

Sponsor: Town of Felton
First Reading: February 13, 2023
Second Reading: April 10, 2023

AN ORDINANCE TO REPEAL ARTICLE IV, TITLE 32 OF THE FELTON TOWN CODE AND ADOPT A NEW ARTICLE IV, TITLE 32, ENTITLED “AN ORDINANCE REGULATING NOISE IN THE TOWN OF FELTON AND PROVIDING PENALTIES FOR VIOLATION THEREOF”

WHEREAS, Section 3.2.28 of the Charter of the Town of Felton authorizes the Town to “define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health or welfare; and to cause the cost of such abatement or removal to be paid by the legal entity causing or permitting same to exist”;

WHEREAS, Section 3.2.50 of the Charter of the Town of Felton authorizes the Town to adopt ordinances “as the Town Council may deem necessary to carry into effect any of the provisions of this Charter . . . or which they may deem proper and necessary for the order, protection and good government of the town, the protection and preservation of persons and property, and of the public health and welfare of the town and its inhabitants;”

WHEREAS, the Town Council has adopted an ordinance entitled, “An Ordinance: Making, Creating or Permitting of Unreasonably Loud, Disturbing, or Unnecessary Noise Prohibited;” and

WHEREAS, in the opinion of the Town Council, it is in the best interest of the public health, safety and welfare to repeal the existing ordinance and adopt a new ordinance to better clarify the Town’s regulations pertaining to excess noise in the Town of Felton.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Felton, a majority thereof concurring in Council duly met, that Article IV, Title 32, is hereby deleted and repealed in its entirety and replaced with the following:

ARTICLE IV – TITLE 32

NOISE CONTROL ORDINANCE OF THE TOWN OF FELTON

Section 1. Purpose and Intent. The Town hereby finds that excessive levels of sound are detrimental to the physical, mental and social well-being of citizens of the Town of Felton, as well as to their comfort, living conditions, general welfare and safety. People have a right to and should be ensured an environment free from excessive sound of any type that may endanger the health, welfare, or safety of citizens or jeopardize the value of the property and erode the integrity of the environment of the Town. The Town hereby declares it to be necessary to provide for the greater good and more effective regulation of excessive sounds through the adoption of this Ordinance.

Section 2. Definitions. The following terms as used in this ordinance shall be defined as follows. All terminology used in this ordinance, not defined herein, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) and the

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AN ORDINANCE TO REPEAL ARTICLE IV, TITLE 22 OF THE TOWN OF PELTON CODE AND ADOPT A NEW ARTICLE IV, TITLE 22, ENTITLED "AN ORDINANCE REGULATING NOISE IN THE TOWN OF PELTON AND PROVIDING PENALTIES FOR VIOLATION THEREOF."

WHEREAS, Section 2.2.28 of the Charter of the Town of Pelton authorizes the Town to "define, prevent, abate or remove nuisance, disturbance or any other condition detrimental to the public safety, health or welfare, and to cause the abatement or removal to be paid by the legal entity causing or permitting same to exist";

WHEREAS, Section 2.2.29 of the Charter of the Town of Pelton authorizes the Town to adopt ordinances "as the Town Council may deem necessary to carry into effect any of the provisions of this Charter . . . or which they may deem proper and necessary for the order, protection and good government of the town, the protection and preservation of persons and property, and of the public health and welfare of the town and its inhabitants";

WHEREAS, the Town Council has adopted an ordinance entitled, "AN Ordinance Making, Creating or Permitting of Unreasonably Loud, Disturbing, or Unnecessary Noise Prohibited"; and

WHEREAS, in the opinion of the Town Council, it is in the best interest of the public health, safety and welfare to repeal the existing ordinance and adopt a new ordinance entitled, "AN Ordinance Making, Creating or Permitting of Unreasonably Loud, Disturbing, or Unnecessary Noise Prohibited"; and

NOW THEREFORE, BE IT HEREBY ENACTED BY the Town Council of the Town of Pelton a majority thereof concurring in Council that the following Article IV, Title 22, is hereby created and repealed in its entirety and reported with the following:

ARTICLE IV - TITLE 22

NOISE CONTROL ORDINANCE OF THE TOWN OF PELTON

Section 1. Purpose and Intent. The Town hereby finds that excessive levels of sound are detrimental to the physical, mental and social well-being of citizens of the Town of Pelton as well as to their comfort, living conditions, general welfare and safety. People have a right to and should be granted an environment free from excessive sound of any type that may endanger the health, welfare or safety of citizens or jeopardize the value of the property and create the integrity of the environment of the Town. The Town hereby declares it to be necessary to provide for the greater good and more effective regulation of excessive sound through the adoption of this Ordinance.

Section 2. Definitions. The following terms as used in this ordinance shall be defined as follows. All terminology used in this ordinance not defined herein shall be in conformity with applicable publications of the American National Standards Institute (ANSI) and the

Acoustical Society of America (ASA) as referenced in this ordinance.

CONSTRUCTION – Operating or causing to be operated any equipment used in the building, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances thereto.

MOBILE SOURCE — Any vehicle, self-propelled or not, which is capable of emitting noise.

NOISE — The intensity, frequency, duration and character of sounds from a single source or number of sources. "Noise" includes the amplified and unamplified human voice, vibrations of audible and subaudible frequency, including but not limited to, the bass sound from amplified music, without limitations.

NOISE DISTURBANCE — Any sound which endangers or injures the safety or health of humans or animals.

PLAINLY AUDIBLE — Any sound that can be detected by a person using his/her unaided hearing faculties, such as, but not limited to, spoken speech or comprehensible musical rhythms, including bass tones with a repetitive and impulsive sound.

SOUND — Any auditory effect that is distinctive or characteristic of its source. "Sound," as used in this article, shall encompass the definition of noise herein.

STATIONARY SOURCE — Any equipment or activity associated with permitted land uses which are capable of generating noise.

Section 3. Maximum Noise Levels and Specific Noise Disturbances.

No person shall cause, suffer, allow or permit the operation of any source of noise in such a manner as to create a noise disturbance. By way of example and not limitation, the following constitute noise disturbances and are prohibited.

- A. *Radios, television sets, musical instruments, and similar devices.* Operating or permitting the use or operation of any radio receiving set, musical instrument(s), television, phonographs, drum or other device for the production or reproduction of sound in such a manner as to constitute a noise disturbance. Operating or permitting the operation of any such device between the hours of 10:00 p.m. and the following 6:00 a.m. in such a manner as to be plainly audible across real property boundaries or through partitions common to two parties within a building, or plainly audible at 50 feet from such device when operated within a motor vehicle on a public right-of-way or on a public space constitutes a noise disturbance.
- B. Yelling, shouting, hooting, or whistling on public streets between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to cause a noise disturbance.
- C. *Power equipment.* Operating, or permitting to be operated, any power saw, sander, drill, grinder, garden equipment or tools of a similar nature, outdoors in residentially zoned 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.
- D. *Animals.* It shall be unlawful for any person to allow any domesticated or caged animal to create a sound in such a manner as to cause a noise disturbance. It is an affirmative defense under this subsection that the dog or other animal was intentionally provoked to bark or make any other noise.

Section 4. Specific noise regulations.

A. Motor Vehicles.

- (1) No person shall drive a motor vehicle, including a motorcycle, on any highway, street, road, or alley in the Town of Felton, unless such motor vehicle or motorcycle is equipped with a muffler in good working order and in accordance with manufacturer's specifications and in constant operation to prevent excessive or unusual noise.
- (2) No person shall use a "muffler cutout" on any motor vehicle.
- (3) No person shall drive a commercial vehicle equipped with an engine compression brake device on any highway, street, road, or alley in the Town of Felton unless such commercial vehicle is also equipped with a muffler in good working order and in accordance with manufacturer's specifications and in constant operation to prevent excessive noise. For the purposes of this section, "engine compression brake device" shall mean any device that uses the engine and transmission to impede the forward motion of the motor vehicle by compression of the engine.
- (4) Any motor vehicle or motorcycle with a current and valid registration shall be deemed to be in compliance with this Ordinance unless modifications have been made to the muffler or noise suppression system that would prevent the motor vehicle or motorcycle from getting re-registered without modifications to the muffler or noise suppression system.

B. Aircraft and railroad noise limits. All aircraft and railroads operating within the confines of the Town of Felton shall comply with all applicable federal and state noise regulations.

C. Construction noise.

- (1) All reasonable procedures shall be undertaken to minimize noise generated by construction activities.
- (2) Construction shall only occur on Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. Construction shall only occur between 8:00 a.m. and 4:00 p.m. on any Saturday. Construction is prohibited on Sunday or any legal holiday in the State of Delaware. Nothing contained herein shall prevent any property owner from working within his/her own property boundaries, provided that such work is done by the property owner.

Section 5. Exemptions and Special Waivers.

A. The following uses and activities shall be exempt from noise level regulations:

- (1) Emergency or warning signals, devices, or vehicles, either as an alert or in the performance of emergency work.
- (2) Municipally sponsored or approved celebrations or events.
- (3) Bells, chimes, or carillons while being used for (i) religious purposes or in conjunction with religious services, (ii) musical performances, or (iii) national celebrations or public holidays.
- (4) Stationary nonemergency signaling devices, such as any stationary bell, chime,

Section 2. Specific noise regulations.

A. Motor Vehicles.

(1) No person shall drive a motor vehicle equipped with an engine that is not equipped with a muffler in good working order and in accordance with manufacturer's specifications and in constant operation to prevent excessive or unusual noise.

(2) No person shall use a muffler cutout on any motor vehicle.

(3) No person shall drive a commercial vehicle equipped with an engine compression brake device on any highway or on any other public road or street in this State or on any highway or on any other public road or street in any other State and in accordance with manufacturer's specifications and in constant operation to prevent excessive noise. For the purpose of this section, "driving compression brake device" shall mean any device that is used to retard and retardation is applied, the forward motion of the motor vehicle by a compression of the engine.

(4) Any motor vehicle or motorcycle with a muffler and which registration shall be deemed to be in compliance with this ordinance unless modifications have been made to the muffler or noise suppression system that would prevent the motor vehicle or motorcycle from getting re-registered without modifications to the muffler or noise suppression system.

B. Airway and roadway noise limits. All aircraft and railroads operating within the confines of the Town of Fenton shall comply with all applicable federal and state noise regulations.

C. Construction noise.

(1) All reasonable procedures shall be undertaken to minimize noise generated by construction activities.

(2) Construction shall only occur on Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. Construction shall only occur between 8:00 a.m. and 4:00 p.m. on any Saturday. Construction is prohibited on Sunday or any legal holiday in the State of Delaware. Nothing contained herein shall prevent any property owner from working within his/her own property boundaries provided that such work is done by the property owner.

Section 3. Exceptions and special waivers.

A. The following uses and activities shall be exempt from noise level regulations:

- (1) Emergency or warning signals, devices or vehicles, either as an aid or in the performance of emergency work.
- (2) Municipally sponsored or approved celebrations or events.
- (3) Bells, chimes, or carillons while being used for (i) religious purposes or in conjunction with religious services, (ii) musical performances, or (iii) national celebrations or public holidays.
- (4) Stationary nonemergency signaling devices, such as any stationary bell, chime,

siren, whistle, or similar device, as long as the signal is limited to no more than one minute of sounding in an hour.

- (5) Noises resulting from the provision of municipal services (i.e. trash collection, public improvements or public utilities construction or repair).
- (6) Parades, public gatherings, or other activities permitted by law and/or for which a temporary special waiver has been issued.
- (7) Unamplified human voices and crowd noises, except as prohibited by Section 3.B.
- (8) Lawn maintenance equipment when it is functioning within the manufacturer's specifications and with all mufflers and noise reducing equipment in use and in properly operating condition between the hours of 8:00 a.m. and 8:00 p.m.
- (9) Amplified announcements and electronically amplified announcements at athletic events.

B. *Exemptions for time to comply.* Upon good cause shown by the property owner or other party responsible for any noise source, the Town Council shall have the power to grant an exemption from the requirement 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 days, provided that such exemption may be renewed as necessary, but only if satisfactory progress towards compliance is shown. A request for exemption shall be filed in writing with the Town Council.

C. *Temporary special waivers.*

- (1) The Town Manager may grant temporary special waivers, not to exceed 90 days, to the terms of this Ordinance, which may be granted for up to two additional 90-day extensions.
- (2) Any person seeking a temporary special waiver shall file a written application with the Town, which shall contain information demonstrating that bringing the source of sound or activity for which the waiver is sought into compliance with the ordinance would constitute an unreasonable hardship on the applicant or community. The Town Manager shall balance the hardship to the applicant, the community, and other persons of not granting the waiver against the adverse impact on the health, safety and welfare of the persons or property affected, and any other adverse impacts of granting the waiver.
- (3) Temporary special waivers shall be granted by notice to the applicant and may include any conditions deemed necessary by the Town Manager, including time limits on the permitted activity. Noncompliance with any condition of the temporary special waiver shall terminate the temporary special waiver and subject the permit holder to those provisions of this ordinance.

Section 7. Violations and penalties.

A. This ordinance shall be enforced by the chief of police or his/her designee(s).

B. *Penalties.*

- (1) Any person or persons to whom a citation is issued for a violation of this ordinance shall be subject to a fine for the first offense of at least \$100.00 and not to exceed \$500.00. For each subsequent offense, such person shall be subject to a fine of at least \$250.00 and not to exceed \$750.00.
- (2) When a warning or citation is issued for a violation occurring at a property not occupied by the owner, if the owner is also given written notice of the warning or citation, the property owner will be presumed to be responsible for any violations of this Ordinance and, in addition to the person committing the violation, may be cited directly by the police department for any such violations.
- (3) The citation shall be deemed to be properly served upon the person or persons responsible for the noise under any section of this ordinance if (a) a copy thereof is personally delivered by hand to the owner, owner's agent, or other person charged with violating the ordinance; (b) the notice is left at the usual place of residence or business where the violation occurred, in the presence of someone of suitable age and discretion who shall be informed of the contents thereof; or (c) the notice is mailed by certified mail addressed to the owner, owner's agent, or other person charged with violating this ordinance at the last known address with the return receipt requested.
- (4) In addition to the penalties listed in this section, the Town shall have the authority, upon conviction, consistent with this ordinance, to revoke any building permit where an owner has failed to demonstrate compliance with this ordinance after 60 days notification to the owner regarding the intent to revoke said building permit.

Section 8. General provisions.

- A. *Severability.* If any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses and phrases of the ordinance.
- B. *Effective date.* This ordinance shall take effect after the second reading and approval by the Town Council.

SYNOPSIS

This ordinance repeals the current noise regulations and establishes updated noise control regulations in the Town of Felton. This ordinance prohibits noises that endanger or injure the safety or health of humans or animals. This ordinance establishes specific limitations for noises originating from specific sources, such as radios, television sets, power equipment, animals, and yelling and shouting. This ordinance regulates the manner in which motor vehicles are to be operated and construction activities are to take place in order to minimize noise disturbances. Various noises are exempted from the standards contained in the ordinance. Individuals may apply to the Town Manager for temporary special waivers, and penalties for violations of the ordinance are established. Any landlord given notice of a warning or citation issued under this ordinance may be cited directly by the Town for any violations occurring at his/her property.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Felton at a duly-noticed and convened meeting at which a quorum was present on April 10, 2023.

Attest: Amy Thomas
Town Manager

So Certifies:

[Signature]
Mayor

This shall certify that a copy of this Ordinance was posted at the Town Hall on March 15, 2023.

4/10/23
Date

So Certifies:

Amy Thomas