

**AN ORDINANCE
OF THE TOWN COUNCIL OF
THE TOWN OF FENWICK ISLAND, DELAWARE
AMENDING CHAPTER 107 NOISE
OF THE FENWICK ISLAND TOWN CODE**

WHEREAS, the Town of Fenwick Island, Delaware (the “Town”), through its Town Council (the “Council”), has broad authority to enact such ordinances necessary for the protection of public health, safety, comfort or welfare, and the protection and preservation of public and private property;

WHEREAS, the Council desires to amend Chapter 107 Noise of the Town Code (the “Code”) in order to establish new, objective and fair noise standards and penalty provisions;

NOW THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Fenwick Island, Delaware, in session met, a quorum at all times pertaining thereto, in the manner following, to wit:

Section 1. Chapter 107 Noise of the Code of the Town of Fenwick Island be, and hereby is, amended by making insertions as shown by underlining and deletions as shown by strikethroughs as follows:

Chapter 107 Noise

§ 107-1 **Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

...

DECIBEL (dB)

A standard unit for measuring the sound pressure level as measured by any reliable application and/or meter that is designed to measure decibel levels.

...

SOUND DEVICE

Any device for the amplification of sounds, including, but not limited to speakers or electronically enhanced sounds.

...

§ 107-2 **General prohibitions.**

The follow acts are deemed to be a noise disturbance. In addition to any noise that would annoy or disturb a reasonable person of normal sensitivities, including as determined by a police officer, the following acts by any person are declared to create an illegal noise disturbance, but any enumeration herein shall not be deemed to be exclusive:

~~A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:~~

A.(1) Playing any radio, phonograph, tape deck, speakers, sound device or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 midnight 10 p.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

B.(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

C.(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

D. The use of any amplified sound device out-of-doors:

(1) Without a permit from the Town; or

(2) Regardless of any permit, between the hours of 10:00 p.m. and 8:00 a.m. the following morning.

E. Unless otherwise permitted in this Chapter, any sound exceeding either (1) 65 Decibels between 8 a.m. and 10 p.m., or (2) 55 Decibels between 10 p.m. and 8 a.m., in each case as measured by a police officer in two successive readings

using any reliable application and/or meter that is designed to measure decibel levels at any property line of the property on which the noise source is located.

§ 107-6 **Exceptions.**

Exempted from these regulations are:

...

- F. With regard to a violation under Section 107-2E of this Chapter, where the police officer measuring Decibel levels determines, in his or her judgment, that the measured Decibel levels would not annoy or disturb a reasonable person of normal sensitivities.

§ 107-7 **Violations and penalties.**

- A. Any person who violates ~~found guilty of violating~~ any of the provisions of this chapter shall, ~~upon conviction thereof~~, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate fine offense.
- B. In addition to the civil fines ~~criminal penalties~~ hereinbefore described, if any person violates any provision of this chapter and/or commits noise disturbance and/or causes or allows noise in prohibited levels to emanate from a source property under his/her ownership or control, the Town may institute an action for injunctive relief against such person to prohibit or prevent such violation.
- C. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of a violation of § 77-9 of this Chapter of this the Code. Such license revocation may be immediate or deferred to the entire rental season for the following year, or both. In the event of a third violation, the matter shall be referred to the Town Council for consideration of implementation of penalty, including, but not limited to revocation of license. Town Council, upon referral, shall schedule a special meeting of Town Council for consideration of the violation and appropriate penalty.

- D. In the case of a commercial property subject to a business license, oral and written notice of each such violation shall be given to the recorded license holder. The business license may be revoked if there have been three oral and written notices during a calendar year of a violation of this Chapter of the Code. In the event of a third violation, the matter shall be referred to the Town Council for consideration of implementation of penalty, including, but not limited to revocation of license. Town Council, upon referral, shall schedule a special meeting of Town Council for consideration of the violation and appropriate penalty.
- E. In addition, The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys' fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

Adopted by the Council
Of the Town of Fenwick Island, Delaware

_____, 2024

Secretary of the Town Council
Of the Town of Fenwick Island