

TOWN OF NEWPORT

ORDINANCE 404

"AN ORDINANCE ESTABLISHING NOISE CONTROL PROVISIONS FOR THE PURPOSES OF MONITORING AND PROTECTING AGAINST UNNECESSARY NOISE LEVELS WITHIN THE TOWN OF NEWPORT, DELAWARE."

WHEREAS, Chapter 71 of Title 7 of the Delaware Code establishing noise control provisions has been amended to authorize local governments to enact noise control and abatement statutes that are not less stringent than those of the State; and

WHEREAS, New Castle County, the City of Wilmington, and the Town of Elsmere have previously enacted ordinances regulating noise levels within their respective jurisdictions; and

WHEREAS, The Commissioners of the Town of Newport, finding that excessive levels of sound are detrimental to the physical and mental well-being, living conditions, and general welfare of citizens, declare it necessary to provide for the greater good through the adoption of these noise control regulations;

NOW THEREFORE, The Commissioners of the Town of Newport hereby ordain the following:

SECTION I TITLE

These regulations shall be referred to as the "Noise Control Ordinance of the Town of Newport".

SECTION II DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them in this section, and all terminology used in this ordinance not defined as follows shall be in conformance with applicable publications of the American National Standard Institute (ANSI) or its successor body.

A-weighted sound pressure level: A sound pressure level as measured by a sound meter using the A-weighting network. The level read shall be designated as dB(A) or dBA.

Ambient noise level: The all-encompassing background noise associated with a given environment without the sound contribution of the specific source in question.

Commercial event: Any event, assembly, announcement, or activity designed for the purpose of offering for sale or exchange any commodities, goods, or services of a commercial nature.

Decibel: A standard unit for measuring the sound pressure level. It is equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to a reference pressure which is 20 micropascals denoted as dB.

District, Business: B zoning district in the Town of Newport Building Zone Ordinance.

District, Industrial: HI or GI zoning district.

District, Residential: RA or RB zoning district.

Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate actions.

Emergency vehicles: Motor vehicles or amphibious craft used in response to public calamity or to protect persons or property from imminent danger such as, but not limited to, police, fire, ambulance rescue units, and civil defense motor vehicles.

Impulse sound: A sound of short duration, much less than one second, with an abrupt onset and rapid decay, separated in time by at least one second.

Infrasonic sound: Sound pressure levels having frequencies below 16 Hz.

Equivalent sound level (A-weighted): The constant sound level that, in a given situation and time period (x) conveys the sound energy as the actual time varying A-weighted sound. Designated Leg (x) or dBA.

Motor vehicle: As defined in the Motor Vehicle Code of the State of Delaware, or any vehicles which are propelled or drawn by mechanical equipment such as, but not limited to, passenger cars, trucks, truck trailers, semi-trailers, campers, motorcycles, minibikes, go carts, snowmobiles, mopeds, amphibious craft, dune buggies, or racing vehicles.

Muffler: Any apparatus whose primary purpose is to transmit liquids or gasses while causing a reduction in sound emission at one end.

Noise: Any sound which is unwanted or which causes or tends to cause an adverse physiological or psychological effect on human beings.

Noise Disturbance: Any sound which (1) endangers or injures the safety or health of humans or animals, or (2) annoys or disturbs a reasonable person of normal sensibilities, or (3) jeopardizes the value of property and erodes the integrity of the environment, or (4) is in excess of the allowable noise levels established in the provisions of this ordinance.

Noise, plainly audible: Any noise for which the information content of that noise is unambiguously communicated to the listener such as, but not limited to, understandable spoken speech or comprehensible musical rhythms.

Person: Any individual(s), corporation, company, association, society, firm, partnership, or joint stock company, including the State and all its political subdivisions, agencies, instruments, and any department, board, or agency of the government of the United States.

Powered Model Vehicles: Any powered vehicles, either airborne, water-borne, or landborne, which are designated not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, which can be propelled by mechanical means.

Property boundary: An imaginary line at the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, or institution, corporation, business, or governmental entity.

Public space: Parks, streets, highways, rights-of-way, buildings, and other areas owned, maintained, or administered by any governmental authority and freely accessible to the general public.

Pure tone: Any sound which can be distinctly heard as a single pitch or set of single pitches. For the purpose of this section, a pure tone shall exist if the one-third octave band sound pressure level and the band with the tone exceeds the arithmetic mean of the sound pressure level of the two contiguous one-third octave bands with center frequencies greater than 400 Hz.

Sound: A temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

Sound amplifying equipment: Any device for increasing the magnitude of the human voice, music, or other sound.

Sound level: The sound pressure level (SPL) obtained by the use of a sound level meter and frequency weighting network such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI SI. 4-1971, or the latest approved revision thereof). The unit of measurement is the decibel. If the frequency weighting employed is not indicated the A-weighting shall apply.

Sound pressure: The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

Stationary source of sounds: Any device which creates sound while fixed in position, including but not limited to residential, commercial, or industrial machinery, pumps, fans, compressors, air conditioners, refrigeration equipment, or automobile repair tools and equipment.

Town sponsored event: Any event, occurrence, activity, or assembly planned, funded, and implemented in whole by an agency, department, office, or authorized representative of Town government, or so planned, funded, or implemented in part by Town government together with one or more non-profit, charitable, or civic organizations with full endorsement by the Commissioners of Newport.

Ultrasonic sound: Sound pressure levels having frequencies above 20,000 Hz.

Weekday: Any Monday, Tuesday, Wednesday, Thursday, or Friday which is not a legally designated holiday.

SECTION III UNMEASURED NOISE DISTURBANCES PROHIBITED

a) **General Prohibition:** It shall be unlawful for any person (s), corporation, or business entity to make, continue, or cause to be created or continued, a noise disturbance within the Town of Newport.

b) **Specific Prohibitions:** It shall be unlawful for any person (s), corporation, or business entity to make, continue, or cause to be created or continued, any noise disturbance in the Town of Newport in any of the following manners:

1) **Motor vehicles:** It shall be unlawful for any person (s) within any residential district to conduct any repairs, to rebuild any parts, to test, or to perform engine work on any vehicle in such a manner as to create a noise disturbance.

2) **Vehicular Noise Limits:** All motor vehicles operating within the corporate limits of the Town of Newport must comply with applicable State of Delaware regulations pursuant to Title VII of the Delaware Code.

3) **Aircraft and Railroad Noise Limits:** All aircraft and railroads operating within the Town of Newport shall comply with applicable Federal and State noise regulations.

4) **Radios, TV sets, similar devices:** Operating or permitting the use or operation of any radio, receiving set, musical instrument(s), television, phonograph, drum, sound amplifier, loud speaker, automobile radio or stereo, high fidelity equipment, portable high fidelity radio and tape players, or other devices which produce, reproduce, or amplify sound in any of the following ways:

a) In such a manner so as to create a noise disturbance within a receiving property.

b) In such a manner so as to create a noise disturbance within any receiving property when operated in or on a motor vehicle or craft on a public right-of-way, public space, or public waterway.

c) In such a manner so as to create a noise disturbance to any person other than the operator of the device when operated by any passenger on a common carrier or when operated by any pedestrian on a public street, public sidewalk, or public space.

d) In such a manner so as to create a noise disturbance across real property lines or boundaries or through partitions common to two parties within a building, or plainly audible at a distance of fifty (50) feet from such device when operated within a motor vehicle on a public right-of-way or public space.

- 5) Electronic bug or Insect Extermination Devices:
 - a) Operating or permitting to be operated any electronic insect or bug killing device or the elimination, control, or extermination of insects or bugs in such a manner as to create a noise disturbance.
 - b) Operating any such device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create an audible noise disturbance in a residential district.
- 6) Exterior Loudspeakers: Using or operating any mechanical device, loudspeaker, or other sound amplifying equipment in a fixed or moveable position exterior to any building, or mounted upon any aircraft, motor vehicle, or amphibious craft such that the sound therefrom causes a noise disturbance or is plainly audible at or beyond the property boundary of the source, including sources originating within a public right-of-way.
- 7) Street Sales: The sale of anything by shouting, hawking, or outcry within a residential district is forbidden.
- 8) Animals or Birds: Owning, possessing, harboring, or controlling any animal or bird which barks, bays, cries, squawks, or makes any type of noise continuously or incessantly for a period of ten (10) minutes or makes such a noise intermittently for one-half ($\frac{1}{2}$) hour or more thereby causing a noise disturbance within a residential property; provided, however, that at the time the animal or bird is making such noise no person (s) is trespassing or threatening to trespass upon the private property in or upon which the animal or bird is situated, or that there is no other act by persons which teased or provoked the animal or bird to create the noise.
- 9) Loading Operations: Loading, unloading, opening, or otherwise handling boxes, crates, containers, garbage cans, or other similar objects between the hours of 10:00 p.m. and 7:00 a.m. the following day, in such manner as to create a noise disturbance within a residential district; provided, however, that such noise disturbances are not produced by an emergency.
- 10) Verbal Public Behavior: Yelling, shouting, hooting, whistling, taunting, or generally creating a racket on a public street between the hours of 10:00 p.m. and 7:00 a.m. so as to annoy and disturb quiet comfort of persons, or to cause a noise disturbance in any residential or business district, or any person in the nearby vicinity.
- 11) Construction Noise: Operating or causing to be operated any equipment used in commercial construction, repair, alteration, demolition, or renovation work on buildings, structures, streets, alleys, or appurtenances thereto in the following manner:

- a) With sound control devices which have been tampered with so as to operate or protect sound levels to a full or normal capacity.
- b) In violation of any regulations of the United States Environmental Protection Agency.
- c) Between the hours of 10:00 p.m. and 7:00 a.m. the following morning on weekdays and between the hours of 9:00 p.m. and 8:00 a.m. on weekends or legal holidays to create a noise disturbance, except as otherwise provided in this ordinance.

12) Explosives and Firearms: The use or firing of any explosives, firearms, or similar devices which create an impulsive sound so as to cause a noise disturbance within a residential district or on a public right-of-way.

13) Powered Model Objects: Operating or permitting the operation of powered model cars, airplanes, boats, or other vehicles between the hours of 10:00 p.m. and 7:00 a.m. the following morning. Maximum sound pressure levels during the permitted period of operation shall conform to those set forth in Section IV concerning allowable noise levels and shall be measured at the property line of the source or at a distance of one hundred (100) feet if it is operated in a public space.

14) Refuse Compacting Devices: The operation or permitting the operation of any motor vehicle or mechanical device which can compact, shred, or dismember any type of refuse which causes a noise disturbance between the hours of 10:00 p.m. and 7:00 a.m. the following day in residential districts; except those operations engaged in the delivery of municipal services.

15) Power Equipment: Operating, or permitting to be operated any power saw, sander, drill, grinder, garden tractor, lawn maintenance equipment, mechanical equipment, or similar tools outdoors in a residential district between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create a noise disturbance. Such equipment must be operated with mufflers and noise reducing equipment in proper condition.

16) Stationary Emergency Signaling Devices:

a) Testing of only the electrical mechanical functioning of a stationary emergency signaling device shall occur at the same time each day that a test is performed, but not before 8:00 a.m. or after 8:00 p.m. Such testing shall only use the minimum cycle test time. In no case shall such test time exceed thirty (30) seconds.

b) Testing of the complete emergency signaling system, including the electromechanical functioning of the signaling device and the personnel response to the signal, shall not occur more than once each calendar month.

unless approved by the Town of Newport Administrator. Such testing shall not occur before 8:00 a.m. and after 8:00 p.m.. The 30 second time limit on the functioning of the signal shall not apply.

- c) Stationary emergency signaling device shall be used only for testing in compliance with applicable provisions of this ordinance and for emergency purposes where personnel and equipment are mobilized.

17) Proper Noise Control Devices: No person (s) shall operate any equipment unless all noise and/or vibration control devices installed thereon are in full and proper operation, are maintained according to standard procedures and schedules, and have not been disturbed in any way due to neglect or negligence on the part of the operator.

- a) No person(s) shall tamper with, circumvent, vandalize, fail to properly maintain, remove, or alter in any way any sound protection device or equipment. This requirement shall also apply to sound level monitoring devices, meters, or instruments installed or positioned by the Town of Newport Administrator, Police Department, or any person authorized to monitor or enforce the provisions of this ordinance.

- b) No person(s) shall tamper with, deface, alter, or remove a noise protection label placed on any product or equipment so as to contribute to or cause a noise disturbance.

SECTION IV MEASURED NOISE DISTURBANCES PROHIBITED

a) Unless a person has been granted a special exception in accordance with the provisions of this ordinance, it shall be unlawful for any person or group of persons to create a public noise disturbance in the Town of Newport. Any one or a combination of the following shall constitute a public noise disturbance:

- 1) A noise level which exceeds the ambient noise level of a given environment by 10 dBA at the point of complaint originating within the receiving property, except as otherwise regulated in this ordinance.

- 2) A stationary source of sound which emits a pure tone, a cyclically varying sound, or a repetitive impulse sound shall be considered a noise disturbance if the sound exceeds the ambient noise level by 5 dBA.

- 3) Any noise which could be clearly characterized as being "plainly audible" as defined and detailed in the provisions of this ordinance.

SECTION V EXEMPTIONS AND SPECIAL WAIVERS

a) The following uses and activities shall be exempt from the noise level requirements of this ordinance:

- 1) Safety signals and warning devices, including testing of those devices, used to bring attention to a legitimate public emergency.
- 2) Noise created by any authorized vehicle which is responding to an emergency and by persons and equipment engaged in the performance of emergency work.
- 3) Noises resulting from the provision of municipal services by public sector personnel including, but not limited to, snow removal, street cleaning, and refuse collection and compacting.
- 4) The unamplified human voice and unamplified crowd noises resulting from activities such as those planned by day care centers, schools, governmental and community groups; provided that such noises do not constitute clear violations of normal public verbal behavior.
- 5) Noises created by bells, chimes, and carillons which are used for religious purposes or for observation of national, legal, or public holidays.
- 6) Town sponsored events in public parks or public spaces sponsored by federal, state, or local governments or agencies thereof.
- 7) Non-commercial public assembly activities, including political rallies and promotions, conducted on public parks, spaces, and right-of-ways between the hours of 9:00 a.m. and 8:00 p.m..
- 8) Noise created by recreational, musical, or athletic events, including uses of amplified announcements, provided that such exceptions are effective only during the specific period of time authorized for the activity.

b) Upon good cause shown by the owner or responsible party for any noise source, the Town of Newport Administrator shall have the power to grant an exception from the requirements of this ordinance in order to allow sufficient time for the installation of necessary sound control equipment, facilities, or modifications to achieve compliance with the provisions of this ordinance. Such exemptions shall not exceed thirty (30) days, provided that exemptions may be renewed or extended as necessary only after satisfactory progress toward compliance has been demonstrated. A request for exemption shall be filed in form of a written letter to the Town of Newport Administrator, who shall determine the status of the exemption so applied for within a time period not to exceed five (5) days from the business day such letter was received. Failure to comply with this requirement shall constitute a violation of this ordinance and may be punishable as such.

- c) **Special Waivers:** The Town of Newport Administrator shall have the power to grant special waivers within a reasonable interpretation of the intent of this ordinance. Such activities requiring waivers include, but are not limited to:
- 1) Any event or activity of a non-profit or charitable nature and is judged to be of exceptional value, benefit, or interest to the public.
 - 2) Any event or activity which has a significant history of positive and legitimate public acceptance.
 - 3) A commercial event, activity, assembly of a temporary duration which is judged to be of exceptional value, benefit, or interest to the public.
- d) Each written letter of application for a special waiver shall be given to the Town of Newport Administrator with a fee of ten dollars (\$10); it shall specify the dates and hours of the requested activity, the type of noise creating activity, or equipment intended to be used, and the name, address, and telephone number of the person responsible for the event.
- e) Each application shall also contain information which demonstrates that bringing the intended sound creating activity into a strict compliance with this ordinance would constitute an unreasonable hardship on the applicant, community, or on another person.
- f) In determining the status of the application, the Town Administrator shall balance the benefit derived to the applicant and to the public from granting it and the hardship to the applicant and public from a denial of the request, and shall assess any adverse impacts on the health, safety, and welfare on the public and property which could result from granting a waiver.
- g) Special waivers shall be granted by notice to the applicant and may include any additional conditions felt necessary by the Town Administrator, Police Department, or other authorized officer of the Town. Special waivers shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any conditions of the special waiver shall be sufficient cause for a termination and shall subject the sound or activity to the requirements of this ordinance.
- h) The Town Administrator may issue additional guidelines to be followed in applying for special waivers and additional criteria to be considered in determining status of waiver requests.

SECTION VI ENFORCEMENT AND PENALTIES

- a) This ordinance shall be enforced by the Town of Newport Administrator and the Town of Newport Police Department.
- b) Any person violating any provision of this ordinance, including provisions for measured and unmeasured noise disturbances, shall

receive a verbal order to cease or abate the noise immediately or within a reasonable time period specified by the Town Administrator, Police Department, or other authorized officer.

- c) Any person who fails to comply with the above verbal order to cease or abate a noise disturbance, or who does comply but then again violates the order within seventy-two (72) hours, shall be charged with a violation of this ordinance and shall be subject to a fine of not less than twenty-five dollars (\$25) and not more than two hundred dollars (\$200). Each day such violation continues shall constitute a separate offense and may be punishable as such.
- d) A written record of all citations of measured noise disturbances shall be kept by the Town of Newport Administrator.
- e) For the purposes of the enforcement of the provisions of this ordinance, a noise level sound meter that meets or exceeds the requirements of the American National Standard Institute (ANSI) specifications for sound meters (ANSI S1-1971), approved on April 27, 1971, and issued by the American National Standards Institute for types I, II, and III sound level meters, shall be used in the analysis of individual noise disturbances. A sound level calibration instrument of the coupler type shall be used to calibrate the sound level meter in decibel units and such instrument shall produce a calibration sound pressure level. Such calibration instruments shall be used regularly as part of the normal maintenance procedures for the sound level meter used in the enforcement of this ordinance.

SECTION VII SEVERABILITY

If any section, paragraph, article, or provision of this ordinance should be declared invalid or unconstitutional by any court of competent jurisdiction such decision shall refer to and apply only to that section, paragraph, article, or provision; such decision shall not affect the validity of this ordinance and the remainder shall be valid and effective.

SECTION VIII EFFECTIVE DATE

This ordinance and its provisions shall become effective immediately upon adoption by the Commissioners of the Town of Newport.

Adopted this 1st of August 1985.
(day) (month)

Richard A. Barney
Town Secretary

Ronald J. Dupuis Sr.
Mayor

[Signature]
Town Solicitor

Anthony J. Colicchio
Commissioner

Richard A. Barney
Commissioner

Charles C. DiPietro
Commissioner