

ORDINANCE NO. _____

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, CREATING AND ENACTING CHAPTER 168 SECTIONS 29 THROUGH 37 OF THE CODE OF THE BOROUGH OF KUTZTOWN TO BE KNOWN AS THE "BOROUGH OF KUTZTOWN NOISE CONTROL ORDINANCE".

WHEREAS, the Borough Council of the Borough of Kutztown, in an effort to protect its citizens from the hazards presented from noise, has determined that it is in the best interest of its Citizens that the Borough of Kutztown establish specific noise regulations across the Borough; and

WHEREAS, the Borough Council of the Borough of Kutztown recognizes that noise that may be generated from different land uses must be balanced with the property rights of neighboring properties; and

WHEREAS, the Borough Council of the Borough of Kutztown recognizes that noise can be detrimental to the health, safety, and general welfare of property owners, and can impact the enjoyment of one's property; and

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, as follows:

SECTION 1. Chapter 168 Sections 29 through 37 of the Code of the Borough of Kutztown are hereby created and enacted to read as follows:

168-29. Title.

This Ordinance shall be known and may be cited as the Borough of Kutztown Noise Control Ordinance.

168-30. Definitions.

The following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(A) ANSI — American National Standards Institute, or its successors.

(B) A-WEIGHTED SOUND LEVEL — A measure of sound pressure level designed to reflect the acuity of the human ear, which does not respond equally to all frequencies. The ear is less efficient at low and high frequencies than at medium or speech-range frequencies. Therefore, to describe

a sound containing a wide range of frequencies in a manner representative of the ear's response, it is necessary to reduce the effects of the low and high frequencies with respect to the medium frequencies. The resultant sound level is said to be A-weighted, and the units are dBA. The A-weighted sound level is also called the "noise level." Sound level meters have an A-weighting network for measuring A-weighted sound level.

(C) **APPROVED SOUND METER** - A sound meter meeting the requirements of the American National Standards Institute (ANSI) S1.4 or latest approved revision for a Type 1 or Type 2 sound meter device. Measurements shall be made using the A-weighted scale and slow response.

(D) **BOROUGH** – Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania.

(E) **CODE ENFORCEMENT OFFICER** — That person appointed by the Council of the Borough of Kutztown to enforce this and other municipal ordinances, or such person's designee.

(F) **COUNCIL** — Borough Council of the Borough of Kutztown.

(G) **DBA** — Unit of sound level. The weighted sound pressure level by the use of the A metering characteristic and weighting specified in American National Standards Institute (ANSI), S1.4 or latest approved revision. dBA is used as a measure of human response to sound.

(H) **NOISE** — Any sound not occurring in the natural environment, including sounds emitted from residential, institutional, recreational, educational, business, office, commercial, service, industrial and accessory uses within the Borough by a person, animal, appliance, equipment, instrument or other device.

(I) **NOISE LEVEL** — For airborne sound, unless specified to the contrary, it is the A-weighted sound level.

(J) **PERSON** — Includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other similar entity.

(K) **POLICE DEPARTMENT** — The Kutztown Borough Police Department and any sworn member thereof.

(L) **PROPERTY** — Any lot, tract, parcel of land or any building or other structure or improvement thereon or any other separate and legally definable area, including but not limited to leaseholds, condominiums, licenses and other areas of separate and lawful occupancy or control.

(M) **SOUND** — An oscillation in pressure, stress, particle displacement, particle velocity, etc., in an elastic or partially elastic medium, or the superposition of such propagated alterations; an auditory sensation evoked by the oscillation described above (not all sound waves can evoke an auditory sensation: e.g., ultrasound).

(N) **VEHICLE** — Any device, or combination of devices, used for or capable of being used for the transportation of persons or property. Vehicles include but are not limited to the following: motor

vehicles such as automobiles, trucks, buses, motorcycles, motorized bicycles, snowmobiles, scooters, all-terrain vehicles, go-carts, racers, life devices, farm machinery, industrial machinery, highway graders, trailers, graders, and semitrailers.

168-32. Operation.

The Code Enforcement Officer, or his designee, who is charged with the enforcement of the provisions of this article, shall operate any approved sound meter used in the enforcement of this article in accordance with the instructions provided by its manufacturer. The sound meter shall be self-tested on the day that it was used via a calibration process approved by the sound level meter manufacturer and shall be certified via the manufacturer or via an accredited third-party calibration facility to be accurate within accepted standards by the manufacturer within one year prior to its use.

168-33. Noise Limit.

No person shall create or permit the creation of any noise nor operate nor cause the operation of any source of sound constituting noise on property owned, leased, occupied or otherwise controlled by such person which causes the sound level, when measured at or beyond the boundaries of such property, to exceed the noise levels specified below during the times indicated.

**PERMISSABLE SOUND LEVELS
(7:00 a.m. – 10:00 p.m., otherwise minus 5 dBA)**

Zone Categories of Receiver (measured at property line)

Zone Categories of Source	Zone Categories of Receiver (measured at property line)		
	Residential	Commercial	Industrial
	Residential	TBD	TBD
	Commercial	TBD	TBD
Industrial	TBD	TBD	TBD

168-34. Exemptions.

Noise emitted from the following sources shall be exempt from the noise level standards specified herein:

(A) All safety signals and warning devices (e.g., intrusion alarms, back-up alarms on trucks, ADA style sound emitting devices; provided however that burglar alarms not terminating within 30 minutes after being activated shall not be exempted); authorized vehicles when responding to emergencies (e.g., police, fire, ambulance sirens or any other device used to alert persons to an emergency or used during the conduct of emergency operations.)

(B) The provision, repair, and maintenance of municipal services or public utilities.

(C) Bells, chimes, and carillons used for religious purposes or in conjunction with national celebrations or public holidays.

(D) Appliances, lawn and garden equipment, chain saws, and power tools in use between the hours of 7:00 a.m. and 9:00 p.m., prevailing time; provided, however, that they are operated within the manufacturer's specifications and with all standard noise reducing equipment in use, unmodified, and in proper operating condition.

(E) Construction equipment when being used on a specific short-term or temporary project (such as construction of a building; construction, repairing or cleaning a road; drilling a well; and other similar short-term construction, demolition, or repair projects) in accordance with §168-12 Working Hours, for the duration of such short-term or temporary project; provided, however, that such construction equipment is operated within the manufacturer specifications and with all standard noise-reducing equipment in use, unmodified, and in proper operating condition.

(F) Air conditioners, fans, heating units and similar comfort devices, manifestly designed and used solely for individual single-family dwelling units, provided such are operated within the manufacturer's specifications and with all standard noise reducing equipment in use, unmodified, and in proper operating condition.

(G) Airplanes, helicopters, normal activities of properly licensed airports and trains operating on railroads.

(H) Musical, recreational, and athletic events conducted, sponsored by schools, local government, or community associations, community or village festivals, or events sponsored by nonprofit organizations.

(I) Existing weapons firing ranges between the hours of 7:00 a.m. and 9:00 p.m., prevailing time.

(J) All motor vehicles being operated on roads, streets and alleys open to the public within the Borough of Kutztown; provided, however, they are operated within the manufacturer's specifications and with all standard noise reducing equipment in use, unmodified, and in proper working condition and otherwise in compliance with the provisions of 67 Pa. Code § 157.11 relating to vehicular noise limits.

(K) All farm-related and snow removal operations and activities.

(L) Any public event for which a permit has been issued pursuant to Chapter 155 Parades, of the Code of the Borough of Kutztown.

(M) Any fireworks display for which a permit has been issued pursuant to Chapter 120 Fireworks, of the Code of the Borough of Kutztown.

168-35. Enforcement.

(A) The Police Department and the Code Enforcement Officer are hereby authorized and directed to enforce the provisions of this article.

(B) Any emission of noise from any source which is in violation of the provisions of this article shall be deemed and is hereby declared to be a nuisance and, in addition to the imposition of any fines or penalties herein provided, may be abated. It shall be lawful for the Code Enforcement Officer or any police officer who observes any violation of the provisions of this article to immediately abate such nuisance, and the failure of any person to obey an order of the Code Enforcement Officer or a police officer to comply with the provisions of this article shall, in addition to the fines or penalties provided for herein, subject such person to any other applicable criminal penalties as may be provided by law.

168-36. Criminal Penalties.

Any person who violates any provision of this article or any order of the Borough of Kutztown issued pursuant to this article commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$2,500 for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for 90 days for each separate offense. Employees of the Borough of Kutztown authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this article, and the Borough Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice having jurisdiction over the Borough of Kutztown. There is no accelerated rehabilitative disposition authorized for a summary offense.

168-37 Civil Penalties.

(A) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this article or any order issued pursuant to this article, the Borough of Kutztown may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$10,000 per day for each violation. In determining the amount of the penalty, the Borough of Kutztown shall consider the willfulness of the violation; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough of Kutztown; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

(B) When the Borough of Kutztown proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the Prothonotary of Berks County within the thirty-day period for placement in an escrow account with the State Treasurer or any commonwealth bank or post an appeal bond to the Prothonotary of Berks County within 30 days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the commonwealth and is satisfactory to the Borough of Kutztown. If, through administrative or final judicial review of the proposed penalty, it is

determined that no violation occurred or that the amount of the penalty shall be reduced, the Prothonotary of Berks County shall, within 30 days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The Prothonotary of Berks County shall conduct a hearing to consider the appellant's alleged inability to pay within 30 days of the date of the appeal. The Prothonotary of Berks County may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Prothonotary of Berks County finds that the appellant is financially unable to pay. The Prothonotary of Berks County shall issue an order within 30 days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Borough of Kutztown and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with Section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 51, et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the Borough of Kutztown. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Borough of Kutztown, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

SECTION 3. Severability. The Provisions of this Ordinance are severable and if any section, sentence, clause, or part or provision hereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Borough that such Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION 4. Repealer. All ordinances and resolutions or parts of ordinances and resolutions conflicting herewith are hereby repealed.

SECTION 5. Effective Date. This Ordinance shall become effective on the earliest date permitted by law after enactment.

ENACTED AND ORDAINED as an Ordinance of the Borough of Kutztown, Berks County, Pennsylvania, this ____ day of _____, 2024.