

Ordinance #5 Noise

Noise laws and ordinances are ubiquitous. In Delaware noise laws have been enacted by the State, all three counties and by various municipalities. Arden's noise ordinance, adopted in 1970, is very simple. In contrast the New Castle County ordinance is comprehensive and complex. See New Castle County Code Section 22.03.008, adopted in 2016. The New Castle County Ordinance applies throughout New Castle County, including to Arden. Arden could still have a noise ordinance, but should it?

Types of Noise Ordinances

Noise ordinances are of two general types: ordinances that limit noise that by reason of volume, character, intensity and duration disturb the comfort, peace or safety of a "person of ordinary sensibility" and ordinances that prohibit noise exceeding a specified decibel level. Arden's noise ordinance takes the first approach. The New Castle County ordinances uses both approaches. The first approach is more subjective. It can be written to identify more specific sounds that people find disturbing and does not require any equipment. The second approach requires the use of special equipment that measures sound and setting decibel levels for various activities.

General Prohibitions

Most noise ordinances include a general prohibition on noise and a list of specific prohibitions. Ordinance #5 includes a general prohibition in Section 1. Section 1 prohibits "unreasonably loud, disturbing and unnecessary noise in the Village or noise of such character, intensity and duration as to be detrimental to the life and health of any person or to unreasonably disturb or annoy the quiet comfort or repose of any person." It is almost certainly unenforceable. The Virginia Supreme court in *Tanner v. City of Virginia Beach* (2009) declared the City of Virginia Beach noise ordinance unconstitutional. The City of Virginia Beach ordinance used terminology very similar to that used in Section 2 of Arden's ordinance. The Court held that phrases like "unreasonably loud, disturbing and unnecessary" and references to "reasonable persons and "reasonable sensitivity" are too vague to give citizens notice of what conduct is prohibited.

The New Castle County ordinance also contains a general noise prohibition. It prohibits noise that "endangers or injures the safety or health of humans or animals," or "recklessly or willfully disturbs . . . a "reasonable person of normal sensibilities . . . by making loud or unseemly noises" or "jeopardizes the value of property." Taken alone, this language would seem to be too vague, but the County ordinance also includes specific prohibitions on various noises sources and, as an alternative approach, the prohibition of noise that exceeds specified decibel levels.

Specific Prohibitions

Ordinance # 5 includes two specific prohibitions. The first prohibition, in Section 3, prohibits "excessive noise" from automobiles with brakes or muffler in a state of disrepair. The

County ordinance simply requires that vehicles must comply with State law, which prohibits driving a motor vehicle not equipped with a muffler in good working order. Title 21, Chapter 43, Section 4311.

Section 4 of Ordinance #5 prohibits playing musical instruments or a radio, phonograph or television at a volume causing “excessive or unreasonable noise.” This prohibition is probably also unenforceable because of vagueness. The County ordinance includes a dozen or so specific prohibitions addressing noise from differing sources, including from radios, phonographs. These specific prohibitions also include, for example, prohibitions relating to construction noise; power equipment; explosives, firearms and fire crackers; and powered model vehicles. Some of these specific prohibitions limit to certain hours the activity that would generate the noise. For example, a prohibition on use of power equipment limits the use of certain power tools to 7 AM to 9 PM.

Section 4 also provides that “No person shall allow an unattended dog outside of its owner’s domicile to bark between the hours of 10 P.M. and 10 A.M.” The comparable section in the County ordinance prohibits continuous noise for a period of 10 minutes or intermittent noise for 30 minutes. It applies any time of day.

Noise Meters

Some noise ordinances prohibit noise above specified decibels as measured by decibel meter. Special equipment and training are needed for this purpose. The advantage of this approach is that it is more objective. Ordinance # 5 does not include decibel limits on noise. The County ordinance prohibits noise which exceeds the ambient noise level by 10 decibels, measured at the point of “complaint origination, and for certain types of sound 5 decibels.

Exceptions and Waivers

Ordinance # 5 does not include any exceptions or provide for any waivers. The County ordinance includes some exceptions. An example is noise from emergency vehicles responding to an emergency. The County Department of Land Use is also permitted to grant waivers. It must hold a public hearing before doing so.

Enforcement

Almost all ordinances provide for enforcement by a police department because of the possibility of violence in confrontations with those causing a violation of the ordinance and the need to use the courts to impose fines for violations. The New Castle County ordinance provides for enforcement by the New Castle County Police Department. The portions relating to dogs or other animals may also be enforced by animal control agencies.

The New Castle County ordinance authorizes fines for first offenses of \$250 to \$1,000; \$500 to \$2,500 for second offenses and \$1,000 to \$5,000 for subsequent offenses. Each day a violation continues constitutes a separate offense.

Ordinance #5 is silent on enforcement. It would be necessary to rely on the New Castle County Police Department to enforce the ordinance. Ordinance #5 limits fines for violations to \$100 for each violation in accordance with Arden's charter.

Conclusion

Ordinance # 5 does not meet Arden's needs and is almost certainly unconstitutional at least in part. The New Castle County noise ordinance is comprehensive. The County Police Department presumably has experience with enforcing it. It would be possible to amend Ordinance # 5 to address its deficiencies, but it would necessarily be similar to the County ordinance and any differences would be confusing to those who must comply and those who enforce it. Since the County ordinance applies to Arden, it is better to repeal Ordinance # 5.

Recommendation: Repeal Ordinance # 5