

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY
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**CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 16 -1121-01**

**ORDINANCE TO AMEND THE CITY DELAWARE CITY CODE CHAPTER 26 TO
GOVERN NOISE NUISANCES**

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-01 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code");

WHEREAS, the Mayor and City Council desire to amend Chapter 26, Sections 26-41 through 26-45 (the "Amendments");

WHEREAS, the Mayor and City Council believe that governing noise nuisances is in the best interest of The City of Delaware City;

WHEREAS, under Article V, Section 5-02(B) of the Charter, the Amendments were introduced at a regular meeting, duly read in full or in abstract, and prominently posted for ten (10) days in The City of Delaware City.

NOW, THEREFORE, making the express finding that the changes to the Code is necessary to enhance the health, safety, and welfare of the City of Delaware City, the Mayor and

the City Council of The City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Amend Chapter 26, Article V of the City Code by adding the underlined text identified below:

Sections 26-34 to 26-40 Reserved

Section 2. Amend Chapter 26 of the City Code of Delaware City by adding Sections 26-41 through 26-45, which are identified in the text below:

Article VI Noise Control

Section 26-41. Noise Disturbances Prohibited, generally.

It shall be unlawful for any person to create or assist in creating any unreasonably loud and disturbing noise in the City that encroaches on the quiet enjoyment of the property of another.

Section 26-42 Noise Measurement.

For the purpose of determining a noise disturbance, the noise shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI), or by a Code Enforcement Official, or designee, who determines that a noise unreasonably effects the quiet enjoyment of neighboring properties.

Section 26-43 Prohibited Noise.

A. It shall be unlawful to carry on the following activities in any residentially zoned area of the city or within three hundred (300) feet of any residentially occupied structure:

1. Operate a front-end loader for refuse collection between the hours of 9:00 p.m. and 7:00 a.m.
2. Operate construction machinery between the hours of 9:00 p.m. and 7:00 a.m.
3. Operate garage machinery between the hours of 9:00 p.m. and 7:00 a.m.
4. Operate lawn mowers and other domestic tools out-of-doors between 9:00 p.m. and 7:00 a.m.
5. Any noise that registers more than sixty (60) db(A) at the nearest complainant's property line shall be probable cause for a violation.

B. Any sound that overweeningly encroaches upon the quiet enjoyment of a neighboring property, as determined by the Code Enforcement Officer, or designee, is prohibited.

C. This section shall not apply to emergency operations designed to protect the public health and safety.

Section 26-44. Exceptions and Special Waivers.

A. Application. The application for a permit to exceed the time-frame and levels under Section 26-43 shall be submitted to the Code Enforcement Officer at least fifteen (15) working days in advance of the planned use except in case of emergency. The application shall designate an individual person or persons who shall be in control of the sound amplification equipment and assure that its use complies with the terms of the permit.

B. Denial; exceptional permit. If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, he shall promptly submit a copy of the denied permit application together with a short statement of the reasons he believes he is entitled to a permit to the City Manager. The City Manager shall have the discretion to grant an exceptional permit waiving locational, time, and/or db(A) requirements, upon his determination that the applicant has made a substantial showing of legal entitlement. Any such exceptional permit shall be promptly reported to city council.

Section 26-45 Enforcement and Penalties.

Any person found in violation of this section is subject to a fine up to \$100 for each infraction.

Section 3. Inconsistent Ordinances and Resolutions Repealed. All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the

unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.

ADOPTED BY THE MAYOR AND COUNCIL, this ____ day of _____, 2016.

ATTEST:

City Secretary

Mayor

APPROVED AS TO FORM:

Council Member

City Solicitor

Council Member

Council Member

Council Member

Council Member