

ARTICLE III. - NOISE CONTROL AND ABATEMENT^[3]

Footnotes:

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Cross reference— *Offenses against public peace and order, § 36-66 et seq.*

State Law reference— *Noise control and abatement, 7 Del. C. § 7101 et seq.; unlawful use of motor vehicle horns, 21 Del. C. § 4306; mufflers and cut-outs, 21 Del. C. § 4311.*

Sec. 11-56. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

City-sponsored event means any event, occurrence, activity or assembly planned, funded and implemented in whole by an agency, department, division, office or authorized representative of city government, or so planned, funded and implemented in part by city government together with one or more nonprofit, charitable or civic organizations with full endorsement by the city government.

Commercial event means 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 means 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, means any C-1, C-2, C-3, C-4, C-5, C-6, W-2 or W-3 zoning district.

District, industrial, means any M-1, M-2 or W-1 zoning district.

District, residence, means any R-1, R-2-A, R-3, R-4, R-5-A, R-5-B, R-5-C, O or W-4 zoning district.

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

Emergency vehicle means a motor vehicle 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 vehicle.

Equivalent sound level (A-weighted) means 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 Leq (x) dB(A).

Motor vehicle means the same as defined in 21 Del. C. § 101, or any vehicles which are propelled or drawn by mechanical equipment, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, motorcycles, minibikes, go-carts, snowmobiles, mopeds, amphibious craft on land, dune buggies or racing vehicles.

Muffler means any apparatus whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

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

Noise disturbance means any sound which:

- (1) Endangers or injures the safety or health of humans or animals;
- (2) Annoys or disturbs a reasonable person of normal sensibilities;
- (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 section 11-65.

Noise, plainly audible, means 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.

Powered model vehicles means any powered vehicle, either airborne, waterborne or landborne, which is designed 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 means 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 means 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 means 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 average of the sound pressure level of the two contiguous one-third octave bands by 15 dB for bands with center frequencies less than 160 Hz, eight dB for bands with center frequencies of 160 Hz to 400 Hz and by five dB for bands with center frequencies greater than 400 Hz.

Sound means 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 level means 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 Institution specifications for sound level meters, ANSI S1.4-1971, 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 means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

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

All terminology used in this article not defined in this section shall be in conformance with applicable publications of the American National Standard Institute (ANSI) or its successor body.

(Code 1968, § 52-2)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 11-57. - Declaration of policy.

The city, finding that excessive levels of sound are detrimental to the physical, mental and social well-being of the citizens of the city as well as to their comfort, living conditions, general welfare and safety, hereby declares it to be necessary to provide for the greater good and for the more effective regulation of excessive sounds through the adoption of this article.

(Code 1968, § 52-1)

Sec. 11-58. - Enforcement.

This article shall be enforced by the chief of police or his designees and by the commissioner of licenses and inspection or his designees, except as otherwise noted in this article. Section 11-60 shall be enforced by the police department. Section 11-65 shall be enforced by the department of licenses and inspections.

(Code 1968, § 52-3(1))

Sec. 11-59. - Penalties.

- (a) Any person who is found guilty of a violation of any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof before a court of proper jurisdiction, unless some other penalty is specifically mandated, shall be subject to a fine of not less than \$250.00 nor more than \$1,000.00 for the first violation, a fine of not less than \$500.00 nor more than \$2,500.00 for the second violation, and a fine of not less \$1,000.00 nor more than \$5,000.00 for the third and subsequent violations. Each day that such violation of the provisions of this article occurs or continues shall constitute and be a separate offense and shall be punishable as such.
- (b) A written record of all citations of measured violations shall be kept by the commissioner of licenses and inspections or his designees.

(Code 1968, § 52-3(2); Ord. No. 93-074, § 1, 11-4-93; Ord. No. 05-054, § 1, 8-18-05)

Sec. 11-60. - Plainly audible sounds and unmeasured noise disturbances prohibited.

- (a) *Enforcement.* This section shall be enforced by the police department.
- (b) *General prohibitions.* It shall be unlawful for any person to make, continue, or cause to be made, or to create a noise disturbance within the boundaries of the city, except as provided in this article.
- (c) *Specific prohibitions.*
- (1) *Horns and signaling devices.* The use of motor vehicle horns and warning or signaling devices shall be limited to the emergency situations for which they are designed.
 - (2) *Radios, television sets, phonographs and similar devices.*
 - a. Operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph, drum, sound amplifier, auto- mobile radio, automobile stereo or high fidelity equipment, or other device which produces, reproduces, or amplifies sound:
 1. In such a manner as to create a noise disturbance within a receiving property;
 2. In such a manner as to create a noise disturbance within any receiving property when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters;
 3. In such a manner 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 or sidewalk or on any public space; or
 4. In such a manner, at any time during any 24-hour day, and so as to be plainly audible across real property boundaries or through partitions common to two parties within a building, or plainly audible at a distance of 50 feet from such device when operated within a motor vehicle on a

public right-of-way or on a public space.

- b. Removal and impoundment; procedures and penalties. In the enforcement of the provisions of subsection (2)a. of this section, police officers may remove and impound at police headquarters any such set, instrument, phonograph, equipment or device being used or operated in violation of such subsection and, in such instances, shall issue to the owner or operator of the same a form of receipt identifying the name and residence address of such owner or operator and clearly describing the set, instrument, phonograph, equipment or device impounded. Upon final adjudication of charges of violation of such subsection, the police department shall forthwith return such device to the owner or operator upon presentation of the issued form of receipt to the police department.
 - c. Penalties. The penalties for violations of this section shall be those penalties as set forth in section 11-59 of this article.
- (3) *Exterior loudspeakers.* Using or operating any mechanical device or loudspeaker in a fixed or movable 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, or on a public way, except as provided below.
 - (4) *Street sales.* Selling anything by shouting or by outcry within any residence district. Selling ice cream, popsicles, or any other perishable commodities, if any other commodities are otherwise lawful, from a motor vehicle accompanied by the amplification of sound from an automobile radio, automobile stereo or high fidelity equipment, or other device which reproduces, or amplifies sound between the hours of 9:00 p.m. and 7:00 a.m. the following morning, between June 1 and August 31, and between the hours of 8:00 p.m. and 7:00 a.m. the following morning during the school year, between September 1 and May 31 of each calendar year. A violation of the provisions of this subsection shall be punishable by a fine of not less than \$50.00.
 - (5) *Animals and birds.* Owning, possessing, harboring or controlling any animal or bird which barks, bays, cries or squawks or makes any other noise continuously or incessantly for a period of ten minutes or makes such noise intermittently for one-half hour or more thereby causing a noise disturbance within a receiving property; 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 there is no other act by persons which teased or provoked the animal or bird.
 - (6) *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 a manner as to create a noise disturbance within a residence district, except during an emergency.
 - (7) *Construction noise.* Operating or causing to be operated any equipment or construction tools used in commercial or noncommercial construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances thereto, in the following manner:
 - a. With sound control devices which have been tampered with;
 - b. In violation of any regulations of the United States Environmental Protection Agency; or
 - c. In business and industrial districts at any time before 7:00 a.m. and after 10:00 p.m., Monday through Friday; before 9:00 a.m. and after 10:00 p.m. on Saturday, Sunday or the day of a legal, national or state holiday which creates a noise disturbance. In residence districts at any time before 8:00 a.m. and after 7:00 p.m., Monday through Friday; before 9:00 a.m. and after 7:00 p.m. on Saturday; and before 10:00 a.m. and after 5:00 p.m., on Sunday or the day of a legal, national or state holiday which creates a noise disturbance.
 - (8) *Explosives, firearms and similar devices.* The use or firing of explosives, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance within a residence district or on a public right-of-way.
 - (9)

Powered model 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.

- (10) *Refuse compacting vehicles.* The operation of or permitting the operation of any motor vehicle which can compact refuse and which causes a noise disturbance between the hours of 10:00 p.m. and 7:00 a.m. the following day in residence districts, except such vehicles engaged in municipal services.
- (11) *Yelling, shouting, hooting, whistling* or generally creating a racket on public streets between the hours of 10:00 p.m. and 8:00 a.m. so as to annoy and disturb the quiet comfort or repose of persons or to cause a noise disturbance in any business or residence districts, or of any persons in the vicinity.
- (12) *Noise disturbances within dwellings.* Making or generating any noise disturbance by yelling, shouting, hooting or whistling, or otherwise making or generating any loud and raucous sound within a dwelling or structure at any time during any 24-hour day so as to be plainly audible across real property boundaries or through partitions common to two parties within a building, or plainly audible at a distance of 50 feet or more from the property boundary, and said noise disturbance unreasonably annoys and/or disturbs persons of normal sensitivities living or located on adjacent parcels or in adjacent dwelling units.
- (13) *Power equipment.* Operating, or permitting to be operated, any power saw, sander, drill, grinder, garden equipment or other construction tools of a similar nature, outdoors in residence districts between the hours of 8:00 p.m. and 7:00 a.m. the following day, in such a manner as to create a noise disturbance.
- (14) *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. Any such testing shall only use the minimum cycle test time. In no case shall such test time exceed ten 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. Such testing shall not occur before 8:00 a.m., or after 8:00 p.m. The ten-second time limit on the electro-mechanical functioning of the signaling device shall not apply to such system testing.
 - c. Stationary emergency signaling devices shall be used only for testing in compliance with applicable provisions of this chapter and for emergency purposes where personnel and equipment are mobilized.
- (15) *Tampering.*
- a. No person shall operate any equipment unless all noise and/or vibration control devices installed thereon are in full operation.
 - b. No person shall tamper with, circumvent or remove any sound level monitoring instrument, meter or device positioned by or for the police or licenses and inspections.
 - c. No person shall remove or deface a noise label on any product.
- (16) *Weekends and holidays.* Unless otherwise expressly provided, in residence districts each of the prohibitions in this subsection shall be applicable during the periods of time from the hour of the prior evening as provided until 9:00 a.m. of the following day whenever that day is a Saturday, a Sunday or a legal national or state holiday.

(Code 1968, § 52-4; Ord. No. 94-040, § 1, 7-14-94; Ord. No. 97-071, § 1, 10-2-97; Ord. No. 00-116, § 1, 9-28-00; Ord. No. 05-054, § 2, 8-18-05; Ord. No. 14-017, § 1, 6-19-14)

Sec. 11-61. - Use and activity exemptions.

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

- (1) *Safety signals and warning devices.* Noises of safety signals and warning devices, including testing of the same, when used in a manner and for purposes consistent with sections 11-60(c)(1) and 11-60(c)(13).
- (2) *Emergencies.* Noise created as a result of, or related to, an emergency including:
 - a. The emission of sound for the purpose of alerting persons to the existence of an emergency; or
 - b. The emission of sound in the performance of emergency work.
- (3) *Municipal services.* Noises resulting from the provisions of municipal services including, but not limited to, street cleaning, snow removal, and garbage and trash collection.
- (4) *The unamplified human voice.* Including noises resulting from activities conducted by day care centers, schools, and playgrounds, so long as such noises do not constitute a violation of section 11-60(c)(11).
- (5) *Religious services.* Noise created by bells, chimes and carillons while being used between the hours of 6:00 a.m. and 12:00 a.m. for the purpose of or in conjunction with religious services, or for national celebrations or public holidays, and those bells, chimes and carillons presently installed and in use for any purpose.
- (6) *City-sponsored events* in public parks or public spaces and activities of federal, state, and local governmental agencies.
- (7) *Noncommercial events, parades, public speaking or public assembly activities, including political rallies and promotions, conducted on any public space or right-of-way, provided that such activities are in compliance with all other applicable provisions of the city and state codes and are conducted only between the hours of 9:00 a.m. and 9:00 p.m.*
- (8) *Lawn maintenance equipment, except between the hours of 9:00 p.m. and 7:00 a.m., so long as it is functioning within manufacturers' specifications and with all mufflers and noise-reducing equipment in use and is in proper operating condition.*
- (9) *Recreational, athletic and musical activities.* Noise created by the use of property for the purposes of recreational, athletic or musical activities, including electronically amplified announcements, provided that such exemption is effective only during the specific period of time authorized for the conduct of such activity.

(Code 1968, § 52-5(a))

Sec. 11-62. - Exemptions for time to comply.

Upon good cause shown by the owner or responsible party for any noise source, the commissioner of licenses and inspections shall be authorized to grant a temporary exemption from the requirements of this article in order to allow sufficient time for installation of necessary noise-control equipment, facilities or modifications to achieve compliance, not to exceed ten days. Such an exemption may be renewed as necessary, but only if satisfactory progress toward compliance is evidenced. All requests for exemptions shall be filed with the commissioner of licenses and inspections or his designee, except any such request for exemption for an activity or use on the downtown mall shall be filed with the downtown mall review board for its consideration.

(Code 1968, § 52-5(b))

Sec. 11-63. - Special waivers—Authorization.

For good cause shown by an applicant, the commissioner of licenses and inspections or his designee may issue a special waiver of the strict requirements of this article as applied to the following activities:

- (1) An event, activity or assembly which is of a nonprofit or charitable nature and is judged to be of exceptional value, benefit or interest to the public.
- (2) An event, activity or assembly which has a significant history of public acceptance.
- (3) A commercial event, activity or assembly which is judged to be of exceptional value, benefit or interest to the public.

- (4) Commercial or noncommercial construction activities or the use of power equipment or construction tools during the periods of time specified in sections 11-60(c)(7) and 11-60(c)(12), provided that the commissioner or his designee may specify the hours of the day and the number of days during which the special waiver will apply.

(Code 1968, § 52-5(c))

Sec. 11-64. - Same—Issuance.

- (a) Each application for a special waiver under section 11-63 shall be filed with the commissioner of licenses and inspections, together with a fee of \$25.00 for up to three days and of \$10.00 per day more than three days, and shall set forth the date and hours between which such use or activity is to be extant, the nature of the use or activity and any noise-creating equipment to be employed and the name, address and telephone number of the person to be responsible for the operation thereof.
- (b) In determining whether or not to grant or deny the application, the commissioner of licenses and inspections shall balance the benefit to be derived to the applicant and to the public from granting it and the hardship to the applicant and the public from denial against the adverse impact, if any, on the health, safety and welfare of persons and property affected and any other adverse impacts of granting the special waiver.
- (c) Special waivers shall be granted by notice to the applicant and may include all necessary conditions, including time limits within which the permitted activity may be conducted. The special waiver shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special waiver shall be sufficient cause for termination of it and shall subject the person holding it to those otherwise applicable provisions of this article regulating the source of sound or the activity for which the special waiver was granted.
- (d) The commissioner of licenses and inspections may issue guidelines setting forth further procedures to be followed in applying for special waivers and the criteria to be considered in deciding whether or not to issue a special waiver.
- (e) With respect to any and all applications for special waivers for activities on the downtown mall, the foregoing procedures shall be administered by the downtown mall review board rather than the commissioner of licenses and inspection.

(Code 1968, § 52-5(d))

Sec. 11-65. - Allowable noise levels and prohibited measurable noise disturbances.

- (a) This section shall be enforced by the department of licenses and inspections.
- (b) Unless a person has been granted a special waiver, in accordance with the provisions of this article, it shall be unlawful for any person to create a noise disturbance. Any one or a combination of the following shall constitute measurable noise disturbances:
- (1) A noise which exceeds the ambient noise level by ten dBA, at the point of complaint origination within the receiving property, except as otherwise regulated in this article.
 - (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 dBA.
 - (3) Any source of sound which emits an impulse, the duration of less than one second with an abrupt onset and rapid decay, including metal to metal impact or exploding impacts, shall not exceed the peak level set forth below and measured at the point of complaint origination within the receiving property:
 - a. Residence districts between 8:00 p.m. and 8:00 a.m., 80 dBA.
 - b. All other districts and at all other times, 100 dBA.
 - (4) Any source of sound which emits infrasound (below 16 hertz) or ultrasound (above 20 KHz) frequencies shall not exceed 100 dBA when measured at the point of complaint origination within the receiving property.

- (5) No persons shall operate or cause to be operated any stationary source of sound in such a manner as to create a 24-hour equivalent A-weighted sound level which exceeds the leq limits set forth for the receiving land use category below and measured at the point of complaint origination within the property boundary of the receiving land use:
- a. Residence districts: 65 dBA between the hours of 7:00 a.m. and 8:00 p.m., 55 dBA between the hours of 8:00 p.m. and 7:00 a.m.
 - b. Business districts: 75 dBA between the hours of 7:00 a.m. and 10:00 p.m., 65 dBA between the hours of 10:00 p.m. and 7:00 a.m.
 - c. Industrial districts: 85 dBA.
- (6) The operation of or permitting the operation of powered model vehicles during the permitted period of operation, 7:00 a.m. to 9:00 p.m., when the maximum sound pressure levels exceed the levels set forth above as measured at the property line of the source or at a distance of 100 feet from the source if it is operated in a public space.
- (7) The operation of or permitting the operation of any motor vehicle which can compact refuse and which creates, during the compacting cycle, a sound pressure level in excess of 94 dBA when measured at a distance of 50 feet from any point of the vehicle, except such vehicles engaged in municipal services.
- (8) Unless otherwise expressly provided, in residence districts each of the prohibitions in this section shall be applicable during the periods of time from the hour of the prior evening as provided until 9:00 a.m. of the following day whenever that day is a Saturday, a Sunday or legal national or state holiday.
- (c) For the purpose of the enforcement of the provisions of this section, noise levels shall be measured with a sound level meter that meets or exceeds the requirements of American National Standard 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 having a tolerance no greater than 0.5 dB with a reference sound pressure level of 20 micronewtons per square meter.

(Code 1968, § 52-6)

Sec. 11-66. - Motor vehicles, aircraft and railroad noise levels.

- (a) *Vehicle repairs.* It shall be unlawful for any person within any residence district to repair, rebuild, test, or to race the motor of 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.
- (b) *Vehicular noise limits.* All vehicles operating within the boundaries of the city must comply with the applicable state regulations pursuant to 7 Del. C.
- (c) *Aircraft and railroad noise limits.* All aircraft and railroads operating within the boundaries of the city shall comply with all applicable federal and state noise regulations.

(Code 1968, § 52-7)

Sec. 11-67. - Noise-receiving and noise-producing devices prohibited on public transit vehicles.

No person, except as hereinafter authorized, shall operate or use any radio, tape recorder, tape player, television or other noise-receiving and noise-producing device on any public transit vehicle, except in connection with an earplug or earphones which prevent the noise from reaching other persons in the vehicle; provided, that this section shall not apply to any person formally authorized by the owner of the public transit vehicle, any police officer or firefighter, or any person directly engaged in the coordination of transit operations, or public emergencies or activities relating directly to the public health, safety or welfare.

(Code 1968, § 52-8)

Sec. 11-68. - Noise control and abatement warning signs.

The department of public works shall cause noise control warning signs to be made and placed in various high traffic areas throughout the city. The sign shall read "Conviction of Noise Violation, Wilmington City Code Section 11-60, subject to fines of up to \$1,000.00 for first offense".

(Ord. No. 07-048, § 1, 7-12-07)

Secs. 11-69—11-99. - Reserved.