

ORDINANCE NO. 17-2017

**AN ORDINANCE AMENDING CHAPTER 146, NUISANCES, ARTICLE II, NOISE
NUISANCES OF THE CODE OF THE BOROUGH OF SEA BRIGHT**

BE IT ORDAINED by the Borough Council of the Borough of Sea Bright in the County of Monmouth that Article II entitled "Noise Nuisances" of Chapter 146 entitled "Nuisances" of the Code of the Borough of Sea Bright is hereby amended in its entirety in the following manner:

SECTION I

Chapter 146, Nuisances, Article II, Noise Nuisances is hereby amended in its entirety as follows:

ARTICLE II: NOISE NUISANCES

§ 146-5. Noise Nuisances Prohibited

- A. It shall be unlawful for any person to make, continue or cause to be made or permitted any unnecessary and unreasonable loud, disturbing noise which is plainly audible and either annoys, injures or endangers the comfort, repose, health or welfare of others within the limits of the Borough. Such unlawful activity shall be considered a "noise nuisance" as further defined by § 146-7 of this Article.

- B. It shall be unlawful for any person on property owned by him or her or under lease or other arrangement to allow or give permission to any other person on the property to make, continue or cause to be made or permitted any unnecessary and unreasonable loud, disturbing noise which is plainly audible and either annoys, injures or endangers the comfort, repose, health or welfare of others within the limits of the Borough. Such unlawful activity shall be considered a "noise nuisance" as further defined by § 146-7 of this Article.

§ 146-6. Definitions.

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

ADVERTISEMENT DEVICES – Any generator of sound, whether it be human, a radio or other sound system, instrumental (including but certainly not limited to drums), mechanical or otherwise, which intends to attract the attention of the public to and/or acts as an advertisement of any business, sport, exhibition, entertainment, spectacle, undertaking, happening, occasion or any other event.

CONTINUOUS SOUND - Any sound that is not impulsive sound.

EMERGENCY — Any work or action necessary to deliver essential public services, including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions.

IMPULSIVE SOUND - A single pressure peak or a single burst (multiple pressure peaks) that has duration of less than one second.

NOISE — Any sounds of such level and duration as to be or tend to be injurious to human health or welfare or which would unreasonably interfere with the enjoyment of life or property.

NOISE NUISANCE – As further defined within § 146-7 of this Article. However, any noise generated by an activity which has been granted a Special Event Permit pursuant to Chapter 38 of the Code of the Borough of Sea Bright shall not be considered a Noise Nuisance.

PERSON — Any corporation, company, association, society, firm, partnership and joint-stock company, as well as individuals.

PLAINLY AUDIBLE — Any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound-amplification or -reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The enforcement officer need not determine the title, specific words, or the artist performing the song.

SOUND SOURCE — Any person, animal, device, operation, process, activity or phenomenon which emits or causes noise.

§ 146-7. Definition of noise nuisances.

The following acts are declared to be loud, disturbing and unnecessary noise nuisances in violation of this article but said enumeration shall not be deemed to be exclusive, namely:

- A. Radio, phonograph, instrument, singing . The playing of any radio, phonograph or musical instrument or singing in such a manner or in such volume as to annoy or disturb the quiet, comfort or repose of persons within or outside of any dwelling, hotel or other type of residence, particularly during the hours between 10:00 p.m. and 8:00 a.m. of the following morning.
- B. Animals and birds. The owning, harboring or keeping of any animal or bird which has been causing or causes frequent or long-continued noise which disturbs the comfort and repose of any person within the vicinity. "Frequent or long-continued noise" means continually for 10 minutes or intermittently for 30 minutes, unless provoked.
- C. Shouting. The excessive shouting, screaming or loud talking of peddlers, hawkers, vendors, patrons, or others who disturb the peace and quiet of the neighborhood.
- D. Advertisement devices. The operation, particularly during the hours between 10:00 pm and 8:00 am of the following morning of any advertisement device within any building or on any premises, or on the sidewalks, streets and highways or other public places of the Borough, whereby the sound is cast directly or indirectly upon any public street or place and can be heard to the annoyance or inconvenience of persons upon any street or public place or in neighboring premises.
- E. Horns and signals. The sounding of any horn or signal device on any automobile or other vehicle while not in motion for any unnecessary or unreasonable period of time, except as a danger signal.

- F. Muffler exhaust. The generation of loud sound as a result of the discharge into the open air of the exhaust of any steam engine, stationary jet or internal combustion engine or motor vehicle, except through a properly functioning muffler or other device which will effectively prevent loud or explosive noises therefrom. Such sound generation shall not be considered a nuisance if occurring during the course of a Vehicle Repair, as defined within and subject to the limitations of Paragraph O of this section.
- G. Construction. The excavation, grading, paving, erection, demolition, alteration or repair of any premises, street, building or structure from 7:00 p.m. on Friday until 8:00 a.m. Saturday, from 7:00 p.m. Saturday until 7:00 a.m. on Monday, and on Mondays through Fridays from 7:00 p.m. until 7:00 a.m. Commercial construction shall not be allowed on Sundays at any time. Exceptions may be made if urgent necessity is in the interest of public health and safety. If the nature of the emergency will prohibit the prior procurement of a permit the work shall only proceed in accordance with a permit first obtained from the Chief of Police or his/her respective designees. These regulations shall also apply to the delivery, removal or emptying of construction dumpsters and roll-off containers.
- H. Loading and unloading. The creation of loud and excessive noise in connection with the loading or unloading of any vehicle or the opening or destruction of bales, boxes, crates and containers.
- I. Interfering with work in institutions. The creation of excessive noise in or on the grounds of any school, church, synagogue, hospital, institution of learning, court, public building or place of public assembly, or on any street adjacent to such grounds, places or buildings, while the same are in use and which unreasonably interferes with the working of the institution or place or unduly annoys persons therein.
- J. Tools and equipment. The operation or use of any power lawn mower, chainsaw, fence-post driller, saw, grinder, drill, garden equipment, snow blowers, leaf blowers or the like, between the hours of 8:00 p.m. and 7:00 a.m. of the following morning.
- K. Buses, trucks or tractors. The unnecessary warming up or idling of buses, trucks or tractors and the unnecessary and repeated idling, acceleration and deceleration or starting and stopping of automobiles and motorcycles.
- L. Outdoor concerts. Outdoor concerts, except in accordance with a Special Event Permit pursuant to Chapter 38 of the Code of the Borough of Sea Bright, or in conjunction with a commercial establishment upon its property provided the commercial establishment is in compliance with the limitations of Paragraphs (A) and (C) of this Section.
- M. Vehicle noises. The use of an automobile, motorcycle or vehicle so out of repair or so loaded that it creates loud and unnecessary grating, grinding, rattling or other noise. Such sound generation shall not be considered a nuisance if occurring during the course of a Vehicle Repair, as defined within and subject to the limitations of Paragraph O of this Section.

- N. Powered model vehicles. The operating or permitting the operation of powered model vehicles between the hours of 8:00 p.m. and 8:00 a.m. of the following morning.
- O. Vehicle repair. The repairing, rebuilding, modifying or testing of any motor vehicle or off-road vehicle in or near a residential district in such a manner as to cause disturbance of the repose of others between the hours of 8:00 p.m. and 8:00 a.m. of the following morning.
- P. Other noises. Any other continuous noise not enumerated above which is unreasonably loud, disturbing, unnecessary, and which annoys, injures or endangers the comfort, repose, health or welfare of others within the limits of the Borough.

§ 146-8. Reserved.

§ 146-9. Proof of violation.

Proof of violation of any Paragraphs of § 146-7 of this Article shall be determined by plainly audible means as detected at more than fifty (50) feet from the property line from which the noise nuisance is emanating or from within the receptor's premises in the event the source and the receptor share a common or abutting wall, floor or ceiling or are on the same property.

§ 146-10. Violations and penalties.

Any person found guilty of violating any provision of this article shall be subject to the following penalty schedule:

- First Offense: A fine not to exceed \$ 200.00.
- Second Offense: A fine not to exceed \$ 500.00.
- Third Offense: A fine not to exceed \$ 1,250.00.
- Fourth or Greater Offense:

- (a) A fine not to exceed \$ 1,250.00; and/or
- (b) a period of community service not exceeding 90 days; and/or
- (c) Imprisonment for any term not exceeding 90 days.

Each day of violation shall constitute an additional, separate and distinct offense. However, no subsequent offense shall apply unless it has occurred within five (5) months of the previous offense. Any offense occurring more than five (5) months after the previous offense shall be considered a First Offense.

§ 146-11. Permits; fees.

- A. The Borough official, officer or employee charged with the responsibility of issuing permits for the activities requiring permits in accordance with Paragraph G of § 146-7 of this Article shall issue permits for such activities if such officer

shall find that the activities will not unduly or unnecessarily annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others; that the activities will not violate any other ordinance or law or create a public nuisance; and that the public health and safety will not be endangered thereby.

- B. Permits shall specify the dates and hours of the permitted activities.
- C. The issuing agents are authorized to adopt and use such forms of application and permits as may be reasonably required in the performance of their duties. Each application for a permit shall be accompanied by the applicable fee or a fee of \$20 if no other fee has been established, which shall be payable to the Borough of Sea Bright.

§ 146-12. Appeal of denial of permit.

An applicant for a permit pursuant to Paragraph G of § 146-7 of this Article shall have the right to appeal to the Borough Council from the denial of the permit by the applicable municipal official. Such appeal shall be taken by filing a written notice of appeal addressed to the Borough Council. Such notice shall be filed within three days after the issuing officer shall have notified the applicant of the denial of the permit. The Borough Council shall act upon the appeal at its next regularly scheduled meeting after receiving the notice thereof and shall give the applicant an opportunity to be heard before taking action. The Borough council may affirm or reverse the issuing officer's denial of the permit or may grant the permit with modifications or conditions.

§ 146-13. Enforcement.

- A. It shall be the duty of the Police Department of the Borough to enforce the provisions of this article. In addition to public law enforcement officers and others who by law are entitled to enforce or bring complaints under this article, the officers who are designated hereunder for the issuance of permits, as well as the Borough License Officer and Health Officer, or their designees, shall have the power to enforce and bring complaints under this article.
- B. A violation of this article shall be cause for a summons and complaint to be issued forthwith, and failure to desist upon being warned by an enforcement officer shall constitute an additional separate offense; provided, however, that if the noise source is not a readily identifiable individual or a motor vehicle moving on a public right- of-way, in lieu of a summons and complaint, enforcement personnel may issue a twenty-four-hour notice, in writing, which may be served personally or by certified mail to the last-known address of the person or persons in charge of or in control of the device, building or premises producing the noise, to abate said violation of this article. Failure to comply with this order so issued and served shall constitute an additional violation of this article.

SECTION II: All Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistencies

SECTION III: If any section, subsection, paragraph, sentence or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

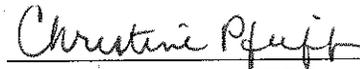
SECTION III: If any section, subsection, paragraph, sentence or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION IV: This Ordinance shall take effect immediately upon its passage and publication as required by law.

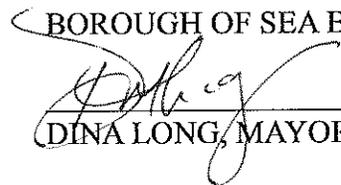
I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Sea Bright, introduced on September 19, 2017 and will be further considered after a Public Hearing held on October 3, 2017 at the Municipal Building at 7:00 pm.

INTRODUCED: September 19, 2017
PUBLIC HEARING: October 3, 2017
ADOPTED: October 17, 2017

Witness



CHRISTINE PFEIFFER, CLERK

BOROUGH OF SEA BRIGHT,


DINA LONG, MAYOR

