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ORDINANCE NO. 2024-\_\_\_\_\_

**AN ORDINANCE TO AMEND CHAPTER 14  
OF APEX TOWN CODE**

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX AS FOLLOWS:

**Section 1.** Chapter 14 of the Town of Apex Code of Ordinances is hereby amended to read as follows with additions shown as bold underlined text and deletions shown as strikethrough text:

**ARTICLE I. – IN GENERAL**

**Sec. 14-1. – Attempts; aiding and abetting; attempts to avoid doing required acts.**

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**Sec. 14-16. ~~Reserved~~Authorization of expanded area for ABC licensed premises.**

**Pursuant to the authority granted by S.L. 2021-150, and in accordance with G.S. 160A205.5, any establishment located within the corporate limits of the town and holding an ABC permit issued pursuant to Article 10 or 11 of Chapter 18B of the North Carolina General Statutes that allows the on-premises consumption of alcoholic beverages may utilize an area that is not part of the permittee’s licensed premises for the outdoor possession and consumption of alcoholic beverages sold by the permittee, subject to the requirements of G.S. 18B-904(h).**

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**Sec. 14-28. ~~Reserved~~Bird sanctuary.**

**(a) The area embraced within the corporate limits of the town and all land owned or leased by the town outside the corporate limits is hereby designated as a bird sanctuary.**

**(b) It shall be unlawful intentionally to trap, hunt, shoot or otherwise kill, within the sanctuary hereby established, any native wild bird; provided, it shall be lawful to trap or otherwise destroy starlings, crows or similar birds or fowl when such birds or fowl are found to congregate in such numbers in a particular locality or otherwise constitute a nuisance or a menace to health or property and do in fact serious damage to property within the town. If are used to eradicate birds causing such damage to persons or property within the town, then a permit shall be obtained from the chief of police as provided under section 14-17. The bird clubs of**

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**the town are hereby granted permission to erect artistic signs, giving notice of the regulations herein provided, at such places and of such design as may be approved by the mayor. A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.**

## **ARTICLE II. - NOISE**

### **Sec. 14-29. Noise; definitions.**

In addition to the common meanings of words, the following definitions shall be used in interpreting sections 14-29 through 14-38 of this Code:

*"A" weighting scale* means the sound pressure level, in decibels, as measured with the sound level meter using the "A" weighted network (scale). The standard unit notation is dB(A).

*Ambient base noise level* means the average sound pressure level in dB(A) during a reasonable period of time, as determined by employing a sound level meter as described in section 14-30 and excluding impulsive sounds.

*ANSI* means the American National Standards Institute or its successor bodies.

*Construction* means on-site erection, fabrication, installation, alteration, repair, demolition or removal of any structure, facility or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting and landscaping. Construction does not include owner occupied residential projects completed solely by the property owner and which do not require a building permit.

*Daytime hours* means from 7:00 a.m. until 10:00 p.m., local time.

*dB(A)* means the sound level in decibels, determined by the "A" weighting scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication ANSI, § 1.4-1983, for a Type 2 instrument.

*Decibel (dB)* means a unit of measure, on a logarithmic scale, of the ratio of the magnitude of a particular sound pressure to a standard reference pressure, which for purposes of sections 14-29 through 14-38 shall be 0.0002 microbars.

*Emergency work* means work made necessary to restore property to a safe condition, work required to protect, provide or prevent persons or property from danger or potential danger; or work by private or public utilities when restoring utility service.

*Nighttime hours* means after 10:00 p.m. and until before 7:00 a.m., local time.

**Noise Sensitive Area includes but is not limited to hospitals, rest homes, family care homes, group care facilities, schools, day care facilities, churches, libraries, or other similar institutions.**

*Person* means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

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**Plainly Audible** means any sound or vibration caused by sound that can be detected by a reasonable person of ordinary sensitivities using their unaided hearing faculties.

**Reasonable Person** means a person of ordinary sensitivities who is within the area of the audibility or perceptibility of the noise or vibration that transmits sounds which disrupt the reasonable conduct of basic human activities, such as conversation, sleep, work, or other such activities.

*Sound level* means, in decibels, a weighted sound pressure level determined by the use of a sound level meter whose characteristics and frequency weightings are specified in ANSI standards.

*Sound level meter* means any instrument which meets the requirements for an ANSI Type I or Type II sound level meter.

*Sound magnifying device* means any device or machine for the magnification of a human voice, music or any other sound. "Sound magnifying device" shall not include emergency warning devices on police, fire, ambulance or other emergency vehicles, nor shall it include horns or steam whistles which are used for purposes authorized by section 14-34.

*Sound pressure level* means, in decibels, 20 times the logarithm to the base 10 of the ratio of the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 0.0002 microbars.

#### **Sec. 14-30. Reserved Measurement techniques.**

- (a) Except for noise within multifamily or multi-tenanted structures, noise measurements shall be made ten feet away from the boundary line at the point where the highest noise levels appear to be; but when the measurements in these locations are not practical, noise measurements may be made at the boundary of the public right of way which adjoins the complaining property. Such noise measurements shall be made at a height of at least four feet above the ground and at a point approximately ten feet away from walls, barriers, obstructions (trees, bushes, etc.) on a sound level meter operated on the "A" weighting network (scale). In the case of noises within multifamily or multi-tenanted structures, noise measurements shall be made in the complaining unit at a height of at least four feet above the floor and at a point approximately equidistance from all walls on a sound level meter operated on the "A" weighting network (scale).
- (b) No individual other than the operators shall be within ten feet of the sound level meter during the sample period.
- (c) Sound measurements shall be conducted at that time of day or night when the suspect noise source is emitting sound.
- (d) The sound level measurement shall be determined as follows:
  - (1) Set the sound level meter on the "A" weighted network.
  - (2) The operator of the sound level meter shall face the noise source and record the meter's instantaneous response (reading) observed at consecutive ten second intervals until 100 readings are obtained.

- (e) ~~It shall be unlawful for any person to interfere, through the use of sound or otherwise, with the taking of sound level measurements. A violation of this subsection is punishable as a misdemeanor as provided by G.S. 14-4.~~
- (f) ~~If the operator uses an integrating sound level meter for at least ten minutes, in accordance with its specifications, the results shall also be admissible.~~

**Sec. 14-31. General Prohibition Sound emission standards and limitations.**

- (a) Unless otherwise specifically indicated, it shall be unlawful during the daytime or nighttime hours for any person to cause or allow the emission of **plainly audible** sound from any source or sources which **is unreasonably loud**, when measured pursuant to section 14-30, exceed the maximum decibel limits specified in table 1 more than ten percent of any measuring period, which shall be the length of time to take 100 readings at consecutive ten-second intervals.

Table 1. Maximum Noise Limitations dB(A)

Zoning Districts/ Conditional Use	Daytime (7:00 a.m. to 10:00 p.m.)	Nighttime (10:00 p.m. to 7:00 a.m.)
Zoning Districts		
Residential	60	55
Business, Downtown Business, Shopping Center, Highway Commercial	60	55
Industrial	70	65

- (b) **In determining whether a noise or sound is unreasonably loud for purposes of this section, factors that may be considered include, but are not limited to:**
- (1) its volume;**
  - (2) the volume of background noise, if any, in the area where it is produced;**
  - (3) its proximity to residences or other developments where people sleep;**
  - (4) its proximity to Noise Sensitive Areas;**
  - (5) the zoning and character of the area where it is produced;**
  - (6) the time of day or night that it is produced;**
  - (7) its duration; and**
  - (8) whether it is recurrent, intermittent, or constant.**

**The determination of whether a noise or sound is unreasonably loud shall be made without considering the content of any message conveyed by the noise or sound.** When a source can be identified and its noise measured in more than one zoning district or conditional use zoning district, the limits of the more restrictive district shall apply at the boundaries between different zoning districts or conditional use zoning districts.

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- (c) ~~For any source of sound, the maximum sound level shall not exceed the sound level in table 1 by 10 dB(A), except as enumerated in section 14-32 below.~~
- (d) ~~Notwithstanding the location of hospitals, rest homes, family care homes, group care facilities, public or private or parochial school or day care facilities, it shall be unlawful for any person to cause or allow the emission of sound onto the structures of such uses which exceeds the maximum noise limitations for residential zoning districts.~~
- (ce) For activities which are necessary for railroad operations it shall be unlawful for any person to cause or allow the emission of sound from the boundaries of railroad rights-of-way which exceeds the noise emission standard promulgated in the Code of Federal Regulations pursuant to Title 42 of U.S.C. § 4916, as from time to time amended, and for purposes of such statute the standards of this chapter are declared to be identical to the federal standards.
- (df) A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

### **Sec. 14-32. Exceptions to limitation standards.**

The ~~maximum noise limitation standards defined~~ **general prohibitions** in section 14-31 shall not apply to the following sources:

- (1) Emergency warning devices or safety signals;
- (2) Lawn care equipment and agricultural field equipment used during the daytime hours;
- (3) Equipment being used for construction, provided that all equipment is operated with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition **during the hours specified in Section 14-33(a)(7)**;
- (4) Parades, fairs, circuses, other similar public entertainment events, sporting events or activities, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above;
- (5) Bells, chimes and similar devices which operate during daytime hours for a duration of no longer than five minutes in any measurement period;
- (6) Emergency work; or
- (7) **Sound amplification equipment operated in accordance with a permit issued pursuant to section 14-34** ~~Emission of sound from any source or sources on public rights-of-way, except for those limited by section 14-35 herein.~~

### **Sec. 14-33. Other prohibited noises.**

- (a) The following acts are specifically declared to be **plainly audible and** unreasonably loud, ~~annoying, frightening, loud or disturbing noise~~, the emission of which shall be unlawful:
- (1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.

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- (2) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles.
  - (3) The playing of any radio, phonograph, amplifier, television, tape deck, tape recorder, or musical instrument in such a manner or with such volume during the nighttime hours as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, hotel, motel or other type of residence.
  - (4) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.
  - (5) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as warning of danger.
  - (6) The discharge into the open air of the exhaust of any stationary internal combustion or steam engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
  - (7) The creation of ~~loud and excessive~~ noise from construction activities in a residential or business district Monday through Friday between the hours of 7:00 p.m. and 7:00 a.m., or on Saturdays and holidays observed by the state between the hours of 7:00 p.m. and 9:00 a.m., or at any time on Sundays and the following holidays: New Year's Day, Thanksgiving Day, or Christmas Day, except by **approval permit** from the building inspector when, in the building inspector's opinion, such work will not create ~~objectionable~~ **unreasonable** noise. The building inspector may **approve permit** emergency work in the preservation of public health or safety at any time.
  - (8) The creation of any ~~excessive noise on any street adjacent to~~ **within 150 feet of a Noise Sensitive Area while it is in use,** any school, institution of learning, church or court, ~~while the same are in session, or within 150 feet of any hospital, which unreasonably interferes with the work of such institution or which~~ **unreasonably disturbs the persons in these institutions** ~~or unduly annoys patients in the hospital.~~
  - (9) The creation of loud and excessive noise in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates and containers.
  - (10) The outdoor use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise, except by permit from the town council.
  - (11) The conducting, operating or maintaining of any garage or filling station, or the repair, rebuilding or testing of any motor vehicle in any residential district, so as to cause loud or offensive noises to be emitted therefrom during the nighttime hours.
  - (12) The firing or discharging of firearms, fireworks, gun powder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the town council.
  - (13) The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity.
  - (14) The use of any mechanical device operated by compressed air unless the noise created is effectively muffled and reduced.

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- (15) The collection of garbage, recyclables and yard waste between the hours of 11:00 p.m. and 6:00 a.m. This prohibition shall not apply to industrial facilities located in industrial zoning districts including LI (light industrial) and TF (tech/flex) as defined by the unified development ordinance.
- (16) The delivery or receipt of goods, merchandise, or materials from commercial or business establishments between the hours of 11:00 p.m. and 6:00 a.m. Vehicles intended for these delivery or receipt purposes shall not operate or park with engines in operation at these same locations during these same prohibited hours. This prohibition shall not apply to industrial facilities located in industrial zoning districts including LI (light industrial) and TF (tech/flex) as defined by the unified development ordinance.
- (17) The playing of any radio, cassette player, compact disc, video tape, or disc, or other similar device for reproducing sound located on or in any motor vehicle on a public street, highway, within any public vehicular area, or on the premises of a private residence, if the sound generated or noise vibration emitted is plainly audible or can be felt at a distance of 50 feet or more from the radio, cassette player, compact disc, video tape or disc, or other similar device that is producing the sound.**
- (18) The use or operation, on public places, town rights-of-way, or on public vehicular areas of any sound amplifier, bullhorn, loudspeaker, public address system, or other similar device, when operated in such a manner as to be plainly audible during (i) nighttime hours at a distance of fifty (50) feet from any reasonable person, or (ii) during daytime hours, at a distance of three hundred (300) feet from any reasonable person, other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs a reasonable person. This prohibition shall not apply to the operation of horns, sirens, or other emergency warning devices actually being used in emergency circumstances, or the operation of sound amplification equipment in accordance with a permit issued pursuant to section 14-34.**
- (b) A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

**Sec. 14-34. Sound ~~magnification~~ amplification permit.**

- (a) It shall be unlawful to operate or allow the operation of any sound amplification equipment in the public right-of-way, including streets and sidewalks, on public vehicular areas, or on other public property in excess of the limits prescribed by section 14-33(18) without having actual on-site possession of a permit issued by the Apex Police Department.**
- (b) Sound amplification equipment operated pursuant to this subsection may not be located more than ten feet off the ground. In addition to the person operating or allowing the operation of sound amplification equipment in violation of this subsection, the person to whom the permit was issued must be present at the location and during the times permitted and shall be liable for any and all violations.**
- (c) An application for a permit pursuant to this section shall: (i) be submitted to the Apex Police Department at least one full business day but no more than seven**

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**calendar days before the permit time requested; and (ii) specify the proposed location of the sound amplification equipment and the date and time that the sound amplification will begin and end. Permits shall be issued on a first come, first served basis. A permit shall not be issued for sound amplification during nighttime hours or a location that is within: (a) 100 feet of another location for which a sound amplification permit has been issued for the same time, (b) 100 feet of a town-approved special event, (c) 100 feet of the area permitted for a parade, group demonstration, or picket line pursuant to article X of chapter 20 unless issued to the holder of the parade, group demonstration, or picket line permit, or (d) 150 feet of a Noise Sensitive Area, as defined in section 14-29, while it is in use.**

Except for parades and related activities defined in section 14-32(4) and subject to the other exceptions enumerated in section 14-32(1), (2), (3), (5), (6), and (7); it shall be unlawful for any person to use or operate on or over any street within the town any radio, phonograph or other similar mechanical device to produce sound or any mechanical loudspeaker or other sound-magnifying device at a level of volume greater than 55 dB(A) measured at a distance of 20 feet. Any such operation shall be unlawful unless such loudspeaker or other mechanical sound-magnifying device shall be equipped with a control by which the power output can be registered and determined. Except for parades and related activities section 14-32(4) and subject to the other exceptions enumerated in section 14-32(1), (2), (3), (5), (6), and (7); no such equipment or device shall be used or operated on the streets of the town during the period between 8:30 p.m. and 9:00 a.m. Further, no such equipment or device shall be operated to produce magnified sounds along that portion of any street within the block where there is located any school, institution of learning, church or court, while the same are in session, or where any hospital, funeral home, or undertaking establishment is located, or where a funeral is being conducted at any place. Further, no such equipment or device shall be operated on the streets of this town on Sunday. A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.

#### **Sec. 14-35. Inference in prosecution for noise violation.**

The complaints of two or more persons, at least one of whom resides in a different home from the other complaining person or persons, or the complaint of one or more persons, when combined with the complaint of a duly authorized investigating person, shall be prima facie evidence that such sound is **an unreasonable** loud and annoying, ~~frightening, loud and disturbing, or unreasonably loud noise.~~

#### **Sec. 14-36. Burden of persuasion regarding exceptions to noise restrictions.**

In any proceeding pursuant to sections 14-29 through 14-~~368~~ of this Code, if an exception stated in sections 14-29 through 14-~~368~~ would limit an obligation, limit a liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of persuasion that the exception applies and that the terms of the exception have been met.

#### **Sec. 14-37. Penalties for violation of noise restrictions.**

(a) *Civil penalties.*

- (1) Any person violating any of the provisions of sections 14-29 through 14-~~368~~ shall be subject to a civil penalty of not more than \$100.00 for the first through fifth day of a



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violation, and shall be subject to a civil penalty of not more than \$500.00 per day for the sixth and any subsequent days. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under this subsection.

- (2) The town council shall determine the amount of the civil penalty to be assessed under this subsection, shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received within 60 days after demand for payment is made, the matter shall be referred to the town attorney for institution of a civil action in the name of the town in the appropriate division of the General Court of Justice of Wake County for recovery of the penalty.
  - (3) As an additional remedy, whenever the town council has reasonable cause to believe that any person causes or allows the operation or maintenance of any noise source, in violation of any provisions of sections 14-29 through 14-36~~8~~ or which causes any unreasonably loud, ~~annoying, frightening, loud and disturbing~~ noise, it may, either before or after the institution of any other action or proceeding authorized by this subsection, institute injunctive relief to restrain the violation. The action shall be brought in the appropriate division of the General Court of Justice of Wake County. The institution of an action for injunctive relief shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this chapter.
- (b) *Criminal penalties.* A violation of this Chapter is punishable as a misdemeanor as provided by G.S. 14-4. Each day of a continuing violation shall constitute a separate violation under this subsection.

**Sec. 14-38. Reserved~~Bird sanctuary.~~**

- (a) ~~The area embraced within the corporate limits of the town and all land owned or leased by the town outside the corporate limits is hereby designated as a bird sanctuary.~~
- (b) ~~It shall be unlawful intentionally to trap, hunt, shoot or otherwise kill, within the sanctuary hereby established, any native wild bird; provided, it shall be lawful to trap or otherwise destroy starlings, crows or similar birds or fowl when such birds or fowl are found to congregate in such numbers in a particular locality or otherwise constitute a nuisance or a menace to health or property and do in fact serious damage to property within the town. If are used to eradicate birds causing such damage to persons or property within the town, then a permit shall be obtained from the chief of police as provided under section 14-17. The bird clubs of the town are hereby granted permission to erect artistic signs, giving notice of the regulations herein provided, at such places and of such design as may be approved by the mayor. A violation of this section is punishable as a misdemeanor as provided by G.S. 14-4.~~

**Sec. 14-39. Reserved~~Authorization of expanded area for ABC licensed premises.~~**

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~~Pursuant to the authority granted by S.L. 2021-150, and in accordance with G.S. 160A-205.5, any establishment located within the corporate limits of the town and holding an ABC permit issued pursuant to Article 10 or 11 of Chapter 18B of the North Carolina General Statutes that allows the on-premises consumption of alcoholic beverages may utilize an area that is not part of the permittee's licensed premises for the outdoor possession and consumption of alcoholic beverages sold by the permittee, subject to the requirements of G.S. 18B-904(h).~~

**Section 2.** It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances and the sections of this ordinance may be renumbered to accomplish such intention.

**Section 3. Severability, Conflict of Laws.** If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**Section 4. Effective Date.** This ordinance shall be effective upon adoption.

Introduced by Council Member: \_\_\_\_\_

Seconded by Council Member: \_\_\_\_\_

This the 28<sup>th</sup> day of May, 2024.

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Jacques K. Gilbert  
Mayor

ATTEST:

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Allen L. Coleman, CMC, NCCCC  
Town Clerk

APPROVED AS TO FORM:

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Laurie L. Hohe  
Town Attorney