

ORDINANCE NO. 090820

ORDINANCE REPEALING ORDINANCE NO. 111318
AND REPLACING THE CONTENTS THEREOF

WHEREAS, the Town Council of the Town of McCordsville, Indiana, has heretofore enacted Ordinance No. 111318 modifying Title IX, Chapter 93, §93.03, §93.04 and §93.99 of the Code of Ordinances of the Town of McCordsville, Indiana; and

WHEREAS, a committee was formed in part to review the provisions of said Ordinance and the remaining provisions of Title IX, Chapter 93, which committee has reported back to the Town Council regarding their recommendations; and

WHEREAS, the Town Council of the Town of McCordsville, Indiana believes the recommendations regarding amendments to Title IX, Chapter 93 are in the best interest of the health, safety, and welfare of the citizens of McCordsville, Indiana.

THEREFORE BE IT ORDAINED by the Town Council of the Town of McCordsville, Indiana, as follows:

SECTION I

Ordinance No. 111318 is revoked in its entirety.

SECTION II

Title IX, Chapter 93, §93.03 and § 93.04, § 93.99 shall be amended by deleting said section and inserting in lieu thereof the following:

Definitions

For the purposes of this ordinance, the following words, terms and phrases shall have the meanings set forth:

- A. **Commercial area** shall mean any parcel of land zoned as CN, CO, CR, PUD-M, P, TC, and OT under the Zoning Ordinance.
- B. **dB(A)** shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter using the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.
- C. **Decibel** shall mean a unit measure of sound level; the symbol is dB.

- D. ***Sound Level Meter*** shall mean an instrument designed to measure sound pressure levels.
- E. ***Emergency work*** shall mean any activities performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by existing or imminent peril.
- F. ***Industrial area*** shall mean any parcel of land zoned as I1 and I2 under the Zoning Ordinance.
- G. ***Person*** shall mean any individual, association, partnership, corporation or any other legal entity.
- H. ***Property line*** shall mean the real line and its vertical extension which separates the real property owned, leased or occupied by any person from contiguous real property owned, leased or occupied by any other person.
- I. ***Public property*** shall mean all real property which is owned or controlled by a governmental entity, and shall include any public rights-of-way, public buildings, parks and waterways.
- J. ***Public right-of-way*** shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.
- K. ***Residential area*** shall mean any parcel of land zoned as R-1, R-1S, R-2, R-3, R-4, R-5, MF1, MF2, and PUD-R under the Zoning Ordinance.
- L. ***Sound amplification system*** shall mean any apparatus used for the amplification of sounds from any radio, tape player, cassette player, compact disc player, loudspeaker, sound amplifier, alarm or other sound-generating device, including any apparatus for the amplification of the human voice.
- M. **Source Property**- The property from which the sound being measured originates.

SECTION III

Title IX, Chapter 93, §93.03 § 93.04(A)(1), § 93.99 shall be amended by deleting said section and inserting in lieu thereof the following:

- (1) Using, operating or permitting to be played, used or operated, any machine or device for the producing or reproducing of sound in a manner so as to disturb the peace, quiet, and comfort of neighboring inhabitants when such sound exceeds the sound level limit as it pertains to the zoning districts below, unless another agreement has been reached with the town:
 - a. Residential Area during the hours of 7:00am - 10:00pm= 55 dB(A)
 - b. Residential Area during the hours of 10:00pm - 7:00am= 50 dB(A)
 - c. Commercial Area during the hours of 7:00am - 10:00pm= 66 dB(A)
 - d. Commercial Area during the hours of 10:00pm - 7:00am= 64 dB(A)
 - e. Industrial Area during the hours of 7:00am – 10:00pm= 66 dB(A)
 - f. Industrial Area during the hours of 10:00pm - 7:00am= 64 dB(A)

- (2) Zoning Districts: The restriction of the dB(A) set forth above apply to the zoning district of the sound source, not the complainant.

- (3) Measurement Procedures: The sound level meter shall be operated according to the instrument manufacturer's instruction and as follows:
 - a. Microphone Orientation. The microphone shall be pointed toward the allegedly offensive noise source, unless the instrument manufacturer's instructions specifically indicate otherwise.
 - b. Meter Setting. The meter shall be set for the A-weighted network and "slow" response mode.
 - c. Calibration. An external calibration check and battery check shall be made before and after each use.
 - d. Meter Readings. The recorded reading shall be the highest sound level obtained with the allegedly offensive noise source in operation, disregarding unrelated peaks due to extraneous ambient noises.
 - e. Sound levels shall be measured at the approximate location of the complainant's property line, at a height of at least four feet above the immediate surrounding surface.
 - f. After a complaint is made, the officer shall measure the dB(A). If the noise level exceeds the dB(A) level allowed for

the sound source zone, then the officer will contact the person responsible for the sound source and request the sound source come into compliance. If the person responsible for the sound source does not come into compliance the officer responding to the complaint will issue the offending person a warning or citation. For every complaint and noncompliance action taken, a new citation may be issued if the sound maker continues to exceed the dB(A) level allowed for the sound source's zone.

- (4) Penalty: Whoever violates the provision of this chapter shall be fined a sum of \$100 for the first offense, a sum of \$500 for the second offense, a sum of \$1,000 for the third offense and a sum of \$2,500 for any additional offenses that occur within any one calendar year. A separate offense shall be deemed committed on each occasion a complaint is made and the sound maker refuses to come into compliance with the regulations listed above. In addition, the Public Works Commissioner and/or his or her designated representative may issue to any violator of the provisions of this chapter an immediate stop work order and/or cease and desist order, as deemed appropriate in their sole and unlimited discretion. Violation of said stop work order or cease and desist order shall constitute a separate and additional violation of this chapter and shall result in the imposition of a fine in the amount of \$2,500. Each time such violation occurs shall constitute a separate violation. Should enforcement of this chapter require the utilization of the services of the Town Attorney, the violator shall, in addition to any fines imposed, be responsible for and shall pay all such attorney fees incurred by the town.

SECTION IV

This Ordinance shall be in full force and effect from and after its passage and due publication.

SECTION V

Introduced and filed on the 8th day of September, 2020. A motion to consider on first reading on the day of introduction was offered and sustained by a vote of ____ in favor and ____ opposed pursuant to I.C. 36-5-2-9.8.

Duly ordained and passed this _____ day of _____, 2020 by the Town Council of the Town of McCordsville, Hancock County, Indiana, having been passed by a vote of ____ in favor and ____ opposed.

TOWN OF McCORDSVILLE, INDIANA, BY ITS TOWN COUNCIL

Voting Affirmative:

Voting Opposed:

Barry A. Wood

Barry A. Wood

Larry J. Longman

Larry J. Longman

Gregory J. Brewer

Gregory J. Brewer

Branden D. Williams

Branden D. Williams

Thomas R. Strayer

Thomas R. Strayer

ATTEST:

Staci Starcher, Clerk-Treasurer

This instrument was prepared by Gregg H. Morelock, BRAND & MORELOCK, 6 West South Street, Greenfield, IN 46140.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Gregg H. Morelock.