

East Bay Charter Township

# 4

Noise Ordinance discussion update

Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

To

Accept

Table

Deny

\_\_\_\_\_  
\_\_\_\_\_

Roll Call:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Abstained: \_\_\_\_\_

Passed

Failed

## Sue Courtade

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**From:** jyoung@upnorthlaw.com  
**Sent:** Sunday, February 17, 2008 9:49 PM  
**To:** 'Glen Lile'  
**Cc:** 'Sue Courtade'; 'Tracey Bartlett'; pwendling@upnorthlaw.com  
**Subject:** East Bay noise ordinance

Per the discussion of the township board at its last meeting, I have reviewed the existing noise ordinance. The ordinance has the following problems:

1. Its wording is awkward and, if the ordinance is retained, the ordinance should be reworded. For example, it should prohibit "noise disturbances" and then define those disturbances in another section.
2. The ordinance contains no exceptions for emergency vehicles, etc.
3. The ordinance provides ONLY for municipal civil infractions as an enforcement remedy. The better approach is to not only allow civil infraction tickets, but also to provide that a violation of the ordinance is a nuisance per se which can be abated by a circuit court lawsuit. This 2-fold approach is needed because sometimes you just do not have the evidence to win a civil infraction ticket, but need the added discovery of evidence which a circuit court lawsuit allows.
4. The penalty section makes retaliation against the person who filed the complaint a misdemeanor. This is not a penalty; rather, it is prohibited conduct and should be in a totally different section. In fact, such conduct might be obstruction of justice under existing state law. If so, then this provision is not needed.

As we discussed at the last meeting, my experience is that noise ordinances create far more problems for local government that they solve. Sometimes, such noise ordinances require the township to investigate complaints by "overly sensitive" neighbors against a local business or when a feud between neighbors is present. Although, in such situations, the complaining party often has the right to sue under a private nuisance theory, these complainants want the township to investigate and prosecute their complaints at taxpayer's expense. Although such potential abuse does not regularly occur, it can be a very real problem for the township when it does occur. If the township decides that prosecution is not warranted, it opens up the township to charges that the township is not enforcing its own ordinances even though noise ordinances (like the one currently in place) are very subjective and, quite often, sufficient evidence may not be present.

The township is justified in repealing this ordinance if it wishes. On the other hand, if the township wants a noise ordinance, I strongly suggest that we be authorized to rewrite this ordinance.

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