

# **Chapter 10**

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**Part 1****Grass, Weeds and Other Vegetation****§10-101. Grass, Weeds and Certain Other Vegetation not Permitted Under Certain Conditions.**

No person, partnership, association, corporation or other legal entity owning or occupying any property within the Township of Ferguson shall permit any grass, weeds or other vegetation which is not edible or planted for some useful or ornamental purpose to grow or remain upon such premises, if:

- A. Such grass, weeds or vegetation exceeds a height of 6 inches. [*Ord. 575*]
- B. Emits any unpleasant or noxious odor.
- C. Conceals any filthy deposit.
- D. Creates or produces pollen.

(*Ord. 99, 4/13/1976, §1; as amended by Ord. 575, 1/17/1993, §1*)

**§10-102. Grass, Weeds and Certain Other Vegetation a Nuisance Under Certain Conditions.**

Any grass, weeds or other vegetation growing upon any premises in the Township in violation of the provisions of §10-101 of this Part is hereby declared to be detrimental to the health, safety and welfare of the inhabitants of the Township and is accordingly declared to be a nuisance.

(*Ord. 99, 4/13/1976, §2*)

**§10-103. Grass, Weeds and Certain Other Vegetation to be Removed, Trimmed or Cut.**

The owner of any premises, either as to vacant premises or premises occupied by the owner, and the occupant thereof, in case of premises occupied by other than the owner thereof shall remove, trim or cut all grass, weeds or other vegetation growing or remaining upon such premises in violation of the provisions of §10-101 of this Part.

(*Ord. 99, 4/13/1976, §3*)

**§10-104. Provisions Inapplicable to Certain Land.**

Notwithstanding any of the other terms of this Part to the contrary, the provisions of this Part shall not apply to:

- A. Land which is located 200 feet or more from any building or structure available for use for human occupancy and is located in the RA or RR zoning district.
- B. Land which is in agricultural use.
- C. Vegetation growing within the right-of-way of roadway maintained by local, State or Federal authorities. Unless described as not applying above, the terms of this Part apply to vacant lots in residential, commercial and industrial

subdivisions.

(*Ord. 99, 4/13/1976, §4; as amended by Ord. 575, 1/17/1993, §2; and by Ord. 734, 8/16/1999, §1*)

**§10-105. Notice to Remove, Trim or Cut; Authority for Township to Do So at Expense of Defaulting Owner or Occupant.**

The Township Manager, or any officer or employee of the Township designated thereby for the purpose, is authorized to give notice, by personal service or by United States mail, to the owner or occupant, as the case may be, of any premises whereon grass, weeds or other vegetation is growing or remaining in violation of the provisions of §10-101, directing and requiring such occupant to remove, trim or cut such grass, weeds or vegetation, so as to conform to the requirements of §10-101 within 5 days after issuance of such notice. In case any person, partnership, association, corporation or other legal entity shall neglect, fail or refuse to comply with such notice within the period of time stated therein, the Township authorities may remove, trim or cut such grass, weeds or vegetation, and the cost thereof, together with any additional penalty authorized by the law, may be collected by the Township as a municipal lien or in any other manner provided by law.

(*Ord. 99, 4/13/1976, §5; as amended by Ord. 575, 1/17/1993, §3*)

**§10-106. Notice of Ordinance Violation; Payment.**

1. Upon the discovery of the initial violation on a premises during a growing season (April through October), the authorized agent of the Township shall give a written notice of warning to the owner and/or occupant of such violation. The owner and/or occupant shall then have 5 days to abate such violation.

2. After a period of no less than 5 days after the issuance of the warning notice, the Township's authorized agent may inspect the premises for compliance with this Part. If after the 5 days warning time and within the same growing season, the Township's authorized agent observes the premises to again be in violation, an ordinance violation notice shall be issued to the owner and/or occupant either by personal delivery, by United States mail directed to the last known address, or by posting the violation notice upon the premises where such violation occurs. Each 24 hour period shall constitute a separate violation and an ordinance violation notice may be issued every 24 hours. If such owner and/or occupant notified shall, within 7 days after the delivery, mailing or leaving of such violation notice, pay to the Treasurer of the Township a penalty for the violation as set forth by resolution of the Board of Supervisors, the same will constitute full satisfaction for violation noted in said notice. The failure of such person to make payment, as aforesaid, within 7 days shall render such owner and/or occupant subject to the penalties as provided for in §10-107 of this Part.

(*Ord. 99, 4/13/1976; as added by Ord. 575, 1/17/1993, §4*)

**§10-107. Penalty for Violation.**

Any person, partnership, association, corporation or other legal entity who or which shall violate or fail, neglect or refuse to comply with any of the provisions of this Part, upon conviction thereof, in a proceeding commenced before a district justice

pursuant to the Pennsylvania Rules of Criminal Procedures, shall be sentenced to a fine of not less than \$100 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Provided: each day's violation shall constitute a separate offense and notice to the offender shall not be necessary in order to constitute an offense.

(*Ord. 99*, 4/13/1976, §6; as amended by *Ord. 820*, 12/8/2003)



## Part 2

### Food Establishments and Food Handling

#### §10-201. State Act and Regulations Adopted.

Food establishments, as defined herein, are declared to be subject to the provisions of the Act of May 23, 1945, P.L. 926 (35 P.S. §§655.1–655.13), as amended, the Food Act (31 P.S. §§20.1–20.18), and the rules and regulations adopted by the Department of Agriculture of the Commonwealth of Pennsylvania, Title 7, Chapter 46, “Food Code Regulation” as now enacted and as may be hereafter amended. A copy of these regulations shall be supplied to any person operating a food establishment, on request. (Ord. 939, 8/2/2010)

#### §10-202. Definitions.

The definitions as set forth in §1 of the Pennsylvania Public Health Act, being the Act of May 23, 1945, P.L. 926, as amended, and the definitions as set forth in the rules and regulations of the Department of Agriculture of the Commonwealth of Pennsylvania, Title 7, Chapter 46, as now enacted and as may be hereafter amended are incorporated herein by reference. In addition to the definitions set forth in the Act and Food Code regulation, the following words and phrases shall have the meaning ascribed to them in this Section unless the context clearly indicates otherwise:

*Acts* - the Pennsylvania Public Health Act, the Act of May 23, 1945, P.L. 926, as amended, the Food Act, Act No. 70, July 7, 1994 (31 P.S. 20.1 *et seq.*), as amended. [Amended 8-12-1975 by Ord. No. 130; 6-16-2004 by Ord. No. 2004-431] and Act 369, the Public Eating and Drinking Places Act.

*Approving body* - the Township of Ferguson, Centre County, Pennsylvania.

*Food establishment* - both public eating and drinking places and retail food establishments, collectively.

*Pennsylvania Department of Agriculture* - the rules and regulations adopted by the Pennsylvania Department of Agriculture of the Commonwealth of Pennsylvania, Title 7, Chapter 46, now enacted and as may be hereafter amended.

*Township* - the Township of Ferguson, Centre County, Pennsylvania.

*Walk-up window* - an external opening where food or beverages are passed and/or served to a customer on or standing next to a public sidewalk.

(Ord. 939, 8/2/2010)

#### §10-203. Licenses.

1. In accordance with the Acts, no person shall conduct or operate a food establishment within the Township without first obtaining a license from the Township. No license shall be issued until inspection of the premises, facilities, and equipment of such food establishment has been made by the duly appointed representative of the said Township and found to comply with the provisions of the Acts and Department of Agriculture rules and regulations.

2. Application for a license and the required fee shall be submitted to the Health Officer or their designee prior to erection, structural alteration, occupancy, or operation of any food establishment and/or prior to the issuance of any building permit by the Centre Region Code Administration Agency.

(Ord. 939, 8/2/2010)

#### **§10-204. Inspections.**

The Township shall have the right of inspection at the submission of the application, and from time to time thereafter, to determine compliance with the terms of the Acts and this Part. The Township Supervisors shall from time to time designate and appoint an inspector who shall carry out the inspections in accordance with this Part, the Acts and Department of Agriculture rules and regulations, which are incorporated herein.

(Ord. 939, 8/2/2010)

#### **§10-205. Miscellaneous Requirements.**

1. *Home Processed Foods.* An applicant proposing to operate a food establishment where only home processed foods will be sold shall provide verification of State licensing by the Department of Agriculture. Upon receipt of verification, the applicant will be deemed to be in compliance with this Part and no additional Township licenses will be required.

2. *Eating and Drinking Places.* In addition to all other applicable local, State and Federal regulations, all eating and drinking places must comply with the Pennsylvania Clean Indoor Air Act.

3. *Retail Food Establishment.* In addition to all other applicable local State and Federal regulations, all retail food establishments must comply with the Pennsylvania Clean Indoor Air Act.

4. *Outdoor Eating Areas.* Licensed food establishments that provide outdoor eating areas and allow smoking in these areas, shall provide cigarette butt disposal containers and must keep their premises free from the same. Failure to comply with this requirement is declared to be a violation of this Part and is subject to the penalties containing herein.

5. *Requirement.* Licensed food establishments that sell or serve food or beverages through a walk-up window shall provide interior lobby or seating space for their customers. Such space shall be available to customers whenever the establishment is open for business. The lobby or seating space shall be sized so as to provide space for customers waiting for service and so that they are not forced to block or obstruct the public sidewalk. Establishments may not block or obstruct public sidewalks in providing walk-up window service. Food establishments with a walk-up window shall also provide at least one refuse receptacle near the window and on their premises for their customers' use. Refuse receptacles shall be maintained such that refuse is not allowed to spill or blow onto the public right-of-way.

6. *Hours of Operation.* Licensed food establishments that sell or serve food or beverages through a walk-up window shall cease selling or serving food through a walk-up window no later than 12 midnight, prevailing time, and may reopen no earlier than

7 a.m., prevailing time.

(Ord. 939, 8/2/2010)

**§10-206. Adoption of Rules and Regulations.**

The Township hereby enacts and ordains, and adopts as part of this Part, the rules and regulations of the Commonwealth of Pennsylvania, Department of Agriculture, Title 7, Chapter 46, as authorized under the Acts. All such rules, regulations and standards are incorporated in this Part by reference. A copy of these regulations shall be supplied upon request of the applicant.

(Ord. 939, 8/2/2010)

**§10-207. Fees.**

1. *License Fee.* The applicant shall pay a fee with the application for the license, which fee shall be made payable to the Township and shall cover the ordinary administration of this Part, including the initial and one additional inspection of the premises by the inspector. Such fees shall be established from time to time by resolution of the Township.

2. *Additional Inspection.* In the event that the Township deems it necessary to make an additional inspection under the Acts and regulations of the Department of Agriculture, as required to be made as a result of any action or inaction by the applicant, the applicant shall pay to the Township the actual cost of such additional inspection made by the Township, which shall be paid to the Township prior to the issuance of the license.

(Ord. 939, 8/2/2010)

**§10-208. Proceedings in Law or Equity; Restraint.**

The Township shall have the power to institute in the Court of Common Pleas of Centre County, Pennsylvania, proceedings in law or in equity to restrain any and all violations of the Act and the provisions of this Part. Such proceeding shall be instituted in the name of the Township of Ferguson.

(Ord. 939, 8/2/2010)

**§10-209. Violations and Penalties.**

Any person, as defined in the Acts or the rules and regulations, who shall violate any of the provisions of this Part or of the Acts or the rules, regulations or standards promulgated hereunder, or who resists or interferes with any officer, agent or employee of the Township in the performance of his duties shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 and court costs, including reasonable attorney's fees. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day's continuance of a violation shall constitute a separate offense.

(Ord. 939, 8/2/2010)



### Part 3

### Noise

#### §10-301. Purpose and Scope.

It is the purpose and scope of this Part to provide regulations defining the maximum sound levels that vehicles, appliances and equipment shall be allowed to produce at specified distances from these devices, and also to provide for the prohibition of other kinds of prohibited noises. These regulations and prohibitions are intended to protect the physical, mental and social wellbeing of the residents of the Township of Ferguson.

(*Ord. 241, 9/28/1982, §1*)

#### §10-302. Application.

This Part shall apply:

- A. To all types of vehicles, appliances and equipment, whether privately or publicly owned.
- B. To sounds of any time duration.
- C. To both the owner and operator of vehicles, appliances, equipment, devices, animals or any other object creating noises.

(*Ord. 241, 9/28/1982, §2*)

#### §10-303. Exemptions.

The following devices are exempt from the provisions of these regulations:

- A. Aircraft (except model aircraft).
- B. Police, fire, ambulance and other governmental emergency vehicles.
- C. Back-up alarm devices on trucks and other equipment when installed and operated in accordance with Society of Automotive Engineers recommended practice J 994, "Criteria for Back-up Alarm Devices."
- D. Governmental warning devices (i.e., civil defense or fire siren).

(*Ord. 241, 9/28/1982, §3*)

#### §10-304. Definitions.

All acoustical terminology shall be that contained in ANSI S1.1 "Acoustical Terminology."

*ANSI* - American National Standards Institute or its successors.

*Appliance* - any device or combination of devices used or capable of being used as a means of accomplishing a desired end, such as a window air conditioning unit.

*Day* - the 24 hour period starting at local midnight.

*Day-time* - 7:00 A.M. to 7:00 P.M. [*Ord. 292*]

*Decibel (dB)* - a unit of sound level which is a division of logarithmic scale used

to express the ratio of the sound intensity of the source to the intensity of an arbitrarily chosen reference intensity. The ratio is expressed on the decibel scale by multiplying its "base ten logarithm" by ten.

*Equipment* - any devices or combination of devices to accomplish a desired end, such as a chain saw, bulldozer, etc.

*Excessive Noise* - excessive noise is that sound which is

(1) injurious or which unreasonably interferes with the comfortable enjoyment of life and property. Measured noise levels in excess of limits established in these regulations or those specified in valid permits are declared to be excessive noise.

(2) annoying to a person of ordinary sensibilities.

*Fluctuating Noise* - a fluctuating noise is a noise whose sound level varies significantly with time.

*Impulsive Noise* - impulsive noise is characterized by brief excursions of sound level. The duration of a single impulse is usually less than one second.

*Intermittent Noise* - an intermittent noise is a noise whose sound level exceeds the ambient noise levels at least twice during the period of observation, which is 1 minute or more. The period of time during which the level of the noise remains at an essentially constant value different from that of the ambient is on the order of 1 second or more.

*Noise* - noise is any sound emitted by a person, animal, vehicle, appliance, equipment or other device and its environmental interaction.

*Ordinance Enforcement Officer* - any person appointed by the Township with responsibility to enforce municipal ordinances; or, any sworn member of the Ferguson Township Police Department.

*Person* - either the owner or operator of vehicles, appliances, equipment or devices.

*Period of Observation* - the period of observation is the time interval during which acoustical data are obtained. The period of observation is determined by the characteristics of the noise being measured and the instrumentation being used. The period of observation must be at least as long as the response time of the instrumentation. The greater the variance in individual sound level, the longer must be the observation time for a given expected accuracy of measurement.

*S.A.E.* - Society of Automotive Engineers.

*Sound Level (Noise level)* - airborne sound levels are expressed in dB and obtained by the use of specific frequency dependent weighting networks, as specified in the referenced standards. The specific weighting network used must be indicated by the proper notation. If the A-weighting is employed, the sound level is identified as dB(A).

*Sound Level Meter* - a sound level meter is an instrument, or combination of instruments, which meets or exceeds the requirements for an ANSI Type S1A or Type S2A Sound Level Meter.

*Steady Noise* - a noise whose level remains essentially constant (i.e., fluctuations are less than 5 dB during the period of observation is a steady noise.

*Vehicle* - any device, or combination of devices, used for or capable of being used for transporting persons or property. Vehicles include, but are not limited to, the following: automobiles, trucks, buses, motorcycles, motorized bicycles, snowmobiles, scooters, all-terrain vehicles, go-carts, racers and like devices, farm machinery, industrial machinery, highway graders, trailers, and semi-trailers.

(*Ord. 241, 9/28/1982, §4; as amended by Ord. 292, 4/2/1985, §1*)

**§10-305. Enforcement.**

1. *Abatement.* Any emission of noise from any source in excess of the limitation established in or pursuant to this Part herein described shall be deemed and is hereby declared to be a public nuisance and may be abated, in addition to the administrative proceedings, fines and penalties herein provided. Such abatement may be made by any Police Officer or the Ordinance Enforcement Officer, or may be made by order of the Court of Common Pleas of Centre County on complaint or petition filed on behalf of the Township of Ferguson.

2. Nothing in this Part shall be construed to impair any cause of action, or legal remedy thereof, of any person or the public for injury or damage arising from the emission or release into the atmosphere or ground from any source whatever of noise in such place or manner, or at such levels which may give rise to such cause of action.

3. The Zoning Administrator of the Township shall: [*Ord. 820*]

A. Be qualified by training and experience to perform the necessary measurements and procedures required to determine violations of the provisions of this Part.

B. File complaints with the District Justice to prosecute violations of this Part.

C. Investigate complaints of violations of this Part and make inspections and observations of noise conditions; and

D. Be authorized to issue a warning to persons considered in violation of these regulations, a warning which may allow an appropriate time not to exceed thirty calendar days for correction to bring the offending vehicle(s), appliance(s), equipment or other device(s) within the provisions of these regulations before enforcement by prosecution.

(*Ord. 241, 9/28/1982, §5; as amended by Ord. 669, 4/21/1997, §2; and by Ord. 820, 12/8/2003*)

**§10-306. Administration.**

The Township shall:

A. Have available in convenient form as in a unit the provisions of this Part and the recommended practices, rules, regulations and standards which have been adopted. A copy of the information sources shall be kept on file in the Township offices.

B. Prepare and maintain records of all orders issued by the Zoning Administrator and Zoning Hearing Board. [*Ord. 820*]

C. By the Township Manager, issue all standards, permits, certificates,

notices or other matters required under the provisions of this Part and notify all persons concerned of any decisions rendered and provide such persons with an opportunity to be heard as herein set forth.

(*Ord. 241, 9/28/1982, §6; as amended by Ord. 669, 4/21/1997, §§3,4*)

### **§10-307. Zoning Hearing Board Responsibilities.**

The Zoning Hearing Board shall hear all cases that were formerly heard by the Noise Appeals Board.

(*Ord. 241, 9/28/1982, §7; as amended by Ord. 398, 6/27/1989, §1; and by Ord. 669, 4/21/1997, §5*)

### **§10-308. Noise Limitations.**

1. *General.* No person shall make, permit or cause to be made, any excessive noise of any kind by crying, calling or shouting, or by means of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, hand organ, mechanically-operated piano, other musical instrument, wind instrument, mechanical device, radio, phonograph, sound amplifying or other similar electronic device unless said person has obtained a special permit from the Township Manager as provided in this Part.

2. *Musical Instruments.* No person shall use or perform on any hand organ or other musical instrument or device, in any public way or public open space of the Township before 7:00 A.M. or after 7:00 P.M. of the day (except on Sunday, before 9:00 A.M. or after 7:00 P.M. of the day) unless said person has obtained a special permit from the Township Manager. [*Ord. 292*]

3. *Noise from Premises.* No person owning, or in possession or control of any building or premises, shall use the same, permit the use of the same, or rent the same to be used for any business or employment or residential use, or for any purpose of pleasure or recreation, if such use shall, by its boisterous nature, disturb or destroy the peace of the neighborhood as determined at the property line in which such building or premise is situated, or be dangerous or detrimental to health. [*Ord. 820*]

4. *Equipment Noise.* It shall be unlawful for any person to use any pile driver, shovel, hammer, derrick, hoist, tractor, roller or other mechanical equipment operated by fuel or electric power in building or construction operations from 7:00 P.M. to 7:00 A.M. of the following day (Monday through Saturday), and all day Sunday until 7:00 A.M. Monday, except for emergency work on public improvements, work of public service utilities, and municipal services. [*Ord. 820*]

5. *Noise in Handling Refuse Cans.* No person shall make any unnecessary noise in the handling of ash, trash and garbage cans, either in loading or unloading, whether full or empty.

6. *Noise in Vicinity of Hospitals, Schools and Churches.* No person shall make any unnecessary noise in the vicinity of any hospital, or church during hours of public worship, or school during school hours.

7. *Unlawful to Keep Noisy Animals.* No person shall keep, or permit to be kept, harbor, or otherwise maintain any animal which shall disturb the quiet of any public street or other public place, or of any neighborhood. Provided, however, that a noisy animal shall be defined as one or more animals which makes noises habitually, so as

to constitute annoyance to a person of ordinary sensibilities.

8. *Noise by Peddlers.* No peddler or other person who plies a trade or calling of any nature on the streets of the Township shall use any horn, bell, or other sound instrument to make any noise tending to disturb the peace and quiet of the neighborhood, for the purpose of directing attention to his wares, trade or calling.

9. *Use of Horns and Other Devices on Vehicles.* No person, operating any vehicle, other than police, fire, public service or ambulance operators shall sound any horn, bell, gong, siren, or whistle, except for the ordinary horn installed on such vehicle by the manufacturer, or sound any type of horn except when reasonably necessary to prevent accidents or to otherwise comply with the law of motor vehicles.

10. The operational performance standards established by this Part shall not apply to any public performance being conducted in accordance with provisions of a special permit obtained from the Township Manager for the conduct thereof.

11. *Vehicles.* No person shall operate either a motor vehicle of a type subject to registration, except in police, fire equipment, ambulances or other government emergency vehicles at any time or under any condition of grade, load, acceleration or declaration in such a manner as to exceed the following noise limits for the category of minor vehicles based on a distance of 50 feet from the center of the lane traveled on within the speed limit specified in this Section under test procedures established by §10-310 of this Part.

Type of Vehicle	Speed Limit of 35 MPH __or less__	Speed Limit of more than __35 MPH__
(1) Any motor vehicle with a manufacturer's gross combination weight rating of 10,000 lbs. or more and any combination of vehicles towed by such motor vehicle:	86 dB(A)	90 dB(A)
(2) Any other vehicle or any combination of vehicles towed by such motor vehicle:	76 dB(A)	82 dB(A)
(3) Any motorcycle or motor driven cycle:	78 dB(A)	82 dB(A)

A. This Section applies to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this code relating to motor vehicle mufflers for noise control.

B. No person shall modify or change the exhaust muffler, intake muffler or any other noise abatement device of a motor vehicle so that the noise level is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this paragraph shall be those used to establish compliance of a new motor vehicle with the requirements of this Part.

C. No person shall sell or lease or offer for sale or lease a new or second-hand vehicle that produces a maximum noise exceeding the noise limit at a distance of 50 feet from the centerline of travel as stated above. The manufacturer,

distributor, importer or designated agent shall if requested certify in writing to the Township that his vehicles sold or leased within the Township comply with the provisions of this Part.

12. Equipment. No person shall operate any powered equipment or powered hand tool that produces a maximum noise level exceeding the following noise limits at a distance of 50 feet, under test procedures established by §10-308 of this Part.

Type of Equipment	Noise Limit
(1) Construction and industrial machinery, such as crawler-tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, motor graders, paving machines, off-highway trucks, ditchers, trenchers, compactors, scrapers, pavement breakers, compressors and pneumatic power equipment, but not including pile drivers:	86 dB(A)
(2) Agricultural tractors and equipment:	86 dB(A)
(3) Powered commercial equipment of 2HP or less intended for infrequent use in residential areas, such as chain saws, pavement breakers, log chippers, powered hand tools, etc.:	84 dB(A)
(4) Powered equipment intended for repetitive use in residential areas, such as lawn mowers, small lawn and garden tools, riding tractors, snow removal equipment, etc.:	70 dB(A)

B. No person shall sell or lease or offer for sale or lease new or second-hand equipment that produces a maximum noise exceeding the noise limit at a distance of 50 feet as stated in §10-308(11) of this Part. The manufacturer, distributor, importer or designated agent shall if requested certify in writing to the Township that his equipment sold or leased within the Township complies with the provisions of this Part.

(Ord. 241, 9/28/1982, §8; as amended by Ord. 292, 4/2/1985, §2; and by Ord. 820, 12/8/2003)

**§10-309. Use of Property.**

1. Any property use established in a zoning district as defined and designated under the provisions of the Ferguson Township Zoning Chapter shall be such as to comply with the performance standards governing noise set forth hereinafter for the district in which such use shall be located.

2. Noise levels shall be measured in terms of the sound level in dBA using equipment which meets the requirements established by this Part.

3. In all commercial and industrial zoning districts, at no point on the boundary of any residential zoning district shall the sound level of any individual operation or business, or the combined operations of any person, firm or corporation exceed the dB(A) levels shown below for the zoning district indicated from 7:00 P.M. to 7:00 A.M. (except on Saturday from 7:00 P.M. to 9:00 A.M. Sunday) of the following day, as measured under the test procedures established by §10-310(2) of this Part.

Maximum sound levels dB(A) along district boundaries as measured by conventional sound level meters on slow response:

	Residential	Commercial/Industrial
A-scale levels	55 dB(A)	62 dB(A)

In commercial zoning districts, all activities involving the production, processing, cleaning, servicing, testing, repair of materials, goods or products, or any property use shall conform with the performance standards stated above, provided that performance standards shall, in every case, be applied at the boundaries of the lot on which any such activities take place, except in such cases where the maximum permitted sound levels may be exceeded at a more distant point.

In residential zoning districts, any property use shall conform with the performance standards stated above for residential district boundaries, provided that performance standards shall, in every case, be applied at the boundaries of the lot on which such use is established, except in such cases where the maximum permitted sound levels may be exceeded at a more distant point.

The maximum sound levels established in this Section to be applied to the boundaries of a lot shall not apply to construction sites and emergency operations. Construction site noise levels shall be regulated by §10-308.11 of this Part.

(*Ord. 241, 9/28/1982, §9; as amended by Ord. 292, 4/2/1985, §3*)

**§10-310. Test Procedures.**

1. Test procedures to determine whether maximum noises emitted by new motor vehicles sold or offered for sale or lease meet the noise limits stated in §10-308.12 of this Part shall be in substantial conformity with standards and recommended practice established by the S.A.E., Incorporated and the Pennsylvania Department of Environmental Protection as well as the United States Environmental Protection Agency and such other and further standards as may be propounded in the Code of Recommended Practices of the Township.

2. Test procedures to determine whether maximum noises emitted by powered equipment or powered hand tools, sold or leased, or offered for sale or lease, meet the noise limits stated in §10-308.12 of this Part shall be in substantial conformity with Standards and Recommended Practices established by the S.A.E., Incorporated and the Pennsylvania Department of Environmental Protection as well as the United States Environmental Protection Agency and such other and further standards as may be propounded in the Code of Recommended Practices of the Township.

(*Ord. 241, 9/28/1982, §10; as amended by Ord. 820, 12/8/2003*)

**§10-311. Penalties.**

1. Any person found guilty of violating, disobeying or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this Part in any 180 day period, except when otherwise specifically provided, upon conviction thereof, in a proceeding commenced before a district justice pursuant to the Pennsylvania Rules of Criminal Procedures, be sentenced to a fine of not less than \$25 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. [*Ord. 820*]

2. A separate and distinct offense shall be committed each day that a violation of the terms of this Part continues to exist.

(*Ord. 241, 9/28/1982, §1; as amended by Ord. 820, 12/8/2003*)

## Part 4

### Lewd Material

#### §10-401. Definitions.

*Audience* - one or more persons who are permitted to view a performance for valuable consideration or in or from a public place.

*Display Publicly* - exposing, placing, posting, exhibiting, or in any other fashion displaying in any location, whether public or private, material or a performance in such a manner that it may be readily seen and its content or character distinguished by viewing it in or from a public place or vehicle.

*Disseminate* - manufacture, issue, publish, sell, lend, distribute, rent, transmit, broadcast, exhibit, give away, or present material or to offer or agree to do the same, or to have in one's possession with intent to do the same.

*Knowing* - as used in §10-502 "knowing" means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, any material described herein which is reasonably susceptible of examination by the person.

*Lewd Material* - any material or performance in which all or the following elements are present:

A. Considered as a whole, by the average person, applying the contemporary community standards of the Township of Ferguson, it appeals to the prurient interest in sexual conduct, as hereinafter defined.

B. It depicts, describes or represents in a patently offensive way, sexual conduct, as hereinafter defined.

C. Taken as a whole, it lacks serious literary, artistic, political, educational or scientific value.

*Material* - any printed matter, visual representation or image, or sound recording including, but not limited to books, magazines, story paper, comic book or writing, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensional forms, sculptures, and phonograph, tape or wire recordings.

*Pander* - advertising or propagandizing in connection with the sale of material, the offering of a service, or the presentation or exhibition of a performance by appealing to the prurient interest of potential customers.

*Performance* - any live or reproduced exhibition including but not limited to any play, motion picture film, dance or appearance presented to or performed before an audience.

*Person* - any individual, partnership, firm, association, corporation or other legal entity.

*Promote* - to present for public acceptance through advertising and publicity.

*Prurient Interest* - desire or craving for sexual stimulation or gratification. In determination prurient interest, the material or performance shall be judged with

reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to the prurient interest of a particular group of persons, including but not limited to, homosexuals or sado-masochists. In that case, it shall be judged with reference to the particular group for which it was designed.

*Public Place or Vehicle* - any street, alley, park, boulevard, school or other public property or any dance hall, rental hall, theater, amusement park, liquor establishment, store, depot, place of public accommodation, or other private property in the Township of Ferguson generally frequented by the public for the purposes of education, recreation, amusement, entertainment, sport, shopping or travel; or any vehicle for public transportation, owned or operated by the government, either directly or through a public corporation or authority, or owned or operated by any non-governmental agency for the use, enjoyment or transportation of the general public.

*Sado-masochistic Abuse* - flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

*Sexual Conduct*

- A. Masturbation.
- B. Sexual intercourse, whether genital-genital, oral-genital, oral-anal or anal-genital.
- C. Any erotic fondling or touching of the covered or uncovered genitals, buttocks, pubic area, or any part of the breasts of the female, whether the conduct described in subsections A. through C. is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects.
- D. Actual or simulated display or exhibition of the human pubic area or genitals or any part thereof.
- E. Sexual excitement, as herein defined.
- F. Sado-masochistic abuse, as herein defined.

*Sexual Excitement* - means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Ord. 420, 12/12/1989, §1)

**§10-402. Disseminating and/or Promoting Lewd Material.**

It shall be unlawful for any person, to disseminate and/or promote and/or display publicly lewd material in the Township of Ferguson. A person shall be guilty of the offense of disseminating and/or promoting and/or displaying publicly lewd material, if, knowing its content and character he:

- A. Disseminated or causes to be disseminated any lewd material in or from a public place or vehicle, or for valuable consideration; or has in his possession any lewd material with intent to so disseminate; or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for such dissemination of lewd materials.
- B. Sells an admission ticket or pass to premises where there is being

exhibited or is about to be exhibited lewd material or a performance which contains lewd material.

C. Admits, by accepting a ticket or pass, a person to premises where there is being exhibited lewd material or a performance which contains lewd material.

D. Produces, presents, directs, or knowingly allows the use of any business, building, vehicle or place, owned, leased, conducted or managed by him to be used for a performance which contains lewd material before an audience.

E. Participates in that portion of a live performance before an audience which makes the performance contain lewd material.

F. Panders, displays publicly, or disseminated door to door, any lewd material, or causes such pandering, public display or door to door dissemination.

(*Ord. 420, 12/12/1989, §1*)

#### **§10-403. Penalties.**

Any person who shall violate this Part, shall, upon conviction thereof, in a proceeding commenced before a district justice pursuant to the Pennsylvania Rules of Criminal Procedures, be sentenced to a fine of not less than \$100 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues shall constitute a separate offense.

(*Ord. 420, 12/12/1989, §1; as amended by Ord. 820, 12/8/2003*)

#### **§10-404. Injunction.**

The Solicitor of the Township of Ferguson may institute proceedings in equity in the Court of Common Pleas of Centre County against any person who violates or clearly is about to violate this Part for the purpose of enjoining such violation. The Court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The Court shall be requested by the Solicitor of the Township of Ferguson to hold a hearing within 3 days, one of which days must be a business day for the Court, and a final decree shall be requested to be filed in the Office of the Prothonotary within 24 hours after the close of the hearing. A written memorandum supporting the decree shall be filed within 5 days of the filing of the decree. The Solicitor of the Township of Ferguson shall prove the elements of the violation beyond a reasonable doubt. The defendant shall have the right to trial by jury at said hearing.

(*Ord. 420, 12/12/1989, §1*)



## Part 5

### Reimbursement for Unnecessary Non-Routine Police Services

#### §10-501. Definitions.

As used in this Part, the following terms shall have the meanings indicated unless a different meaning clearly appears from the context:

*Actor* - a person violating any ordinance of the Township of Ferguson and/or any laws of the Commonwealth of Pennsylvania and/or those laws, rules and regulations designated as the Pennsylvania Crimes Code Pa.C.S.A., Title 18, and Title 35, Chapter 6, in their entirety.

*Request for response* - any communication to the Township of Ferguson or County 911 Dispatch Center or to the police or other entity, indicating the possibility or existence of the occurrence of a crime or other emergency situation warranting immediate action by the police.

*Requestor* - any person, tenant, resident, business organization, non-profit organization, charitable institution, agent, servant, or employee who makes a request for response.

*Response* - any request for response which causes the Township of Ferguson Police Department to utilize its communications systems, motor vehicles and/or personnel to arrive at any place designated by the requestor.

(Ord. 794, 6/3/2002, §2)

#### §10-502. Imposition of Costs and Expenses - Fees.

1. Any requestor who makes a request for response which causes a response and subsequently results in the withdrawing of charges initiated as a result of the response or any requestor who unreasonably makes multiple requests for response may be charged the cost of the response(s) as set forth in §10-503 of this Part.

2. If it is determined that any actor has violated any ordinance of the Township of Ferguson or any law of the Commonwealth of Pennsylvania, said actor may be charged the cost of the response as provided at §10-503 of this Part. A determination that an actor has violated any Township ordinance or any State law shall be established upon proof of any of the following:

A. An adjudication of guilty after a bench trial before any judge of the Court of Common Pleas of Centre County.

B. An adjudication of guilty by any Centre County District Justice.

C. A conviction by a jury after trial.

D. An actor's guilty plea.

E. An actor's plea of nolo contendere.

F. An actor's plea of no contest.

G. An actor's agreement to a disposition without verdict such as probation without verdict.

H. An adjudication, determination, or consent agreement regarding a juvenile under the Pennsylvania Juvenile Act.

3. A person who is responsible for a response to an incident of a summary nature may be issued a warning and advised of the consequences for additional responses. If an additional response or responses for additional violation(s) within a 90-day period are required, then the person or persons responsible may be subject to reimbursement fees for not only the subsequent response(s) but also for the initial response.

4. In the case of a specific location which becomes a source of repeated calls for service, the owner, occupant or lessee responsible for such a location, who has been properly forewarned, may be considered responsible for the repeated calls to that location and will be subject to payment of the same costs and expenses as requestors under subsection .1 or actors under subsection .2.

5. Nothing in this Part is to be construed to infer that any person acting in good faith who initiates a request for response which turns out to be unfounded or unnecessary is liable under this Section.

6. Moreover, any person who unknowingly or unintentionally necessitates a request for response and who voluntarily resolves the nuisance shall be issued a warning and advised of consequences. Subsequent responses for the same or similar offense(s) within a 90-day period may result in the actor being invoiced for all responses, including the first.

(*Ord. 794, 6/3/2002, §2*)

#### **§10-503. Fees.**

Upon the occurrence of any of the events set forth at subsections .1 through .4 of §10-502, and if liability is not excused by §§10-502.5 or 10-502.6 of this Part, the requestor or actor in question shall pay to the Township of Ferguson the fee set forth in the Ferguson Township reimbursement costs resolution on file at the Ferguson Township municipal building. The fee set forth in said resolution may be adjusted by further resolution of the Board of Supervisors of Ferguson Township. The requestor or actor shall also be responsible for paying to the Township any incidental costs, fees or expenses relating to any such response that are not set forth in the Ferguson Township reimbursement costs resolution.

(*Ord. 794, 6/3/2002, §2*)

#### **§10-504. Collection of Fees.**

1. The Ferguson Township Police Department shall provide an invoice to those individuals creating the requirement of a police response and/or any actor or perpetrator as set forth in §10-502 of this Part pursuant to the schedule of charges set forth in Appendix "A"<sup>2</sup> of this Part, said amount being the hourly rate indicated thereon plus any incidental costs, fees or expenses.

2. The invoice as designated above shall be provided by the Ferguson Township Police Department within 30 days of the date of the police response or determination as set forth in this Part. Thereafter, payment shall be made to Ferguson Township for

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<sup>2</sup>Editor's Note: Appendix "A" is on file at the Township office.

the aforesaid invoice within 30 days of the date of the invoice.

3. If a person who receives an invoice from the Ferguson Township Police Department shall fail to pay the same within 30 days after receipt of said invoice, the Township of Ferguson is authorized to file a civil action and/or an action for a municipal lien against the invoiced party. Notwithstanding the foregoing, Ferguson Township, by and through its Police Department, may request any court having competent jurisdiction over a requestor or actor to make restitution to Ferguson Township of said invoiced amount.

4. Interest on the unpaid balance of any invoices for any fees shall carry an interest rate of 6% per annum on the unpaid balance. In addition, the Township of Ferguson may assess attorney's fees, costs and expenses associated with the collection of any fees authorized by this Part.

*(Ord. 794, 6/3/2002, §2)*



## Part 6

### Abandoned and Nuisance Motor Vehicles

#### §10-601. Definitions.

As used in this Part, the following terms have the meaning indicated, unless a different meaning clearly appears from the context:

*Abandoned motor vehicle* - any motor vehicle which is without a currently valid license plate or plates and is wrecked, dismantled, inoperative (meaning that it cannot move under its own motorized power), without current inspection, or in an abandoned condition, with the exception of motor vehicles stored at permitted motor vehicle repair, body repair, auto wrecking, junk and scrap establishments and automobile dealerships/sales.

*Board of Supervisors* - the elected governing body of the Township of Ferguson, Centre County, Commonwealth of Pennsylvania.

*Lessee* - owner for the purpose of this Part when the lessor holds the lessee responsible for maintenance and repairs.

*Motor vehicle* - any type of mechanical device, propelled by a motor, in which persons or property may be transported upon public streets or highways, and including trailers or semi-trailers pulled thereby with the exception of usable farm machinery, self-propelled wheel chairs, ATV's, go-karts and riding lawn and garden equipment.

*Nuisance* - any condition, which shall constitute a danger or potential danger to the health, safety, or welfare of the citizens of the Township of Ferguson.

*Owner* - the actual owner, agent lessee or custodian of the property on which motor vehicles are stored, whether individual or partnership, association, or corporation.

*Person* - a natural person, firm, partnership, association, corporation, or other legal entity.

*Competition vehicle* - an unlicensed and uninspected but operable motor vehicle specifically designed and constructed for competitive use on an off-street motorsports facility.

*Restoration vehicle* - an unlicensed, uninspected, inoperable motor vehicle being restored and repaired to be a licensed, inspected and operable vehicle.

*Restoration parts vehicle* - an unlicensed, uninspected, inoperable motor vehicle used to salvage parts used in the restoration and repair of a vehicle being restored to be a licensed, inspected and operable vehicle.

*Township* - the Township of Ferguson, Centre County, Commonwealth of Pennsylvania.

In this Part, the singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine and the neuter.

(Ord. 835, 8/16/2004, §1)

**§10-602. Abandoned Motor Vehicle and Motor Vehicle Nuisances Prohibited.**

It shall be unlawful for any person, owner or lessee to maintain a motor vehicle nuisance or abandoned motor vehicle upon the open private grounds of such person, owner or lessee within the Township. A motor vehicle nuisance shall include any motor vehicle which is unable to move under its own power, unlicensed and uninspected, and has any of the following physical defects:

- A. Broken windshields, mirrors or other glass, with sharp edges.
- B. One or more flat or open tires or tubes.
- C. Missing doors, windows, hood, trunk or other body parts which could permit animal harborage.
- D. Any body parts with sharp edges including holes resulting from rust.
- E. Missing tires resulting in unsafe suspension of the motor vehicle.
- F. Broken head-lamps or tail-lamps with sharp edges.
- G. Disassembled chassis parts apart from the motor vehicle stored in a disorderly fashion or loose in or on the vehicle.
- H. Protruding sharp objects from the chassis.
- I. Broken vehicle frame suspended from the ground in an unstable manner.
- J. Leaking or damaged oil pan or gas tank which could cause fire or explosion.
- K. Exposed battery containing acid.
- L. Open or damaged floor boards including trunk and fire-wall.
- M. Damaged bumpers pulled away from the perimeter of vehicle.
- N. Broken grill with protruding edges.
- O. Loose or damaged metal trim and clips.
- P. Suspended on unstable supports.
- Q. Such other defect which could threaten the health, safety and welfare of the citizens of the Township of Ferguson.

(Ord. 835, 8/16/2004, §1)

**§10-603. Storage of Motor Vehicle Nuisances Permitted.**

1. Any person, owner or lessee who has one or more abandoned motor vehicle(s) or motor vehicle nuisance(s) as defined in §10-601 above may store such vehicle(s) in the Township of Ferguson only in strict compliance with the regulations provided herein. The abandoned motor vehicle(s) or motor vehicle nuisance(s) must be stored within a garage or other enclosed building.

2. *Restoration Vehicle.* Restoration vehicle(s) must be stored inside a garage or other enclosed building. One restoration vehicle may be stored outdoors on the property subject to certain conditions. If a restoration vehicle is stored outdoors then there shall be no other restoration vehicle, restoration parts vehicle or other abandoned motor vehicle or nuisance motor vehicle stored on the property outdoors. An annual "restoration vehicle" permit shall be applied for and issued to property owners that are

restoring a vehicle that is stored outdoors. The permit fee shall be established by resolution of the Board of Supervisors. The restoration vehicle shall be covered with a commercially manufactured vehicle cover designed to completely cover the vehicle from the front bumper to the rear bumper. A one time restoration vehicle permit shall be issued for no more than 2 consecutive years. At the end of the second permit year the restoration vehicle unless fully restored, licensed and operable, shall be removed from the property and shall be considered an abandoned nuisance motor vehicle unless the vehicle is stored inside a garage or other enclosed building. Restoration vehicles shall not be stored in any prohibited yard area (see Zoning Ordinance, §27-709.E) and the storage area shall be depicted on the permit application.

3. *Restoration Parts Vehicle.* One vehicle used as a “restoration parts vehicle” may be stored on the property subject to certain conditions. An annual “restoration parts vehicle” permit shall be applied for and issued to property owners that are restoring a vehicle enclosed in a garage or other enclosed building. The permit fee shall be established by resolution of the Board of Supervisors. The restoration parts vehicle shall be covered with a commercially manufactured vehicle cover designed to completely cover the vehicle from the front bumper to the rear bumper. Parts removed from the vehicle shall be stored in the garage or other enclosed building. A one time restoration parts vehicle permit shall be issued for no more than 2 consecutive years. At the end of the second permit year the restoration parts vehicle shall be removed from the property and shall be considered an abandoned nuisance motor vehicle. Restoration parts vehicles shall not be stored in any prohibited yard area (see Zoning Ordinance, §27-709.E) and the storage area shall be depicted on the permit application.

4. *Competition Vehicle.* Nothing herein shall prohibit the storage of one competition vehicle on the property provided the vehicle is stored on the property of the racing vehicle owner, it is not stored in any prohibited yard area, there is no other permit issued for a restoration vehicle or restoration parts vehicle if the competition vehicle is stored outdoors, and further that the vehicle is either stored in an enclosed building or if stored outside it is covered using a commercially manufactured vehicle cover designed to completely cover the vehicle from the front bumper to the rear bumper.

(Ord. 835, 8/16/2004, §1)

#### **§10-604. Inspection of Premises; Notice to Comply.**

1. The Zoning Administrator, upon receiving a complaint, viewing of a violation or other probable cause, shall notify the owner of the property on which motor vehicles are stored to determine if there is compliance with this Part. If the property owner denies access to the property the Zoning Administrator is hereby authorized to inspect outdoor private property, on which motor vehicles are stored to determine if there is compliance with the provisions of this Part. If noncompliance with the provisions of this Part constitutes a nuisance, or if any condition poses a threat to the health, safety, or welfare of the public, the Zoning Administrator shall issue a written notice by first class mail to the property owner describing the violation and giving the owner 15 business days to correct the violation(s). Failure of the property owner to correct the violations shall be cause for the Zoning Administrator to cause to be served by registered, certified mail, regular mail or personal service upon the owner of said premises notice, or, if the owner's whereabouts or identity be unknown, by posting the

notice conspicuously upon the offending premises.

2. Said notice shall specify the condition complained of, and shall require the owner to commence to remove or otherwise rectify the condition as set forth therein within 10 business days of receipt, personal service or posting of said notice, and thereafter, to fully comply with the requirements of the notice.

*(Ord. 835, 8/16/2004, §1)*

**§10-605. Authority to Remedy Noncompliance.**

If the owner of grounds on which motor vehicles are stored does not comply with the notice to abate the nuisance, within the time limit prescribed, the Township shall have the authority to take measures to correct the conditions and collect the cost of such corrections plus 10 percent of all costs. The Township, in such an event and pursuant to its statutory or otherwise authorized police powers, shall have the right and power to enter upon the offending premises to accomplish the foregoing.

*(Ord. 835, 8/16/2004, §1)*

**§10-606. Hearing.**

1. Any person aggrieved by the decision of the Zoning Administrator may request and shall then be granted a hearing before the Zoning Hearing Board; provided the aggrieved person files with the Zoning Hearing Board, within 10 business days after notice of the Zoning Administrator's decision, an appeal requesting such a hearing and setting forth a brief statement of the grounds therefore. The hearing shall commence not later than 60 days after the date on which the appeal was filed.

2. After such hearing, the Zoning Hearing Board shall sustain, modify or overrule the action of the Zoning Administrator.

*(Ord. 835, 8/16/2004, §1)*

**§10-607. Penalties.**

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not less than \$100 nor more than \$600, and in default of payment, to undergo imprisonment for a term not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense.

*(Ord. 835, 8/16/2004, §1)*

**§10-608. Remedies not Mutually Exclusive.**

The remedies provided herein for the enforcement of this Part, or any remedy provided by law, shall not be deemed mutually exclusive; rather they may be employed simultaneously or consecutively, at the option of the Township.

*(Ord. 835, 8/16/2004, §1)*