



THE COUNTY OF CHESTER



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October 26, 2022

Derek Davis, Township Manager
East Goshen Township
1580 Paoli Pike
West Chester, PA 19380

Re: Zoning Ordinance and Miscellaneous Ordinance Amendments – Noise and Nuisances
East Goshen Township – ZA-09-22-17384 and MA-10-22-17398

Dear Mr. Davis:

The Chester County Planning Commission has reviewed the proposed Zoning Ordinance and Miscellaneous Ordinance Amendments, which were received by this office on September 27, 2022 (we note that the draft ordinance is identified as “Solicitor Draft – 9.27.22”). The proposed zoning ordinance amendment was reviewed pursuant to the provisions of Section 609(e) of the Pennsylvania Municipalities Planning Code, and we offer the following comments to assist in your review of the proposed amendments.

DESCRIPTION:

1. The Township proposes the following amendments to the Township Code:
 - A. Repeal Chapter 156-Noise in its entirety, to be replaced by the proposed ordinance language in Section 1, entitled Chapter 156 – Noise and Nuisances. We note that Article I – Noise includes standards on noise limits, exceptions to noise limits, enforcement provisions, other remedies, and waivers. Article II – Nuisances addresses health hazards and nuisances, including the planting, cultivating and growing of bamboo;
 - B. Delete Section 240-24.C of the Zoning Ordinance, Noise Control, in its entirety;
 - C. Delete Section 240-24.D of the Zoning Ordinance, Vibration Control, in its entirety;
 - D. Amend Section 240-31.C(3)(h)[2][b][ii][C], pertaining to a study demonstrating compliance with the noise standards in Chapter 156 of the Township Code for commercial communications antenna on a commercial communications support structure;
 - E. Amend Section 240-31.C(3)(h)[3][c][ii][B]{3}, pertaining to a study demonstrating compliance with the noise standards in Chapter 156 of the Township Code for commercial communications antenna on an existing structure not previously approved for installation;
 - F. Amend subsection [6] of Section 240-31.C(3)(p), the conditional use standards for junkyards (including automobile salvage yards), by replacing the existing language with a reference to see the general performance standards of Article V and the noise and nuisance regulations of Chapter 156; and
 - G. Amend Section 240-31.C(3)(aa)[14], by replacing the existing language with a reference that, for a public utility facility and/or public utility building, all uses shall be conducted in compliance with applicable governmental regulations, including the general performance standards of this chapter and the noise and nuisance regulations of Chapter 156.

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COMMENTS:

2. We endorse the Township’s efforts towards adopting the proposed noise control standards under the provisions of the Township Code, instead of the Pennsylvania Municipalities Planning Code (PA MPC). The creation of noise is an activity that relates more closely to personal behavior rather than the matters that Article VI (Zoning) in the MPC allows municipalities to regulate, which includes the use of land, the location and density of development and related activities.
3. Section 156-3.A(1) provides sound level limits for three land use categories: Residential, public space, open space, agricultural, or institutional; commercial or business; and industrial. We note that there are lower sound level limits at nighttime for the first two land use categories. We recommend that the Township consider applying the lower (nighttime) sound level limit for these categories to either Sundays and legal holidays, or weekends and legal holidays. The following are examples of other Chester County municipalities that have such standards in their noise ordinances:
 - Birmingham Township - <https://ecode360.com/9022012>.
 - West Goshen Township - <https://ecode360.com/16233184>.
 - West Whiteland Township - <https://ecode360.com/28606637>.
4. Existing Section 156-3 of the Township Code contains numerous definitions related to noise. While some of these definitions have been incorporated into the text of the draft ordinance (e.g., impulsive sound is defined within Section 156-3.B(2)), other terms such as pure tone, and sound level, are not defined at all in the draft ordinance language. The Township should ensure that definitions are provided for all noise-related terms. We also recommend, for ease of use purposes, that all definitions be provided within a definitions subsection in Article I-Noise of Chapter 156. We note that a definitions subsection is provided for the proposed nuisance standards in Article II of Chapter 156.
5. Section 156-5 appears to identify the list of municipal officials that may have the power to administer the terms of this chapter (“A summary citation under this Chapter may be filed by any Township law enforcement officer, zoning officer, code enforcement officer, Township Manager, or any other person designated by the Board of Supervisors”). We also note that, while the existing ordinance language states that the noise control program shall be administered by the “Noise Control Office(r),” this term is not provided in the draft ordinance language.

We note that code enforcement officers and the Township Manager may not be available at times when noise complaints are likely to be filed, such as in the late evening or early morning hours, and they may not be able to respond immediately at other times, especially when the noise is of a transient nature. Other municipal officials, such as law enforcement officers, may be better suited to enforce a noise ordinance in those and other circumstances.
6. Consideration should be provided by the Township to either exempt school events and school activities (e.g., sporting events, band practice, etc.) from these standards, or indicate that these types of activities are subject to the waiver standards set forth in Section 156-7. If waivers are required for these activities, then consideration should be provided for allowing more than four waivers in any calendar year for school events and school activities as appropriate.

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7. The Township should review the language provided in Section 156-3(D)(2) pertaining to noise sources. As currently written (“...by any other means or methods which are physically annoying to the comfort of any reasonable person...”), this does not appear to be objective criteria that can be enforced by the Township. The Township Solicitor may wish to further explore the regulation of low-frequency noise as there may be objective ways to measure these frequencies. While we currently are not aware of specific ordinances in Chester County that address the issue, there may be other examples that address this issue.

8. Section 156-11 addresses the prohibition of the planting, cultivating and/or growing of bamboo within the Township. We recommend that the Township, in its review of the proposed standards, refer to Swarthmore Borough’s bamboo ordinance, which is available online at:
<https://www.swarthmorepa.org/DocumentCenter/View/242/Ord-Bamboo05-04-15?bidId=>.

Additional information on invasive plant species is provided in the County Planning Commission’s “Landscaping with Native Plants” planning eTool, which is available at:
<https://www.chescoplanning.org/MuniCorner/eTools/72-NativePlants.cfm>.

RECOMMENDATION: The Township should consider the comments in this letter before acting on the proposed amendments.

We request an official copy of the decision made by the Township Supervisors, as required by Section 609(g) of the Pennsylvania Municipalities Planning Code. This will allow us to maintain a current file copy of your ordinance.

Sincerely,



Paul Farkas
Senior Review Planner

PUBLIC NOTICE

NOTICE IS GIVEN that the Board of Supervisors of East Goshen Township will hold a public hearing to consider passage of the following ordinance during its regular meeting on November 15, 2022, at 7:00 p.m. at the Township Municipal Building located at 1580 Paoli Pike, West Chester, PA 19380. Following the public hearing, the Board will consider enactment of the proposed ordinance at its regular meeting of the Board of Supervisors. A full text copy of the ordinance is available for public examination without charge or may be obtained for a charge not greater than the cost thereof at the Municipal Building. For further information, please contact Derek Davis, Township Manager (610-692-7171). The preamble and a brief summary prepared by the solicitor listing the provisions in reasonable detail follows:

AN ORDINANCE OF THE TOWNSHIP OF EAST GOSHEN, CHESTER COUNTY, PENNSYLVANIA, REPEALING CHAPTER 156 OF THE EAST GOSHEN TOWNSHIP CODE OF ORDINANCES, TITLED "NOISE", AND REPLACING IT WITH A NEW CHAPTER 156, TITLED "NOISE AND NUISANCES", IN ORDER TO EFFECTIVELY REGULATE NOISE AND NUISANCE DISTURBANCES IN THE TOWNSHIP; TO REMOVE NOISE REGULATIONS FROM THE EAST GOSHEN TOWNSHIP ZONING ORDINANCE; AND TO CLARIFY NOISE AND NUISANCE STANDARDS FOR SPECIFIC PRINCIPAL USES. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. Repeals Chapter 156 of the Code of Ordinances, "Noise", and replaces it with a new Chapter 156 titled "Noise and Nuisance", which provides regulations for noise and other nuisances within the Township.

Section 2. Deletes Subsection C, "Noise Control", from Section 240-24 of the Township Zoning Ordinance, "General Performance Standards".

Section 3. Deletes Subsection D, "Vibration Control", from Section 240-24 of the Township Zoning Ordinance, "General Performance Standards".

Section 4. Amends the noise regulation standards required for conditional use approval for commercial communications antenna erected on commercial support structures in Section 240-31 of the Zoning Ordinance, titled "Conditional Uses; Additional Standards for Specific Principal Uses", Subsection 240-31.C(3)(h)[2][b][ii][C].

Section 5. Amends the noise regulation standards required for conditional use approval for commercial communications antenna erected on existing structures in Section 240-31 of the Zoning Ordinance, titled "Conditional Uses; Additional Standards for Specific Principal Uses", Subsection 240-31. C(3)(h)[3][c][ii][B]{3}.

Section 6. Amends the noise regulation standards required for conditional use approval for junkyards in Section 240-31 of the Zoning Ordinance, titled "Conditional Uses; Additional Standards for Specific Principal Uses", Subsection 240-31.C(3)(p)[6].

Section 7. Amends the noise regulation standards required for conditional use approval for public utility facilities and buildings in Section 240-31 of the Zoning Ordinance, titled "Conditional Uses; Additional Standards for Specific Principal Uses", Subsection 240-31.C(3)(aa)[14].

Section 8. Contains a severability clause.

Section 9. Authorizes the codification of this ordinance by General Code.

Section 10. Contains a repealer clause.

Section 11. This ordinance shall become effective upon enactment as provided by law.

William R. Christman III, Township Solicitor

Please publish twice on October 31, 2022, and November 7, 2022 and send proof of publication and statement to Derek Davis, Township Manager, 1580 Paoli Pike, West Chester, PA 19380.

cc: Derek Davis, Township Manager
Duane Brady, Zoning Officer
Cara Fitzpatrick, Court Reporter