



TITLE #: 38

Ordinance #: 04-08-13-014

Date: 04-08-2013

ORDINANCE for NOISE CONTROL

DESCRIPTION: This ordinance shall be known as the “Town of Cheswold Noise Control”, as it establishes standards of behavior for property owners, residents and visitors while they are within the Town of Cheswold. It shall sometimes and herein be referred to as the Noise Ordinance and shall apply to and include the entire corporate limits of the Town of Cheswold, Kent County – State of Delaware.

Section 1. PURPOSE

This Ordinance is enacted to protect, preserve and promote the health, safety, welfare, peace and quiet for the citizens of the Town of Cheswold through the reduction, control and prevention of noise. The intent of this Ordinance is to establish standards which will eliminate and reduce unnecessary noises which are physically harmful or otherwise detrimental to the enjoyment of life, property and maintenance of business.

Section 2. APPLICABILITY

The provisions of the Noise Ordinance shall apply to all noises, sounds, and tones received at all property categories, except industrial districts which must meet the noise standards pre-determined by the Delaware Department of Natural Resources and Environmental Control, (DNREC), for that particular industry, that originate within the incorporated limits of the Town of Cheswold.

And it shall apply to all persons living, visiting or passing through the corporate limits of the Town of Cheswold, whether sitting, walking or riding in or on any type of mobile conveyance or owning or renting a residential, commercial or industrial structure and to all farm units which exceed compliance of the sound level measurements.

Additionally, this ordinance applies to noises, sounds, and tones about which a complainant has lodged a complaint, except for industrial sites under the auspices of DNREC. Sound level measurements for determining compliance shall be conducted only on the property of the complainant regardless of the existence of other receptors in closer proximity to the noise source under investigation.

Section 3. USAGE of TERMS

As used in this Ordinance, the following terms have the associated meaning:

3.1 Shall – is to be construed as mandatory.

3.2 May – is to be construed as permissive.

3.3 Gender – words importing the masculine gender shall include the feminine and neuter.

Section 4. DEFINITIONS

Definitions not specifically defined below shall be in conformance with applicable publications of the American National Standards Institute, (ANSI), or its successor body.

As used in this Ordinance, the following terms shall have the specified meaning:

- 4.1 Ambient Noise** – shall mean the all encompassing background noise associated with a given environment without the sound contribution of the specific source in question.
- 4.2 Animal Noise Control Agency** – shall mean a State or County administrative agency; a humane society; or other entity which is authorized by statute, ordinance or contract to enforce any animal noise control laws or regulations of the State of Delaware; Kent County or the Town of Cheswold.
- 4.3 Decibel-** shall mean a standard unit for measuring the sound pressure level. It is equal to twenty, (20), times the logarithm to the base 10 of the ratio of the pressure of the sound measured to a reference pressure which is twenty, (20), micropascals denoted as dB.
- 4.4 Emergency** – shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
- 4.5 Emergency Vehicle** – shall mean a motor vehicle used in response to public calamity or to Protect persons or property from imminent danger.
- 4.6 Holiday** – shall mean any day designated as such by the Federal Government; State of Delaware; or Town of Cheswold.
- 4.7 Motor Vehicle** – shall mean the same as defined in 21 Delaware Code §101, (Motor Vehicle Code), or any vehicles which are propelled or drawn by mechanical equipment, such as but not limited to passenger cars, trucks, trucks, truck trailers, semi-trailers, campers, motorcycles, mini-bikes, go-carts, snow mobiles, mopeds, amphibious craft on land, dune buggies or racing vehicles.
- 4.8 Noise** – shall mean any sound which is unwanted or which causes or tends to cause any adverse physiological or psychological effect on human beings.
- 4.9 Noise Disturbance** – shall mean any sound which:
- 4.9.1** Endangers or injures the safety or health of humans or animals;
- 4.9.2** Any sound that recklessly or willfully disturbs any neighborhood, business, or a reasonable person of normal sensibilities within the Town by making loud and unseemly noises.

Section 4. DEFINITIONS – “continued”

4.9.3 Jeopardizes the value of property and erodes the integrity of the environment; or

4.9.4 Is in excess of the allowable noise levels established in Section 8.

4.10 Noise, Plainly Audible – shall mean any noise for which the information content of that noise is unambiguously communicated to the listener, such as but not limited to spoken speech or musical rhythms.

4.11 Occupier – shall mean any person, public or private corporation; trust, firm; joint stock company; union; incorporated or unincorporated association; partnership; or government of a structure for purposes of residing or conducting business.

4.12 Owner - shall mean any person in whom is vested the ownership and title of property, and who is the owner of record.

Owner shall also include any local, city, county, state or federal governmental entity.

4.13 Person – shall mean a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an incorporated or unincorporated association, a partnership, a government or a governmental instrumentality.

4.14 Police Department – shall mean the group of employees hired by the Town Council of the Town of Cheswold to maintain and enforce the laws, rules and regulations of the Town of Cheswold, Kent County, State of Delaware.

4.15 Powered Model Vehicles – shall mean any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons or property, such as but not limited to model airplanes, boats, cars, or rockets, which can be propelled by mechanical means.

4.16 Premises – shall mean a lot, or parcel of land, including the buildings or structures thereon.

4.17 Property Boundary – shall mean an imaginary line which separates the real property owned or possessed by one, (1), or more person/s or governmental entity from that owned or possessed by another person or government entity.

4.18 Pure Tone – shall mean any sound which can be distinctly heard as a single pitch or set of single pitches. For the purposes of this Ordinance, a pure tone shall exist if the one-third, (1/3), octave band sound pressure level and the band with the tone exceeds the mathematical average of the sound pressure level of the two, (2), contiguous one-third, (1/3), octave bands by fifteen, (15) dB for bands with center frequencies less than one hundred sixty, (160), Hz, eight, (8), dB for bands with center frequencies of one hundred sixty, (160), Hz to four hundred, (400) Hz and by five, (5), dB for bands with center frequencies greater than four hundred, (400), Hz.

Section 4. DEFINITIONS – “continued”

- 4.19 Sound**– shall mean waste a temporal and spatial oscillation in pressue 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.
- 4.20 Weekday** – shall mean any Monday, Tuesday, Wednesday, Thursday, or Friday, which is not legally designated a holiday.
- 4.21 Weekend Day** – shall mean any Saturday or Sunday, which is not legally designated a holiday.
- 4.22 Town Council** – shall mean the group of Town elected officials acting as the governing body of the Town of Cheswold as specified by the Town Charter.

Section 5. DESCRIPTION of RULES for NOISE DISTURBANCE

The shall apply as to noise disturbance:

5.1 General Prohibition

It shall be unlawful for any person to make, continue or cause to be made or continued noise disturbance within the Town of Cheswold.

5.1.1 A noise disturbance can be prosecuted without the use of a noise meter so long as the noise disturbance:

5.1.1.a Endangers or injures the safety or health of human beings or animals;

5.1.1.b Recklessly or willfully disturbs any neighborhood, business, or a reasonable person of normal sensibilities within the Town of Cheswold by making loud or unseemly noises; or

5.1.1.c Jeopardizes the value of property

5.2 Specific Prohibitions

It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbances in the Town of Cheswold in any of the following manners:

5.2.1 Motor Vehicles, Horns and Motor Vehicle Signaling Devices

5.2.1.a It shall be unlawful for any person within any residential area to repair, rebuild, test, race or gun any motor vehicle between the hours of 9:00 p.m. and 8:00 a.m., of the following day in such a manner that would create a noise disturbance.

Section 5. DESCRIPTION of RULES for NOISE DISTURBANCE – “continued”

5.2 Specific Prohibitions - “continued”

5.2.1 Motor Vehicles, Horns and Motor Vehicle Signaling Devices - “continued”

5.2.1.b All vehicles operating within the boundaries of the Town of Cheswold shall comply with the applicable State of Delaware regulations pursuant to 21 Delaware Code §101, et seq. (Motor Vehicle Code).

5.2.1.c All aircraft and railroads operating within the Town of Cheswold shall comply with all applicable Federal and State of Delaware noise restrictions.

5.2.2 Radios, Television Sets, Stereos and Similar Devices.

5.2.2.a Operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph, stereo, drum, speaker or loudspeaker or other device for the production or re-production of sound in such a manner as to cause a noise disturbance.

5.2.2.b Operating any such device, as listed in Subsection 5.2.1.a, between the hours of 9:00 p.m., and following 8:00 a.m., in such a manner as to be:

5.2.2.b.1 Plainly audible through partitions common to two, (2), parties within a building;; or

5.2.2.b.2 Across real property boundaries as to create a noise disturbance.

5.2.3 Radios, Compact Disc Players, Tape Players and Other Similar Devices located within or on a Motor Vvehicle.

5.2.3.a It shall be unlawful for any vehicle operator or person in charge or control of a motor vehicle to permit the operation of any radio, tape player, music speaker, loudspeaker, compact disc player or other similar in or on a vehicle in such a manner as to be plainly audible on a public street, public right-of-way, or public space at fifty, (50), feet or more from the vehicle.

5.2.3.b It shall be unlawful to play such devices in such a manner that the operator of the vehicle cannot hear or comprehend emergency signals or devices.

Section 5. DESCRIPTION of RULES for NOISE DISTURBANCE – “continued”

5.2 Specific Prohibitions - “continued”

5.2.4 Animals

Owing, possessing, harboring or controlling any animal or bird which causes a noise disturbance by barking, baying, crying, squawking or by making any other noise continuously or incessantly for a period of ten, (10), minutes or which makes such noises intermittently for one-half, ($\frac{1}{2}$), hour or more; provided, however, that at the time the animal or bird is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated or that no person other than the owner, controller or possessor of the animal was teasing or provoking the animal or bird at the time it made such noise.

For purposes of the Section, the term “animals and birds” shall not include livestock or poultry which are raised or kept as part of a farm operation which is actively devoted to the production for sale of plants and animals useful to people.

5.2.5 Loading Operations

Loading, unloading, opening or otherwise handling boxes, crates, containers 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, except during an emergency.

5.2.6 Construction Noise

Operating or causing to be operated any equipment used in commercial construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances, thereto in the following manner:

5.2.6.a With sound control devices that have been tampered with.

5.2.6.b In violation of any regulation of the United States Environmental Protection Agency

5.2.6.c Between the hours of 9:00 p.m., and 7:00 a.m., the following day on weekdays and between 10:00 p.m., on Friday and Saturday evening and 9:00 a.m., on weekend mornings or between 10:00 p.m., the day before and 9:00 a.m., the day of a legal holiday which creates a noise disturbance, except as provided in this Section.

5.2.7 Explosives, Firearms and Similar Devices

The use or firing of explosives, firearms or similar devices as to cause a noise disturbance within a residential district or public right-of-way.

Section 5. DESCRIPTION of RULES for NOISE DISTURBANCE – “continued”

5.2 Specific Prohibitions - “continued”

5.2.8 Powered Motor Vehicles

Operating or permitting the operation of powered model vehicles between the hours of 9:00 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 sub-section 5.5 of this Ordinance 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 place.

5.2.9 Refuse Compacting Vehicles

Operating or permitting to be operated any motor vehicles which can compact refuse and which created, during the compacting cycle, a sound pressure level in excess of ninety-four, (94), dB(A) when measured at fifty, (50), feet from any point of the vehicle or between the hours of 8:30 p.m., and 6:00 a.m., the following day in residential districts.

5.2.10 Power Equipment

Operating or permitting to be operated any power saw, sander, drill, grinder, garden equipment or tools of a similar nature outdoors in residential districts between the hours of 9:00 p.m., and 7:00 a.m., the following day, in such a manner as to create a noise disturbance.

5.2.11 Stationary Emergency Signaling Devices

5.2.11.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.

Any such testing shall only use the minimum cycle test time.

In no case shall such test time exceed ten, (10), seconds.

5.2.11.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.

Such testing shall not occur before 8:00 a.m., or after 8:00 p.m.

The ten, (10), second time limit on the electromechanical functioning of the signaling device shall not apply to such system testing.

Section 5. DESCRIPTION of RULES for NOISE DISTURBANCE – “continued”

5.2 Specific Prohibitions - “continued”

5.2.11 Stationary Emergency Signaling Devices – “continued”

5.2.11.c Stationary emergency signaling devices shall be used only for testing in compliance with applicable sub-sections of this Ordinance and for emergency purposes where personnel and equipment are mobilized.

5.2.12 Electronic Insect or Bug Killing Devices

5.2.12.a Operating or permitting the use or operation of any electronic insect or bug killing devices for the elimination, control or extermination of flying insects or bugs in such a manner as to create a noise disturbance.

5.2.12.b Operating any such device as listed in Sub-Section 5.2.12.a, between the hours of 10:00 p.m., and the following morning of 7:00 a.m., in such a manner as to be plainly audible across real property boundaries.

Section 6. CONVICTIONS, ENFORCEMENT and PENALTIES

6.1 Convictions

6.1.1 First Conviction - Except as otherwise specified in this Ordinance, any person who fails to comply with the regulations as established in this Ordinance shall be subject to the penalties provided in the violation of any such provision of this Ordinance and shall be punished by a fine of not less than one hundred dollars, (\$100.00), for the first conviction.

6.1.2 Second Conviction – For a second conviction occurring within twelve, (12), months of the date of the first conviction, the penalty shall be a fine of not less than one hundred twenty-five dollars, (\$125.00), and not more than than five hundred dollars, (\$500.00).

6.1.3 Third Conviction – For a third or subsequent conviction occurring within twelve, (12), months of the date of the first conviction, the penalty shall be a fine of not less than one hundred fifty dollars, (\$150.00), and not more than one thousand dollars, (\$1,000.00), or imprisonment of not more than thirty, (30), days or both.

Section 6. CONVICTIONS, ENFORCEMENT and PENALTIES – “continued”

6.2 Enforcement – Animal Noises

6.2.1 – This Ordinance shall be enforced by an animal noise control agency as defined in this Ordinance.

The Mayor and Town Council may appoint the animal noise control officers, contingent on funds available to be responsible for the enforcement of this section as code enforcement officers for the limited purpose of issuing summons for violations of this section as code enforcement officers for the limited purpose of issuing summons for the violations of this Chapter.

6.3 Penalties

6.3.1 Noise Disturbance and Animal Noise Penalties

Any person convicted of a violation of Sub-Section 5.1; Sub-Section 5.2.4; Sub-Section 8, which shall be classified a misdemeanor, shall pay a fine for each offense as follows:

6.3.1.a First Offense - A fine of not less than two hundred fifty, (\$250.00), nor more than one thousand dollars, (\$1,000.00).

Second Offense – A fine of not less than five hundred dollars, (\$500.00), nor more than two thousand five hundred dollars, (\$2,500.00).

Each Subsequent Offense – A fine of not less than one thousand dollars, (\$1,000.00), nor more than five thousand dollars, (\$5,000.00).

6.3.1.b Each day any violation of such sub-section shall continue shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty for each day shall be imposed.

6.3.1.c Any summons issued for any violation of Sub-Section 5.2.4 may provide that in lieu of appearing in court, the offender may remit a voluntary assessment of up to two hundred dollars, (\$200.00), for each offense.

Section 7. EXCEPTIONS and SPECIAL WAIVERS

7.1 Exceptions

The following uses of an activity shall be exempt from noise level regulations:

7.1.1 Safety Signals – Noise of safety signals and warning devices.

7.1.2 Authorized Emergency Vehicles – Noises resulting from any authorized vehicle, when responding to an emergency.

Section 7. EXCEPTIONS; EXEMPTIONS and SPECIAL WAIVERS – “continued”

7.1 Exceptions – “continued”

7.1.3 Municipal Services – Noises resulting from the provision of municipal services.

7.1.4 Temporary Activities – Any noise resulting from activities of a temporary duration permitted by law or for which a waiver has been granted by the Department of Public Works.

7.1.5 Certain Unamplified Human Voices – The unamplified human voice and unamplified crowd noises resulting from activities such as those planned by day care centers, schools, governmental and community groups, except as specified in Sub-Section 5.2.3.

7.1.6 Parades – Parades and public gatherings for which a special waiver has been issued.

7.1.7 Religious Chimes; Bells; Carillons – Bells, chimes, carillons while being used for religious purposes or in conjunction with religious services or for national celebrations or public holidays and those bells, chimes, carillons that are installed and in use for any purpose.

7.1.8 Shooting Activities at Duly Sanctioned Shooting Organizations – Shooting activity between the hours of 8:00 a.m., and 10:00 p.m., at the outdoor or partially enclosed shooting ranges of organizations which are affiliated with or recognized by the State of Delaware or a national sport shooting organization.

7.2 Exemption for Time to Comply

Upon good cause shown by the owner or responsible party for any noise source, the Town Council shall have the power to grant an exemption from the requirements of this Ordinance, in order to allow sufficient time for installation of needed control equipment, facilities or modifications to achieve compliance, not to exceed ten, (10), days, provided that such exemption may be renewed as necessary, but only if satisfactory progress toward compliance is shown.

A request for exemption shall be filed in writing with the Land Use Administrator on forms provided by the Planning Commission.

7.3 Special Waivers

7.3.1 Authority

The Town Council shall have the authority, consistent with this Section to grant special waivers.

Section 7. EXCEPTIONS; EXEMPTIONS and SPECIAL WAIVERS – “continued”

7.3 Special Waivers – “continued”

7.3.2 Application

Any person seeking a special waiver pursuant to this Section shall file a written application with the Land Use Administrator.

The written application shall contain information which demonstrates that bringing the source of sound or activity for which the special is sought into compliance with this Ordinance would constitute an unreasonable hardship on the applicant or the community for another purpose.

7.3.3 Factors of Issuance or Denial

In determining whether to grant or deny the application, the Town Council shall balance the hardship to the applicant, the community and other persons of not granting the special waiver against the adverse impact on the health, safety and welfare of persons affected; the adverse impact of property affected; and any other adverse impacts of granting the special waiver.

7.3.4 Granting of Special Waivers

Special waivers shall be granted by notice to the applicant and may include all necessary conditions; including the time limits on the permitted activity.

The special waiver shall not become effective until all conditions are agreed to by the applicants.

Non-compliance with any condition of the special waiver shall terminate it and subject the person holding it to the regulations and punishment of Section 6 of this Ordinance.

7.3.5 Guidelines of Special Waivers

The Planning Commission may issue guidelines defining the procedures to be followed in applying for special waivers and the criteria to be considered in deciding whether to grant a special waiver.

Section 8. ALLOWABLE NOISE LEVELS

Unless a person has been granted a special waiver in accordance with Section 7, it shall be unlawful for any person to create a noise disturbance.

Any one, (1), or combination of the following shall constitute noise disturbances:

Section 8. ALLOWABLE NOISE LEVELS – “continued”

- 8.1 A noise which exceeds the ambient noise level by ten, (10), dBA, at the point of complaint origination, within the receiving property, except as otherwise regulated in this Ordinance.
- 8.2 Any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, shall be considered a noise disturbance, if the sound exceeds the ambient noise level by five, (5), dBA.
- 8.3 Noise which is described as “plainly audible”, in sub-sections of this Ordinance, including but not limited to Sub-Section 5.2.2; Sub-Section 5.2.3 and Sub-Section 5.2.10.

Section 9. NOISE LEVEL MEASUREMENT DEVICE

- 9.1 For the purpose of the enforcement of this Ordinance, noise levels shall be measured with a sound meter that meets or exceeds the requirements of the American National Standards Institute specification for sound level meters, (ANSI s1,4-1971), APPROVED April 27, 1971, and issued by the American National Standards Institute, for types I, II or S sound level meters.

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.

- 9.2 In any and all situations requiring the use of a sound level meter, such use shall be conducted by an ANSI certified and approved operator.

Section 10. SEVERABILITY

- 10.1 If any provision of this Ordinance or any application of this Ordinance to any particular entity or circumstance shall be deemed invalid, such invalidity shall not affect any other provision or application of this Ordinance, which may otherwise be given effect and to this end the provisions of this Ordinance are hereby declared to be severable.

Section 11. EFFECTIVE DATE

- 11.1 This ordinance and the rules, regulations, provisions, requirements, orders, administration and management and matters established and adopted hereby shall take effect and be in full force and effect from _____, 2013 and after the date of its final passage and adoption.

Ordinance No. 04-08-13-014 entitled, Noise Ordinance was duly adopted by a majority vote of the Cheswold Town Council at the Council Workshop meeting held on August 20, 2013, at which a quorum was present.

I, Donald F. Tinari, Mayor of the Town of Cheswold, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by an affirmative majority vote of all elected members of the Town Council of Cheswold at a regularly scheduled Town Council Workshop Meeting, held on, Tuesday, August 20, 2013, at which a quorum was present and voting throughout, and that the same is still in force and effect.

Attorney Review Complete: June 14, 2013 by Fred Townsed III, Esquire

CERTIFIED: Donald F. Tinari Date: August 20, 2013
Donald F. Tinari - Mayor

ATTEST: Theon E. Callender Date: August 20, 2013
Theon E. Callender - Secretary/Treasurer

Agreed: Robert W. Sine Date: August 20, 2013
Vice-Mayor Robert W. Sine

Agreed: Justin Curley Date: August 20, 2013
Councilperson Justin Curley

Agreed: Excused Date: August 20, 2013
Councilperson Mildred Johnson

Agreed: Sherry Lamberton Date: August 20, 2013
Councilperson Sherry Lamberton

NOTARIZED: Shadina Jones Date: August 21, 2013
Shadina Jones - Town Clerk

Ordinance No.: 04-08-13-014

Primary Sponsor: Secretary/Treasurer Theon E. Callender
Co-Sponsor: Chief Christopher Workman

Introduction: March 16, 2013