

Adopted April 8, 2024

**AN ORDINANCE TO AMEND CHAPTER 132, NOISE, OF
THE MUNICIPAL CODE OF THE CITY OF LEWES BY AMENDING SECTION 132-2,
DEFINITIONS, AND INSERTING A NEW SECTION 132.4.1 RELATING TO
ESTABLISHING A COMMERCIAL NOISE PERMIT OF AN EXTENDED DURATION**

WHEREAS, the Mayor and City Council of the City of Lewes desire to promote the greater good of the City of Lewes by creating a limited mechanism for restaurants, brewpubs, and microbreweries, with outdoor patios, to play prerecorded outdoor music at reasonable noise levels that do not harm the health and safety of the City of Lewes; and

WHEREAS, the Mayor and City Council of the City of Lewes recognize that following the COVID-19 pandemic, the demand for outdoor dining has increased; and

WHEREAS, the Mayor and City Council of the City of Lewes desire to support restaurants, brewpubs, and microbreweries to promote a vibrant community, and to help strengthen the local economy; and

WHEREAS, the Mayor and City Council of the City of Lewes acknowledge an important interest in supporting its restaurant industry by ensuring that under certain circumstances restaurants, brewpubs, and microbreweries, with outdoor patios, may play outdoor prerecorded music for customers; and

WHEREAS, the Mayor and City Council of City of Lewes also recognize that excessive levels of sound are detrimental to the general welfare of the City, and as a result, outdoor music will not be allowed to the extent that it annoys or disturbs a reasonable person of normal sensitivities, as determined by a police officer.

BE IT ORDAINED by the Mayor and City Council, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

Section 1. Chapter 132, Noise, § 132-2, Definitions, of the Municipal Code of the City of Lewes, Delaware, as amended be and the same is hereby further amended by making insertions as shown by underlining as follows:

§ 132-2 Definitions.

For the purposes of this chapter, the terms used herein are defined as follows:

NOISE DISTURBANCE

Any sound which:

- A. Endangers or injures the safety or health of humans or animals; or
- B. Annoys or disturbs a reasonable person of normal sensitivities; or
- C. Jeopardizes the value of property and erodes the integrity of the environment.; or

D. Causes or tends to cause an adverse psychological or physiological effect on humans, excluding all aspects of noise regulated by the Federal Occupational Safety and Health Act.

Section 2. Chapter 132, Noise, of the Municipal Code of the City of Lewes, Delaware, as amended be and the same is hereby further amended by inserting a new § 132-4.1, as follows:

§ 132-4.1 Extended Noise Permit.

- A. Restaurants, brewpubs, and microbreweries, with patios, decks or porches, covered, uncovered, raised or at grade, may apply to the City Manager for a permit to play outdoor prerecorded music. The following conditions are required for a permit to be issued. Furthermore, all requirements herein shall be continuously maintained throughout the duration of the permit.
- (1) The outdoor recorded music does not create a Noise Disturbance.
 - (2) Speakers must be no larger than ten (10) inches in width by ten (10) inches in height.
 - (3) Speakers must face directly toward the subject Business Establishment.
 - (4) Outdoor prerecorded music is only permitted between the hours of 11:30 a.m. and 9:30 p.m.
 - (5) Outdoor prerecorded music permitted hereunder shall not exceed 65 Decibels at the property line of the property on which the noise source is located.
- B. An application under this section shall be in writing to the City Manager, accompanied by a fee payable to the City in the amount of \$150, and contain the following information attested to by the signature of the applicant.
- (1) The name, address, phone number and email contact information of the applicant, and the address of the property being applied for;
 - (2) That the applicant has an ownership interest in, or is a lessee of, the property being applied for;
 - (a) If the applicant does not have an ownership interest in the property being applied for, an owner of the real property associated with the application must consent to the filing of the application.
 - (3) That the applicant consents to physical inspection by the City of the exterior of the business establishment to confirm all application information, and to confirm all requirements under Subsection (A) are satisfied. Such inspection shall include a decibel level reading of outdoor prerecorded music permitted

under this section. Inspections shall be performed at an agreed upon time, subsequent to the issuance of a permit pursuant to this Section. Furthermore, that the applicant consents to all future such inspections to confirm all requirements herein are continuously maintained throughout the duration of the permit. Nonresponse to or refusal of an inspection shall be grounds for the suspension of a permit under this section.

- (4) That the applicant acknowledges that there is no right to receiving or maintaining a permit under this section. All privileges acquired under this section are revocable at any time.
- C. Upon verifying the completeness and accuracy of the application, the City Manager may grant the application.
- D. Notwithstanding the provisions of § 132-7, any permit issued pursuant to this Section shall be subject to written warning, or suspension, or revocation by the City Manager by reason of a violation of any provision of this chapter.
- E. The City Manager may suspend a permit for community or special events, or emergency situations. The length of the suspension will be for a duration as determined necessary by the City Manager.
- F. Any permit holder may appeal the decision of the City Manager to deny issuance, suspend, or revoke a permit to the Mayor and City Council. The applicant shall have 10 business days to appeal, in writing, to the Mayor and City Council.
- G. Any fraud, material misrepresentations, or false statements contained in the attestations, required documentation, correlating application materials, or other communication to the City in order to induce or prevent official action by the City, not limited to the permit under this section, shall be grounds for immediate revocation of the permit.
- H. A permit issued under this Section shall not be transferable.
- I. This section will cease to have effect, and any permit granted hereunder shall expire, on June 1, 2027, unless a subsequent act of City Council expressly extends the duration of this section.

Section 3. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

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Section 4. This Ordinance shall take effect on June 1, 2024.

I, Timothy Ritzert, Secretary of the City Council of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the ordinance passed by Mayor and City Council at its regular meeting on **April 8, 2024**, at which a quorum was present and voting throughout and the same is still in full force and effect.


Secretary

SYNOPSIS: This Ordinance revises Chapter 132, Noise, of the Municipal Code of the City of Lewes, for the purpose of creating a limited permit to allow for outdoor prerecorded music on private property.