

FRANKLIN TOWNSHIP

ORDINANCE NO. 107-12

NUISANCE ORDINANCE

An Ordinance to promote the public health, safety, and general welfare of property owners of the Franklin Township, Clare County, Michigan, by the regulation of excessive noise, junk, junk automobiles, and other nuisance conditions in the Township, each of which is a serious hazard to the public health, welfare, and quality of life in the Franklin Township; and to prescribe the penalties for violations of the regulations.

THE FRANKLIN TOWNSHIP ORDAINS:

SECTION 1 Title.

This Ordinance is to be known and may be cited as the Franklin Township Nuisance Ordinance.

SECTION 2 Purpose; Preamble; Findings.

The purpose of this Ordinance is to prohibit and make unlawful the committing, creating, or maintaining any public nuisance within the Township, including among other things junk, junk automobiles, and excessive noises, in order to minimize or reduce the potential safety hazards associated by such conduct, and otherwise provide for the health, safety, and welfare of residents and property owners of the Township by the prohibitions described in this Ordinance.

The Township is empowered by Act 246 of the Public Acts of 1945, as amended (now MCL 41.181), to adopt this Ordinance regulating the public health, safety, and general welfare of persons and property, and to provide penalties for the violation of this Ordinance.

The Franklin Township Board of Trustees finds that:

A. The nuisance conditions regulated in this Ordinance can, if not regulated, constitute a serious hazard to the public health, safety, welfare, and the quality of life of its citizens and property owners.

B. People and property owners in the Franklin Township have a right to an environment free from nuisance conditions that may jeopardize the health, safety, welfare of others, or otherwise degrade the quality of life of its citizens and property owners.

SECTION 3 Definitions.

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

A. "American National Standards Institute" (or "ANSI") means the standards-setting, non-governmental organization formed in 1918 that develops and publishes standards for, among other tasks, measuring sound levels.

B. "Decibel" means a unit used to express the magnitude of sound pressure and sound intensity.

C. "dB(A)" means the sound pressure level in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication ANSI §1.4-1971.

D. "Emergency work" means work by emergency responders (such as those who provide police, fire, or ambulance service in the Township) responding to a police call, ambulance dispatch, fire department dispatch; made necessary to restore property to a safe condition following a public calamity; work to restore public utilities; or work required to protect persons or property from imminent danger.

E. "Person" means an individual, firm, or entity who (a) causes or makes a nuisance condition; (b) is in control of the property or premises from which a nuisance condition originates or emanates; or (c) owns the property or premises from which a nuisance condition originates or emanates.

SECTION 4 Public Nuisance Prohibited.

A public nuisance is defined to be any act or condition that is forbidden by any provision of this Ordinance. No person should commit, create, or maintain any public nuisance.

SECTION 5 Public Nuisances Per Se.

The following acts or conditions are each declared to be a public nuisance per se:

A. The placing or maintaining by any person, or permitting to remain on premises owned or occupied by him, or the throwing, placing, or leaving, or permitting the throwing, placing or leaving in any public place or on the premises of another any of the following substances: organic refuse, food wastes, ashes, dead animals, fish, animal bones, hides, rotten soap, grease, tallow, offal, shell, food containers or wrappings, cans, bottles, jars, crockery, garbage, discarded furniture, cartons, boxes, crates, rags, discarded clothing, bedding, floor covering, wallpaper, sweepings, waste paper, newspapers or magazines, motor vehicle parts, machinery parts, discarded appliances, rubbish, excrement, rot, construction debris (including but not limited to lumber, bricks, block, plumbing or heating materials, roofing materials, concrete, cement, electrical materials or siding), yard debris or rubbish (including but not limited to grass clippings, clippings from hedges or shrubs, or detached tree branches), industrial waste, or unclean or nauseous fluids or gases.

B. The emission of noxious fumes or gas, smoke, ashes, or soot in such quantities as to render occupancy of property dangerous or uncomfortable to a person of ordinary sensibilities.

C. The keeping of explosives, inflammable liquids, or other dangerous substances stored in any manner or in any amount contrary to the provisions of any statute or applicable administrative regulation of the State of Michigan.

D. All dangerous and unguarded excavations or machinery in any public place, or so situated, left, or operated on private property as to attract the public.

E. The owning, driving or moving upon the public streets and alleys of a truck or other motor vehicle which: (i) is constructed or loaded so as to permit any part of its load or contents to be deposited upon any street, alley, sidewalk, or other public or private place, or (ii) deposits from its wheels, tires, other parts unto the street, alley, sidewalk or other public or private place dirt, grease, sticky substances or foreign matter of any kind. However, under circumstances determined by the Township Supervisor or designated Township Representative to be in the public interest, he or she may grant persons temporary exemption from the provisions of this subsection conditioned upon: (i) the applicant's agreement to clean and correct the violating condition as specified by the Township Supervisor or designated Township Representative, and (ii) the applicant's execution of a performance guarantee to reimburse the Township for any extraordinary maintenance expenses incurred by the Township in connection with such violation.

F. The keeping, either inside or outside of any building, structure, or dwelling, in a place accessible to children, any abandoned, unattended, unused or discarded icebox, refrigerator, or any air tight container of any kind which has a snap latch or other locking device thereon, without first removing the snap latch or other locking device, or the doors, from such icebox, refrigerator or other such air tight container.

G. The abandoning, leaving, keeping, or maintaining of a junk or abandoned motor vehicle, as provided in Section 6 of this Ordinance.

H. The making, or continuing to make, or causing to be made or continued any noise that unreasonably annoys or disturbs the quiet, comfort, or repose of a reasonable person of normal sensitivities in the vicinity, as provided in Section 7 of this Ordinance.

SECTION 6 Junk Motor Vehicles.

A. A "motor vehicle" is hereby defined as any wheeled vehicle which is self-propelled or intended to be self-propelled. A "junk motor vehicle," for purposes of this Section, means any motor vehicle that:

- (1) has remained on the premises of another for (a) a period of at least 48 continuous hours without the consent of the owner or occupant of the premises; or (b) a period of at least 48 continuous hours after the consent of the owner or occupant of the premises has been revoked;
- (2) for a period of at least 30 consecutive days, is without all of the following: an engine in running condition, four inflated tires, and a battery;

- (3) for a period of at least 72 hours, does not have attached current and registered license plates;
- (4) is, in fact, abandoned by its owner; or
- (5) is, for any reason, both inoperable and unrepairable.

B. No person should abandon a motor vehicle or part thereof on the premises of another.

C. No person should store, maintain, keep, or authorize the storage, maintenance, or keeping of any junk motor vehicle (or part thereof) on any private property under his ownership, tenancy, or control.

D. The following motor vehicles shall not be deemed a junk motor vehicle for purposes of this Section: vehicles stored within a fully enclosed building; vehicles kept as stock in trade by a regularly licensed dealer in motor vehicles; and vehicles stored by a licensed junk dealer. The Supervisor may, upon written application, exempt from this section for any reasonable period of time the following: (i) any historic or classic vehicle; or (ii) any vehicle in the process of restoration or repair.

SECTION 7 Noise.

A. General Prohibited Noise. It is unlawful and a public nuisance under this Ordinance for any person to make, maintain, or cause to be made, any noise that unreasonably annoys or disturbs the quiet, comfort, or repose of a reasonable person of normal sensitivities in the vicinity.

B. Specifically Prohibited Noise. The following noises and acts are declared excessive, unnecessary, unnatural, or unusually loud noise that unreasonably annoys or disturbs the quiet, comfort, or repose of a reasonable person of normal sensitivities in the vicinity.

- (1) Radios, phonographs, and musical instruments. Operating, playing, or permitting the operating or playing of any radio, phonograph, television set, amplified or unamplified musical instrument, drum, loudspeaker, tape recorder, or other sound-producing device, in such a manner so as to unreasonably annoy or disturb the quiet, comfort, or repose of a reasonable person of normal sensitivities in any office, dwelling, hotel, hospital, or residence. The operation of any such set, instrument, phonograph, machine, or device between 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50' from the property from which the noise originates or emanates is prima facie evidence of a violation of this section.
- (2) Shouting and whistling. Yelling, shouting, hooting, whistling, singing, or making any other loud noises on the public streets, sidewalks, bike

pathways, or other streets or paths within the Township, between the hours of 11:00 p.m. and 7:00 a.m. the following day, or the making of any such noise at any time or place so as to unreasonably annoy or disturb the quiet, comfort, or repose of a reasonable person of normal sensitivities in the area. It is prima facie evidence of a violation of this subsection if such is audible 50' from its point of origin.

- (3) Pets, Animals and Birds. Owning, possessing, or harboring any pets, animals, or birds that frequently, repeatedly, and continuously howl, bark, meow, squawk, or make other sounds at any time or place so as to unreasonably annoy or disturb the quiet, comfort, or repose of a reasonable person of normal sensitivities in the area. It is prima facie evidence of a violation of this subsection if such is audible 50' from its point of origin.
- (4) Construction. Unless a variance therefor is first obtained from the Township, the operating or permitting the operation of any tools or equipment used in construction, excavation, demolition, alteration or repair of any building, street or highway, between the hours of 9:00 p.m. and 7:00 a.m. the following day, such that the sound therefrom is plainly audible in any dwelling, hotel, hospital, office or residence, or on any residential property other than the property from which the noise emanates or originates, so as to unreasonably annoy or disturb the quiet, comfort, or repose of a person of normal sensitivities in any office, dwelling, hotel, hospital, or residence.
- (5) Horns. Sounding of any horn or other similar signaling device on a motor vehicle so as to unreasonably annoy or disturb the quiet, comfort, or repose of a person of normal sensitivities in any office, dwelling, hotel, hospital, or residence, unless such is necessary to operate the vehicle safely or as required by the Michigan Motor Vehicle Code or another pertinent local ordinance.
- (6) Vehicles. The operation of any automobile, motorcycle or other vehicle so out of repair or so loaded or constructed as to cause loud and unnecessary grinding, grinding, rattling or other unreasonable noise, including the noise resulting from exhaust, which is clearly audible from nearby properties and unreasonably disturbing to the quiet, comfort or repose of other persons. The modification of any noise abatement device on any motor vehicle or engine, or the failure to maintain the motor vehicle or engine so that the noise emitted by such vehicle or engine is increased above that emitted by such vehicle as originally manufactured, shall be a violation of this section.

C. Exceptions. The noise prohibitions in Section (B) do not apply to

- (1) Any police vehicle, ambulance, fire engine, or other emergency vehicle while engaged in emergency work.
- (2) Any act done on a temporary basis that is permitted by law and for which a license or permit therefor has been issued by the Franklin Township or another proper governmental entity;
- (3) The emission of noise for the purpose of alerting persons to the existence of an emergency through a warning device authorized by law;
- (4) The emission of sound for the purpose of performance of emergency work in the Franklin Township;
- (5) Noise emanating from the discharge of a firearm if the discharge of the firearm was authorized under state law and local ordinance.

D. The Township Board may grant an applicant a variance of Section 7 to permit construction noises otherwise prohibited hereunder if, after notice and a hearing, the applicant proffers evidence from which the Township Board can reasonably conclude that compliance with this section would constitute an unreasonable hardship on either the applicant or the community.

E. Notwithstanding any other provision in this Ordinance, a noise at a level of 50 dB(A) or less measured at any residence, office, hotel, hospital, school, church, or court creates a rebuttable presumption on behalf of the alleged violator of this Ordinance that the noise at issue does not violate this Ordinance.

F. Type of Measurement Instrument. All measurements of dB(A) related to this Ordinance must be made by using a sound level meter of standard design and operated on the "A" weight scale with "slow" meter response. A calibration check must be made of the system at the time of any noise measurement such that the measurement taken is a proper representation of the sound or noise at issue.

G. Place of Measurement. All measurements of noise related to this Ordinance must be made at the office, residence, hotel, hospital, or other building that contains the person whose quiet, comfort, or repose is alleged to have been annoyed or disturbed in violation of this Ordinance.

SECTION 8 Dangerous Buildings Prohibited.

A. It is unlawful for any person in control of real property to keep or maintain any dangerous building on that property as defined in this Ordinance.

B. As used in this Section 8, "Dangerous Building" means any building or structure which has one or more of the following defects or is in one or more of the following conditions:

- (1) Any door, aisle, passageway, stairway or other means of exit does not conform to the applicable fire code or the applicable building code enforced within the Township.
- (2) Any portion of the building or structure is damaged by fire, wind, flood, or by any other cause so that its structural strength or stability is appreciably less than it was before such catastrophe and does not meet the minimum requirements of the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, or the applicable building code enforced within the Township for a new building or structure.
- (3) Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.
- (4) Any portion of the building or structure has settled to such an extent that its walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, or the applicable building code enforced within the Township.
- (5) The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.
- (6) The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.
- (7) The building or structure becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing an unlawful or immoral act.
- (8) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, which because of dilapidation, decay, damage, faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation, or is in a condition that the health officer of the state or county determines is likely to cause sickness or disease or is likely to injure the health, safety, or general welfare of the people living in the dwelling.
- (9) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(10) A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease, or rent with a real estate broker licensed under Article 25 of the Occupational Code, Act 299 of the Public Acts of 1980, as amended, being Sections 339.2501 to 339.2515 of the Michigan Compiled Laws. For purposes of this subsection "building or structure" includes, but is not limited to, a commercial building or structure. This subsection does not apply to a building or structure as to which the owner or agent does both of the following:

- a. Notifies the Clare County Sheriff's Department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice must be given to the local law enforcement by the owner or agent not more than 30 days after the building or structure becomes unoccupied.
- b. Maintains the exterior of the building or structure and adjoining grounds in accordance with this Ordinance, the Housing Law of the State of Michigan, Act No. 167 of the Public Acts of 1917, as amended, and the applicable building code enforced within the Township.

C. Notice Requirement. Whenever the Township has reason to believe that the whole or any part of any building or structure is a dangerous building, as defined in Sub-Section (B), the Township must issue a notice that the building or structure is a dangerous building.

D. Parties Entitled to Notice. Such notice must be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.

E. Contents of Notice. The notice must specify the time and place of a hearing to be held before a Hearing Officer designated by the Township Board concerning whether the building or structure is a dangerous building, at which time and place the person to whom the notice is directed will have the opportunity to show cause why the Hearing Officer should not order the building or structure to be demolished or otherwise made safe, or properly maintained.

F. Service of Notice. The notice must be in writing and be served upon the person to whom the notice is directed personally, or by certified mail with return receipt requested, and addressed to the owner or party in interest at the address shown on the tax records, at least ten (10) days before the date of the hearing described in the notice. If any person to whom a notice is directed is not personally served, in addition to mailing the notice, a copy thereof must be posted upon a conspicuous part of the building or structure.

G. Hearing Officer. The Hearing Officer must be appointed by the Township Supervisor or designated Township Representative with the approval of the Township Board.

The Hearing Officer may be removed at the discretion of the Township Board. The Hearing Officer should be a person who has expertise in housing matters, such as, for example, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An elected official or employee of the Township may not be appointed as a Hearing Officer.

H. Filing of Notice. The Township must file a copy of the notice that the building or structure is a dangerous building with the Hearing Officer.

I. Hearing Testimony and Decision. The Hearing Officer must take testimony of the Township Building Inspector, and/or Ordinance Enforcement Officer or other person requested by the Township or Hearing Officer, the owner of the property, and any interested party. Not more than five (5) days after completion of the hearing, the Hearing Officer must render his or her decision either closing the proceedings or ordering the building or structure to be demolished, otherwise made safe, or properly maintained.

J. Order; Compliance with Order. If it is determined by the Hearing Officer that the building or structure should be demolished or otherwise made safe or properly maintained, the Hearing Officer must so order, fixing a time in the order for the owner or party in interest to comply therewith. If the building or structure is a dangerous building under this Ordinance, the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building, including but not limited to, the maintenance of lawns, trees, and shrubs.

K. Noncompliance with Order. If the owner or party in interest fails to appear or neglects or refuses to comply with the order issued under Sub-Section (J), the Hearing Officer must file a report of the findings and a copy of the order with the Township Board not more than five (5) days after noncompliance by the owner, and request that the necessary action be taken to enforce the order. A copy of the findings and order of the Hearing Officer must be served on the owner or party in interest in the manner prescribed in Section 3 of this Ordinance.

L. Enforcement Hearing. The Township Board must fix a date, not less than thirty (30) days after the Hearing Officer's hearing prescribed in Sub-Section (I) for a hearing on the findings and order of the Hearing Officer and must give notice to the owner or party in interest in the manner prescribed in Section 3 of the time and place of the hearing. At the hearing, the owner or party in interest must be given the opportunity to show cause why the order should not be enforced. The Township Board must either approve, disapprove, or modify the order. If the Township Board approves or modifies the order, the Township Board must take all necessary action to enforce the order. If the order is approved or modified, the owner or party in interest must comply with the order within sixty (60) days after the date of the hearing under this Sub-Section (L). In the case of an order of demolition, if the Township Board determines that the building or structure has been substantially destroyed by fire, wind, flood, or other natural disaster, and the cost of repair of the building or structure is greater than the state equalized valuation of the building or structure, the owner or party in interest must comply with the order of demolition within twenty-one (21) days after the date of the hearing under this Sub-Section (L).

M. Implementation of Order by Township. In the event that the owner or party in interest does not comply with the decision of the Township Board, the Township Board may contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure.

N. Reimbursement of Costs. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the Township to bring the property into conformance with this Ordinance must be reimbursed to the Township by the owner or party in interest in whose name the property appears.

O. Notification of Costs; Lien for Unpaid Costs. The owner or party in interest in whose name the property appears on the last local tax assessment records must be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or maintaining the exterior of the building, structure or grounds adjoining the building or structure, by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within thirty (30) days after mailing by the assessor of the notice of the amount of the cost, the Township must have a lien for the cost incurred by the Township to bring the property into conformance with this Ordinance. The lien must not take effect until notice of the lien is filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens or encumbrances. The lien for the cost must be collected and treated in the same manner as provided for property tax liens under the General Property Tax act, Act 206 of the Michigan Public Acts of 1893, as amended, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

P. Court Judgment for Unpaid Costs; Lien. In addition to other remedies under this Ordinance, the Township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure. The Township must have a lien on the property for the amount of the judgment obtained pursuant to this Sub-Section (P). The lien provided for in this subsection must not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over previously filed or recorded liens and encumbrances. The lien provided for in this subsection must be collected and treated in the same manner as provided for property tax liens under the General Property Tax act, Act 206 of the Michigan Public Acts of 1893, as amended, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

Q. Enforcement of Judgment. A judgment in an action brought pursuant to Sub-Section (P) above may be enforced against any assets of the owner including, but not limited to, the building or structure.

R. Lien for Judgment Amount. The Township must have a lien for the amount of a judgment obtained pursuant to Sub-Section (R) of this Ordinance against the owner's interest in all real property located in this State that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided for in this

subsection does not take effect until notice of the lien is filed or recorded as provided by law and the lien does not have priority over previously filed or recorded liens and encumbrances.

S. Judicial Review. An owner or party in interest aggrieved by any final decision or order of the Township Board under Section 6 may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within twenty-one (21) days from the date of the decision.

SECTION 9 Abatement; Costs.

All expenses, attorney fees, and costs incurred by the Township in abating a public nuisance under this Ordinance must be charged to the person responsible for the nuisance, the occupant of the land in question, or the person who appears as owner or party in interest according to the last local tax assessment records of the Township. If said person fails to pay said charge within 30 days after a statement therefor is mailed to him, the amount of expenses incurred by the Township in abating the public nuisance may be paid from the Township general fund, and the amount thereof assessed against the lands on which said expenditures were made on the next general assessment roll of the Township, and said amount must be collected in the same manner as other taxes are collected. The Township must have a lien upon such lands for such expense, said lien to be enforced in the manner prescribed by the general laws of the State providing for the enforcement of tax liens.

SECTION 10 Enforcement and Penalties.

A. The Township may enforce any violation of this Ordinance by:

1. Criminal Penalties.

A violation of the provisions of this Ordinance may constitute a misdemeanor; any person who violates this Ordinance may, upon conviction thereof, be fined not more than five hundred dollars (\$500) or imprisoned for not more than ninety (90) days, or both. Each occurrence must be considered a separate offense.

2. Injunction and Abatement.

In addition to any other remedies that may be available under this Section, the Township may commence proceedings in a court of proper jurisdiction to enjoin or abate a violation of this Ordinance. Such proceedings must be governed by the applicable statutes and court rules of the State of Michigan, and may include compensating the Township for its costs and reasonable attorney's fees.

SECTION 11 Severability.

If any provision of this Ordinance is declared invalid for any reason, such declaration must not affect the validity of all other sections of this Ordinance.

SECTION 12 **Repealer Clause.**

This Ordinance expressly repeals all Township ordinances and parts of ordinances in conflict herewith, including Ordinance No. 4, regulating noise, and Ordinance No. 8, regulating nuisances; and any anti-blight ordinance the Township may have previously adopted.

SECTION 13 **Effective Date.**

This Ordinance is effective 30 days after publication.

ADOPTED:

Motion: Trustee McLavy / Seconded: Trustee Dalton

YEAS: 5

NAYS: 0

STATE OF MICHIGAN)
)ss
COUNTY OF CLARE)

CLERK'S CERTIFICATION

I, Diane Blackburn, the duly elected, qualified and acting Clerk of the Township of Franklin, Clare County, certify that the above Nuisance Ordinance was adopted at a regular meeting of the Franklin Township Board held at the Franklin Township Office, 9809 N. M-18 Gladwin, Michigan, on the **20th day of September 2012**, by a majority of the members of the board presenting and voting.

Diane Blackburn, Clerk