COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2018 Legislative Session, Legislative Day No. : July 10, 2018

Bill No.: 1403

Expiration Date: September 13, 2018

Introduced by: Mr. Callahan, Mr. Pack, Ms. Williams

A BILL TO ADOPT THE TALBOT COUNTY NOISE ORDINANCE PURSUANT TO ENVIRONMENT ARTICLE §3-105 AND §3-401, ET SEQ., MARYLAND CODE ANN. AND TO AMEND SECTIONS OF CHAPTER 11 (ALCOHOLIC BEVERAGES) AND CHAPTER 15 (ANIMALS) TO MAKE SUCH CHAPTERS CONSISTENT WITH THE TALBOT COUNTY NOISE ORDINANCE

By the Council: July 10, 2018

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, July 31, 2018 at 5:30 p.m. at the Library Meeting Room, Talbot County Free Library, 100 West Dover Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO ADOPT THE TALBOT COUNTY NOISE ORDINANCE PURSUANT TO ENVIRONMENT ARTICLE §3-105 AND §3-401, ET SEQ., MARYLAND CODE ANN. AND TO AMEND SECTIONS OF CHAPTER 11 (ALCOHOLIC BEVERAGES) AND CHAPTER 15 (ANIMALS) TO MAKE SUCH CHAPTERS CONSISTENT WITH THE TALBOT COUNTY NOISE ORDINANCE

WHEREAS, the Environment Article §3-105 and §3-401 of the Maryland Code Annotated provides authority and parameters for the Talbot County Council to regulate noise within Talbot County; and,

WHEREAS, on February 13, 2018, the Talbot County Council created a temporary Noise Task Force ("Task Force") comprised of Talbot County residents and business owners, the Talbot County Sheriff, and staff from the Talbot County Economic Development & Tourism, the Talbot County Office of Law, and the Talbot County Planning and Zoning, to assist the Council in developing possible changes to the regulation of noise in Talbot County as part of the update of Chapter 190, Zoning Ordinance, of the Talbot County Code; and,

WHEREAS, the Task Force met weekly over several months, receiving public comment electronically and at every meeting, heard presentations on the science of sound, on local government enforcement of noise ordinances, and consulted with Talbot Humane and the Talbot County Animal Control Board on the enforcement of animal noises; and,

WHEREAS, the Task Force presented their working draft recommendations to the County Council in a July 2, 2018 joint work session, and such recommendations are detailed below;

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that:

SECTION ONE: The above recitals are incorporated as if fully set forth herein;

SECTION TWO: Upon introduction of this Bill, a public hearing will be scheduled and advertised in a newspaper of general circulation in the County advising the public of the date, time, place and purpose of the public hearing for receipt and consideration of public comment;

SECTION THREE: BE IT ENACTED by the Talbot County Council, that Chapter 92 of the Talbot County Code is hereby created as set forth below:

KEY

Boldface.....Heading or defined term

Underlining.....Added to law by Bill

~~Strikethrough~~.....Deleted from law by Bill

* * * ..... Existing law unaffected

Chapter 92 Noise Ordinance

ARTICLE I: GENERAL

Section 92-1 TITLE AND AUTHORITY

A. This Chapter may be cited as the "Talbot County Noise Ordinance", or "Chapter 92."

B. The effective date of this Chapter 92 is (insert date upon adoption).

Section 92-2 PURPOSE; OBJECTIVES

A. PURPOSE

The purpose of this Chapter is to provide for the abatement and control of Noise levels throughout Talbot County so as to promote public health, safety, welfare, and economic well-being for the residents of the County, and the use and enjoyment of both public and private property.

B. OBJECTIVES

1. To reduce the threat to health, safety, welfare, and economic value when excessive Noise impacts a community by defining the circumstances under which such conditions may be considered a threat; and

2. To abate excessive Noise conditions to promote the health, safety and welfare of the residents of Talbot County, and to promote the maximum use and enjoyment of property.

3. To provide authority and enforcement measures for such efforts.

C. According to documented studies, it has been determined that Noise above certain levels, for certain periods of time, is harmful to the health of humans. Although precise levels at which all adverse health effects occur have not definitely been ascertained, it is known that one's well-being can be affected by Noise through loss of sleep, speech interference, hearing impairment and a variety of other psychological and physiological factors. The establishment of ambient Noise standards or goals, must provide margins of safety in reaching conclusions based on available data that relates Noise exposure to health and welfare effects with due consideration to technical and economic factors.

Section 92-3 MEASUREMENT

A. DECIBEL

1. Noise levels measured with a sound-level meter meeting the most recently published standards of the American National Standards Institute (ANSI S1.4) American Standards Specification for General Purpose Sound Level Meters. The instrument shall be set to the A-Weighted response scale and the meter to the slow response. Measurement shall be based on an average reading.

2. Measurements shall be conducted in accordance with ANSI S1.2, American Standard Method for the Physical Measurements of Sound.

B. NON-DECIBEL

This standard is only applied if a noise meter is not readily available to a Noise Control Officer or where a Noise cannot be measured under the Decibel measurement standards herein.

C. Noise shall not exceed the Decibel or Non-Decibel sound limits indicated in this Chapter beyond the Noise Source property line. Measurements may be made at any point along or adjacent to a lot line of the Noise Source property or at any point on any receiving property when measurement at the Noise Source property line is not practical or feasible, as determined by the Noise Control Officer. Measurements may be conducted at any point or multiple points for the determination of identity of single or multiple Sources.

Section 92-4 NOISE STANDARDS

A. It shall be unlawful within the county to make, continue to make, permit, or cause to be made or continued a Noise Disturbance or a Noise level in excess 65 dBA during the Daytime or 55 dBA during the Nighttime, except as specifically stated herein.

B. Prominent Discrete Tones, cyclically varying sound, or Periodic or repetitive Noises shall not exceed a Sound Level that is 5 dBA lower than the applicable level allowed in 92-4.A above.

C. In the VM zone, as defined in Chapter 190 of the Talbot County Code, restaurants, bars and nightclubs required to obtain a Noise Compliance Plan shall not exceed 60 dBA during the Daytime for outdoor amplified music.

Section 92-5 EXEMPTIONS

A. The provisions of this Chapter do not apply to devices used solely for the purpose of warning, protecting, or alerting the public, or some segment thereof, or the existence of an emergency situation or operation.

B. Certain Noise Sources or unintended Noise, in the regular course of Residential activities, (e.g. wind chimes, garage door) as determined by the Noise Control Officers, will not be investigated for compliance with this Chapter.

C. The provisions of this Chapter do not apply to the following:

1. Household tools and portable appliances in normal usage and in proper operating condition. This does not include Noise caused by amplified music devices.

2. Operation of garden and lawn maintenance equipment between the hours of 7:00 a.m. and 1/2 hour after Sunset.

3. Air conditioning or heat pump equipment used to cool or heat housing on Residential property. For this equipment, a Person may not cause or permit Noise levels which exceed 70 dBA for air conditioning equipment at receiving Residential property and 75 dBA for heat pump equipment at receiving Residential property.

4. A Person may not cause or permit Noise levels emanating from Construction or demolition site activities which exceed:

a. 90 dBA from 7:00 a.m. to 7:00 p.m.; or

b. The levels specified herein from 7:00 p.m. to 7:00 a.m.

5. Back-up generators being used during power outages resulting from storms and other emergencies.

6. On a property granted agricultural assessment by the Maryland Department of Assessment and Taxation, Noise emanated by commercial agricultural, livestock and timber operations, and related support operations and machinery. Related operations include, but are not limited to, production and management of tillage, fertilization, pest control, crop or timber harvesting, marketing, saw mills, grain dryers, livestock, crops, vegetation, and soil including compost, feeding, housing, and maintaining of farm animals and handling their by-products. Related machinery includes, but is not limited to, motor vehicles, tractors and all-terrain vehicles being used for such operations.

7. Motor vehicles and all-terrain vehicles being used for commercial use, landscaping and/or yard work.

8. Motor vehicles licensed for use on public roads when used in a manner consistent with the Transportation Article of the Annotated Code of Maryland. This does not include Noise caused by stereos, radios or other similar devices located within or on motor vehicles.

9. Aircraft and related airport operations at airports licensed by the Maryland Aviation Administration.

10. Boats on State waters or motor vehicles on State lands under the jurisdiction of the Department of Natural Resources.

11. Sounds of pile driving equipment from 7:00 a.m. to ½ hour after Sunset or 7:30 p.m., whichever is later.

12. Sound created by vehicles used for, or in the act of, trash and recycling collection.

13. Sound created by temporary public gatherings, such as sporting, amusement, and entertainment events operating according to terms and conditions authorized by a temporary use certificate or other approval issued by Talbot County. This includes but is not limited to athletic contests, carnivals, fairs, parades, festivals, or other public celebrations.

14. Sound created by events on the property of a public or private school that have been sanctioned by such school.

15. Construction and repair work on public property.

16. The sounding of bells, chimes, or carillons while being used for religious purposes or in conjunction with religious services or for national or state celebrations or public holidays in such a manner as would otherwise cause a Noise Disturbance.

17. Recreational firearm shooting and hunting activities as regulated or licensed by the Maryland Department of Natural Resources.

18. Fireworks displays and celebratory cannon fire permitted by the Office of the State Fire Marshal.

19. Activities for which the regulation of sound has been pre-empted by Federal or State law.

Section 92-6 PROHIBITED ACTS

A. The following acts and the causing thereof are declared to be a violation of this Chapter:

1. Operating or permitting to be operated an off-road internal combustion engine powered vehicle for recreation purposes, including, but not limited to, a dirt bike, an all-terrain vehicle, a go-cart, a snowmobile, or a similar vehicle, on private property closer than 300 feet to a neighboring residence or the associated Curtilage, without the written permission of the affected resident, unless it can be demonstrated to the Noise Control Officers that the vehicle can be operated within the Noise limits specified in Section 92-4.

2. Any owner or Person in control of any animal or bird who allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound when such sound by its volume or frequency unreasonably disturbs or interferes with the peace of any Person for more than fifteen (15) minutes in any one-hour period of any day, or is documented by three or more separate episodes in a sequential seven-day period. The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury, or was in the act of protecting from a perceived or actual threat; when the animal is a service dog that is engaged in the performance of its duties at the time of making the sound; when part of a bona fide agricultural operation; when related to activities regulated by the Department of Natural Resources related to hunting.

Section 92-7 ENFORCEMENT

A. ENFORCEMENT

Violations of this Chapter may be, but need not be, complaint based.

B. ENFORCEMENT OFFICERS

1. Primary Noise Control Officers have the authority to investigate suspected violations of any section of this Chapter and pursue enforcement activities.

2. If a Primary Noise Control Officer is unavailable, a Secondary Noise Control Officer has the authority to investigate suspected violations of any section of this Chapter that do not require the use of a Sound Level meter (i.e. Noise Disturbance, times of day, and/or distance determinations) and pursue enforcement activities.

3. Talbot County Animal Control Officers shall have the principal authority to investigate suspected violations of Section 92-6.A.2 of this Chapter and pursue enforcement activities of that section.

4. Noise Control Officers may cooperate with enforcement personnel of other agencies or municipalities in investigating compliance with one another's ordinances regarding Noise compliance.

C. ENFORCEMENT PROTOCOLS

1. The Departments have discretion to determine which Noise cases will be investigated by which Department. A Noise complaint may be referred to another municipality, County or state agency as appropriate.

2. Noise investigations and sound measurements need not be conducted at the exact time of a Noise compliant.

3. A violation of any provision of this Chapter shall be cause for issuance of a Warning, or a Notice of Violation and Notice of Penalty Assessment as set forth in herein, or other actions or mitigation measures as required by this Chapter.

4. If a Person fails to comply with a Noise Control Officer's decision that a violation exists and must cease, immediate enforcement shall proceed in accordance with this Chapter and/or the Noise Control Officer's enforcement process.

5. The enforcing agency has discretion to provide adequate time for a property or business owner to implement a Noise mitigation measure.

D. PENALTIES

AGRICULTURE AND RESIDENTIAL USES			
VIOLATION OF THIS CHAPTER			
OFFENSE WITHIN A 12-MONTH PERIOD			
1ST	2ND	3RD	4TH and more
FINE			
$100	$200	$400	$1,000
OTHER USES			
VIOLATION OF THIS CHAPTER			
OFFENSE WITHIN A 24-MONTH PERIOD			
1ST	2ND	3RD	4TH and more
FINE			
$1,000	$2,000	$4,000	$10,000

1. For the purposes of this section, Agriculture and Residential includes all uses and related or accessory uses as listed in Chapter 190, Table IV-1, §190-25 of the Talbot County Code. Other uses includes Institutional, Commercial, Industrial, Marine, Utility, Transportation and Communication and their accessory use as listed in Chapter 190, Table IV-1, §190-25 of the Talbot County Code.

2. The Noise Control Officer shall send a copy of the Notice of Violation and Penalty Assessment to the approving authority(ies), as applicable (e.g. Short-Term Rental Review Board, Liquor Board, Board of Appeals, Planning Commission or Planning Director). The notice may include a recommendation to suspend or revoke a license or approval in accordance with the applicable regulations for such action or may include a requirement or recommendation for Noise mitigation.

3. In addition to, and not in lieu of, the penalties prescribed in this Chapter, the County Attorney may apply to the Circuit Court for an injunction or declaratory judgment against the continuing violation of any of the provisions of this Chapter and may seek any other remedy of relief authorized by law.

E. MITIGATION

1. Installation and use of Noise suppression and measurement devices and systems may be required pursuant to the Talbot County Code or enforcement action.

a. No Person shall cause, suffer, allow, or permit the removal, disconnection, or disabling of any noise suppression device or system which has been installed on or in proximity to any Noise Source pursuant to the Talbot County Code or enforcement thereof.

b. No Person shall defeat the designed purpose of any noise suppression or measurement system or device by installing therein or thereon any part or component which does not meet the minimum designed specifications for that system or device.

c. No Noise Source shall be operated with its noise suppression or measurement system or device removed or otherwise rendered inoperable.

Section 92-8 CONFLICTS

A. Whenever any provision of this Chapter conflicts with any other provision of law, rule, or regulation covering the same subject matter, whether set forth in this Chapter or elsewhere, that provision which is more restrictive or imposes the higher standard or requirement shall govern.

ARTICLE II: DEFINITIONS

Section 92-9 GENERAL

A. RULES OF CONSTRUCTION

1. Words used in the present tense include the future; words in the singular number include the plural, and words in the plural number include the singular unless the natural construction of the wording indicates otherwise.

2. The words "shall" and "must" are mandatory, and the words "may" and "should" are permissive.

Section 92-10 TERMS DEFINED

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

ANSI

The American National Standards Institute or its successor bodies.

A-WEIGHTED SOUND

A unit for describing the amplitude of sound as measured on a Sound Level meter using the A-weighting network.

CONSTRUCTION

Any site preparation, assembly, erection, repair, alteration, or similar activity.

CURTILAGE

The enclosed land surrounding a house or dwelling and includes all areas maintained in lawn or horticultural plantings and may be bounded by a fence or wall, but would not typically include areas more distant than 300 feet from the dwelling unless those areas were horticulturally maintained and routinely used as areas of personal refuge, or supported accessory structures that were routinely utilized.

DAYTIME

For the purposes of this chapter, Daytime shall mean from 7:00 a.m. to 10:00 p.m.

DECIBEL (dB)
Means a unit of measure equal to ten times the logarithm to the base ten of the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purposes of this Chapter, 20 micropascals shall be the standard reference pressure.

DECIBEL A – WEIGHTED (dBA)
The Sound Level in Decibels determined by the A-weighting network of a Sound Level meter or by a calculation from octave band or one-third band data.

DEPARTMENT
For the purposes of this Chapter only, this term shall mean the Department of Planning and Zoning, Office of Permits and Inspections, the Talbot County Sheriff's Office and the Maryland State Police. In certain circumstances as defined herein, Department shall include the Talbot County Animal Control Officer.

NIGHTTIME
For the purposes of this chapter, Nighttime shall mean from 10:00 p.m. to 7:00 a.m.

NOISE
The intensity, frequency, duration, and character of sound, including sound and vibration of sub-audible frequencies.

NOISE CONTROL OFFICER, PRIMARY
A Talbot County Code Compliance Officer.

NOISE CONTROL OFFICER, SECONDARY
A Law Enforcement Officer having jurisdiction in Talbot County.

NOISE DISTURBANCE
Sounds of sufficient volume, character and duration which unreasonably annoy, disturb, injure or endanger the comfort, health, safety, welfare, or environment of others, in the opinion of a Talbot County Noise Control Officer.

NON-DECIBEL
Noise levels that can be heard clearly by a Person using his or her unaided hearing faculties. Only those noise levels that reach "Noise Disturbance" are regulated herein.

PERIODIC NOISE
Noise possessing a repetitive on and off characteristic.

PERSON
Any individual, group or individuals, firm, partnership, voluntary association or private, public or municipal corporation, or political subdivision of any government entity responsible for the use of the property.

PROMINENT DISCRETE TONE
Any sound that can be distinctly heard as a single pitch or a set of single pitches.

SOUND LEVEL
In Decibels, the weighted sound pressure level measured by the use of a Sound Level meter satisfying the requirements of ASNI S1.4 1971 "Specifications for Sound Level Meters." Sound Level and Noise level are synonymous. The weighting employed shall always be specified.

SOURCE
Any Person, animal, equipment, location or property, real or personal, generating Noise contributing to noise pollution, or Noise Disturbance.

SUNSET
The time of apparent descent of the sun below the horizon.

SECTION THREE: AND BE IT FURTHER ENACTED, that Chapter 11, Alcoholic Beverages, of the Talbot County Code is hereby amended as follows:

* * *

§11-14 Revocation and suspension of licenses

A. General provisions.

(1) Any license issued under the provisions of this chapter may be revoked or suspended by the Board for any cause which in the judgment of the Board is necessary to promote the peace or safety of the community in which the place of business is situated. A license may be revoked or suspended, and/or a fine imposed by the Board based upon, but not limited to, any of the following findings:

* * *

(h) Repeated failure or refusal of any license holder to comply with any provisions of the Talbot County Code, including but not limited to violations of Chapter 92 of the Talbot County Code.

SECTION FOUR: AND BE IT FURTHER ENACTED, that Chapter 15 of the Talbot County Code is hereby amended as follows:

* * *

§15-2 DEFINITIONS

* * *

PUBLIC NUISANCE

A. Any animal which, on repeated occasions, has been engaging in one or more of the following behaviors:

~~(1) Making loud or objectionable sounds;~~

(1) ~~(2)~~ Running at large;

(2) ~~(3)~~ Excreting on private property other than its owner's;

(3) ~~(4)~~ Damaging property;

(4) ~~(5)~~ Molesting passersby;

(5) ~~(6)~~ Chasing vehicles;

(6) ~~(7)~~ Harassing, chasing, tormenting, or injuring livestock, domestic or farm animals; or

(7) ~~(8)~~ Acting in any manner which is injurious to property or to public health, safety and welfare.

SECTION FIVE: AND BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter §213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION SIX: AND BE IT FURTHER ENACTED, that if any provision of the *TALBOT COUNTY NOISE ORDINANCE,* or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of such Plan which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION SEVEN: AND BE IT FURTHER ENACTED, that the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in the *TALBOT COUNTY NOISE ORDINANCE,* as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION EIGHT: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

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PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. having been published, a public hearing was held on at p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED:

By Order _____
Susan W. Moran, Secretary

Williams -

Price -

Bartlett -

Pack -

Callahan -

EFFECTIVE DATE: _____