

FLOYD COUNTY ORDINANCE 2004- XX
AN ORDINANCE REGULATING CERTAIN PRODUCED AND REPRODUCED
SOUNDS

WHEREAS, on the 5th day of September, 1967, the Board of Commissioners of the County of Floyd duly adopted Ordinance A67-4, being the Floyd County Zoning Ordinance, which ordinance has been amended and modified, from time to time; and

WHEREAS, the Board of Commissioners of the County of Floyd is desirous of further amending said ordinance in the particulars as hereinafter set forth.

NOW THEREFORE:

BE IT ORDAINED that Floyd County Ordinance A67-4 be, and the same hereby is, amended by the addition of the following:

ARTICLE 1. Purpose and Intent

SECTION 1. The control and regulation of certain sounds emanating from residential and commercial property and public rights of ways is deemed proper and necessary to prevent excessive noise, sound trespass (nuisance sound), and unnecessary disturbances to the peace and tranquility of the community, and such control and regulation is further deemed necessary to protect the health, well-being, and quality of life of the citizens of Floyd County, Indiana, and those persons who shall travel the streets, roads, and highways located therein. It is, therefore, the intent of this ordinance to encourage practices which will minimize sound pollution, noise, and sound trespass; promote harmony within the community; and assure the safety, security, and productivity of all persons.

SECTION 2. The terms and provisions of this ordinance shall be deemed an amendment to and become a part of Floyd County Zoning Ordinance A67-4, as said ordinance became effective on September 5, 1967, and as said ordinance has been heretofore amended from time to time.

ARTICLE 2. Application and Jurisdiction

This ordinance and the rules, regulations, and requirements herein contained shall be applicable within the planning jurisdiction of the Floyd County Plan Commission, namely, in those unincorporated areas of Floyd County, Indiana, which lie outside of the legally acquired planning areas of the Civil City of New Albany and the town of Georgetown, Indiana, all as such and similar planning areas may be established and modified, from time to time, in accordance with the provisions of IC 36-7-4, et seq.

ARTICLE 3. Definitions

As used in the Ordinance, unless the context clearly indicates otherwise, the common definition of the following terms and phrases shall be deemed to include the following:

1. The term “real property” shall mean and include real estate, and all improvements located thereon, that is being used for agricultural, residential, commercial, or industrial purposes, but shall not include a public place, as defined in I.C. 36-7-1-16.
2. The term “audible” means that the sound is loud enough to be heard.

ARTICLE 4. Prohibited Acts

SECTION 1. No owner, tenant, or occupant of real property shall operate, use, or play thereon, or cause or permit the operation, use, or playing thereon of any machine, instrument, or device intended for the production or reproduction of sound, including, but not limited to, stereo systems, phonographs, CD players, DVD players, cassette players, television sets, radios, public address systems, loud speakers, musical instruments or similar apparatus or appliances, if the sound generated or produced thereby is audible at a distance of 50 feet or more from the boundary of said property.

SECTION 2. No person who shall travel upon, occupy, or otherwise make use of the right of way of any public highway, street, road, alley, or sidewalk, shall operate, use, or play thereon any machine, instrument, or device intended for the production or reproduction of sound, including, but not limited to stereo systems, phonographs, CD players, DVD players, cassette players, television sets, radios, public address systems, loud speakers, musical instruments or similar apparatus or appliances, if the sound generated or produced thereby is audible at a distance of 50 feet or more from the source thereof.

ARTICLE 5. Exemptions

The listed Sounds, when customarily associated with, incidental to, and within the normal auditory range of the following sources, are exempted from the prohibitions of this Ordinance:

1. Those emitted by fire, police, and other public safety and emergency vehicles.
2. Those emanating from a public or private warning device or burglar alarm.
3. Those associated with legal fireworks.

4. Those related to athletic events sponsored by a public, non profit, or religious agency or entity; church bells and liturgical music.
5. Those arising from events authorized or approved by the Board of Commissioners of the County of Floyd, or declared exempt by said board.
6. Those resulting from an auction or real or personal property conducted by a licensed auctioneer.

ARTICLE 6. Enforcement

SECTION 1. Except as otherwise expressly set forth herein, and except in those instances of a violation of a statute, rule, or regulation having an established penalty or remedy therefor, enforcement of this Ordinance as against a person violating the terms and provisions of same shall be in accordance with the provisions of I.C. 34-28-5, et seq. An action to enforce this ordinance shall be brought in the name of Floyd County, Indiana, or the Floyd County Plan Commission, as appropriate, and upon proof by a preponderance of the evidence of a violation hereof, judgment shall be entered against the defendant for a sum of not less than \$50.00 nor more than \$1,000.00 for each violation. A separate violation of this Ordinance shall be deemed to occur for each day that a person shall be in violation of the terms and provisions hereof.

SECTION 2. In addition to the remedy set forth in Section 1 of this Article, an action may be brought for mandatory or injunctive relief as against any person violating the terms and provisions of this Ordinance, which action shall be brought in the name of Floyd County, Indiana, or the Floyd County Plan Commission, as appropriate.

SECTION 3. To the extent permitted by law and this Ordinance, an action under Section 1 of this Article may be joined with an action under Section 2, and to any judgment in favor of the Plaintiff there shall be added costs of the action, reasonable attorney fees, and expenses incurred in the enforcement of this Ordinance.

SECTION 4. In all actions under this Article, Floyd County, Indiana, and/or the Floyd County Plan Commission, shall be represented by the attorney retained by said Plan Commission.

ARTICLE 7. Miscellaneous Provisions

SECTION 1. Should any term or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such determination shall not affect the remainder of this Ordinance which shall remain in full force and effect.

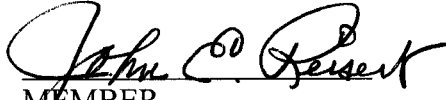
SECTION 2. In the interpretation and application of this Ordinance, the masculine form shall mean and apply to the feminine, and the singular form shall mean and apply to the plural. The title hereof and those of all Articles of this Ordinance shall be disregarded

SECTION 3. Any provision of any ordinance, rule, or regulation heretofore adopted by the Board of Commissioners of the County of Floyd which is inconsistent or in conflict with this Ordinance is hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect on an after it passage and publication as required by law.

SO ORDAINED this 17th day of AUGUST, 2004.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD


MEMBER


MEMBER


MEMBER

ATTEST:


FLOYD COUNTY AUDITOR

FLOYD COUNTY PLAN COMMISSION
RESOLUTION PERTAINING TO A PROPOSED NOISE ORDINANCE

WHEREAS, the Floyd County Commissioners by resolution passed a resolution recommending the implementation of a Noise Ordinance,

WHEREAS, the Floyd County Plan Commission met on June 21st, 2004 and conducted a public hearing on this matter;

WHEREAS, the Plan Commission heard from both proponents and opponents of the proposed Ordinance;

NOW, THEREFORE,

BE IT RESOLVED that the Floyd County Plan Commission hereby approves the Ordinance amending Floyd County Ordinance A67-4 to include the attached noise ordinance.


SO RESOLVED this _____ day of June, 2004.

FLOYD COUNTY PLAN COMMISSION



President

Attest



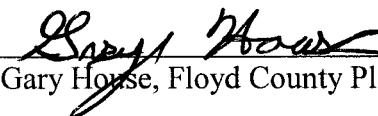
Gary House
Plan Director

7-19-2004

Date

CERTIFICATION OF ACTION

Comes now the Floyd County Plan Commission, pursuant to I.C. 36-7-4-605, and hereby certifies that the attached Resolution is a true and accurate copy of a Resolution Approving a Proposed Noise Ordinance adopted by the Floyd County Plan Commission as part of its meeting on June 21, 2004. The attached Resolution is available for review in the office of the Floyd County Plan Commission and accurately reflects the vote of the Floyd County Plan Commission approving this amendment.



Gary House, Floyd County Plan Commission

MATTOX MATTOX & WILSON

ATTORNEYS AT LAW

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June 29, 2004

Mr. Gary House
Floyd County Planning Commission
City-County Building, Room B-22
311 W. First Street
New Albany, IN 47150

RE: Noise Ordinance

Dear Gary:

Please find enclosed documents regarding the Proposed Noise Ordinance. Once these have been signed, please forward to the Board of Commissioners.

As always, if you have any questions, please don't hesitate to contact me.

Sincerely,

MATTOX, MATTOX & WILSON



Derrick H. Wilson

DHW/kas

Enclosure(s)