official Ordinance Book, whichever comes later.

ORDAINED and ENACTED this 4th day of June, 2020.

LOWER MACUNGIE TOWNSHIP
BOARD OF COMMISSIONERS

Ronald W. Beitler, President

Attest:

Renea Flexer, Asst. Township Manager/Secretary