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Chapter 22 NOISE CONTROL

ARTICLE I GENERAL

Sec. 22.1.1 Purpose and Intent

The City of Asheville, recognizing that persistent exposure to elevated levels of community noise is a public health threat, deems it necessary and desirable to prohibit unwanted, excessive, and avoidable noise as defined by the World Health Organization's most current recommendations and *Guidelines on Community Noise*.

It is the policy of the City to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the express intent of the City to control the level of noise in a manner which promotes: commerce; tourism; the use, value and enjoyment of property; sleep and repose; and the quality of the environment.

Sec. 22.1.2 Scope

This article shall apply to all sound, sound vibration, and noise originating within the corporate limits of the City of Asheville. Nothing in this article shall be construed to limit or prevent the city or any person from pursuing any other legal remedies for damages or the abatement of noises in the city.

Sec 22.1.3 Application

It shall be unlawful to use any portion of this ordinance to discriminate against any individual based on skin color, race, gender, national origin, religion, gender, sexual orientation, disability, age, or medical background.

ARTICLE II DEFINITIONS

Sec. 22.2.1 Definitions

The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context. All terminology used in this Ordinance, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

A-Weighted Sound Level

The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Adjoining Property

Property which either abuts directly on the external boundary of another property or is only separated from the external boundary of the other property by a street or the right-of-way of a street, railroad, or other public service corporation.

Air Handling Unit

Any device or machine that as part of its function moves air into or out of a building and includes but is not limited to any air conditioner, ventilation fan, induction fan or exhaust fan.

Equivalent A-Weighted Sound Level (Leq)

The constant sound level, that in a given situation and time period, conveys the same sound energy as the actual time-varying weighted sound. For the purposes of this ordinance, a time period of 24 hours will be used, unless otherwise specified.

Animal Noise

The keeping of any animal which, by causing frequent or long-continued noise, may disturb the comfort and repose of any person residing in the vicinity.

Busker

A street musician who produces sound as permitted by the city.

C-Weighted Sound Level

The sound pressure level in decibels as measured on a sound level meter using the C-weighting network. The level so read is designated dB(C) or dBC.

Construction

Any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition for or of public or private rights-of-way, structures, utilities or similar property.

Chronic noise producer

Any person (property owner, renter, business owner, business operator) who, because of the sound generated at their location, has received three (3) citations for exceeding external sound limits in a 12-month.

Decibel (dB)

A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

De Novo

In law, the expression trial de novo means a "new trial" by a different tribunal (de novo is a Latin expression meaning "afresh", "anew", "beginning again", hence the literal meaning "new trial").

Demolition

Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Director

The manager, director, leader or appointee of the enforcement and permit granting organization responsible for the enforcement of this Noise Ordinance.

Districts

"District" means the zoning districts to which the provisions of this Chapter 22 are applied. For the purposes of this Chapter 22.

- A. "Residential District" includes zones designated as residential and NB in Sec. 7-8-1. - Enumeration and description of districts. The residential zones include; RS-2, RS-4, RS-8, RM-6, RM-8, and RM-16.
- B. "Central Business District" includes zones identified as CBD in Sec. 7-8-1. - Enumeration and description of districts.

- C. "Commercial District" includes zones designated as OFFICE, O2, OB, CBI, CBII, UR, NCD, HR, UV, UP, URD, RESORT, INST, HB, RB, RIVER, RAD, MXD EXP-CZ in Sec. 7-8-1. - Enumeration and description of districts.
- D. "Industrial District" includes zones designated as CI, LI, IND in Sec. 7-8-1. - Enumeration and description of districts.
- E. For any zone not listed in subsections 22.2.1.A, 22.2.1.B, 22.2.1.C or 22.2.1.D the Director may determine that the zone is substantially similar to a zone listed in 22.2.1.A, 22.2.1.B, 22.2.1.C or 22.2.1.D and may classify it similarly for purposes of this chapter.

Emergency

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency Work

Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross Vehicle Weight Rating (GVWR)

The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GVWR) which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Impulsive Sound

Sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound includes explosions, drop forge impacts, and the discharge of firearms.

Lmax

The RMS (root mean squared) maximum level of a noise source or environment where peak is the maximum level of the raw noise source. RMS, or root mean squared, is a measure of the magnitude of the varying noise source quantity.

Mechanical Stationary Source

Any machine or device operated by fuel or electric power that does not change locations in the course of its use, including but not limited to air handling units, induction fans, or refrigeration units, fans. Mechanical stationary sources include sources on vehicles or trailers, including but not limited to generators, used when the vehicle or trailer is parked.

Motorized vehicle

Generally, any vehicle as defined in G.S. 20-4.01 (49) including, but not limited to:

- A. Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
- B. Common carriers of passengers as defined in G.S. 20-4.01(27)c.
- C. Motorcycles and mopeds as defined in G.S. 20-4.01(27)i.
- D. Truck tractors as defined in G.S. 20-4.01(48).
- E. Farm tractors as defined in G.S. 20-4.01(11).

Noise

Any sound which annoys or disturbs humans, or which causes, or tends to cause, an adverse psychological or physiological effect on humans.

Noise Disturbance

Any sound which (a) endangers or injures the safety or health of humans or animals, or (b) annoys or disturbs any reasonable person of normal sensitivities, or (e) endangers or injures personal or real property.

Noise Control Commission

Herein known as "*Commission*". The body overseeing the noise ordinance and the application of its provisions by the noise ordinance enforcement authority.

Outdoor Music

Amplified or non-amplified musical sound that originates from an outdoor or indoor source that disperses sound beyond the originating property line of the source.

Person

Any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a State or any political subdivision of the State.

Public Nuisance Noise

Any unreasonable sound which either annoys, injures, interferes with or endangers the comfort, repose, health or safety of an entire community or neighborhood, although the extent of damage may be unequal.

Public Right-Of-Way

Any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a government entity.

Public Space

Any real property or structures thereon which are owned or controlled by a government entity.

Pure Tone

Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this ordinance, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one third octave bands by 5 dB for center frequencies of 500 Hz and above and by 8 dB for center frequencies between 160 and 400Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

Real property

An interest or aggregate of rights in land that is guaranteed and protected by law; for purposes of this chapter, the term "real property" includes a leasehold interest.

Real Property Boundary

An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

Receiving property

Real property within which sound originating from sources outside the property is received.

Refrigeration unit

Any device or machine that as part of its function cools air and includes but is not limited to any air conditioner or compressor used in connection with any refrigerator or freezer.

Sound

An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound Level

The weighted sound pressure level obtained by the rise of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4- 1971, or the latest approved revision thereof), if the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound Level Meter

An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

Sound Pressure

The instantaneous difference between the actual pressure and the average of barometric pressure at a given point in space, as produced by sound energy.

Sound Pressure Level

20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals (20×10^{-6} N/m²). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Sound Amplifying Devices

The use or operation of an automatic or electric piano, phonograph, gramophone, sound production device, stereo, radio, television, loudspeaker or any instrument for sound producing, or any sound-amplifying device, so loudly as to disturb persons in the vicinity thereof.

Vibration

An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

Weekday

Any day Monday through Friday that is not a legal holiday.

ARTICLE III ENVIRONMENTAL SOUND LEVELS.

No person shall cause sound, or for any person in possession of property shall permit sound originating from such property, to intrude into the real property of another person whenever such sound exceeds the exterior sound level limits established by this Article.

Sec. 22.3.1 Exterior sound level limits.

- A. The exterior sound level limits are based on the Leq during the measurement interval, using a minimum measurement interval of 1 minute for a constant sound source, or a one-hour measurement for a non-continuous sound source. For sound sources located within the City, the exterior sound level limits are as follows:

Sound Level Limits by Receiving Land Use

Table 1

Receiving Land Use Category	Time of Day	Sound level limit in dBA
Residential	7:00AM - 7:00PM	55 dB(A)
	7:00PM – 7:00AM	45 dB(A)
Central Business District (CBD)	7:00AM - 11:00PM	65 dB(A)
	11:00PM – 7:00AM	50 dB(A)
Commercial	7:00AM - 10:00PM	60 dB(A)
	10:00PM – 7:00AM	50 dB(A)
Institutional	7:00AM - 7:00PM	60 dB(A)
	7:00PM – 7:00AM	45 dB(A)
Industrial	At all times	70 dB(A)

- B. During a measurement interval, Lmax may exceed the exterior sound level limits shown in subsection 22.3.1.A by no more than 15 dB(A).

Sec. 22.3.2 Modifications to exterior sound level limits

- A. For any source of sound that is continuous, the exterior sound level limits established by this subchapter are reduced by 5 dB(A).
- B. For any source of sound that has a pure tone component, the exterior sound level limits established by this subchapter are reduced by 5 dB(A).
- C. For any source of sound that is impulsive and not measured with an impulse sound level meter, the exterior sound level limits established by this subchapter are reduced by 5 dB(A).
- D. For any source of sound that has audible low frequency or bass a dB(C) measurement is required. For each 10 dB that dB(C) measurements exceed dB(A) measurements, the exterior sound level limits established by this subchapter are reduced by 5 dB(A).

ARTICLE IV LIMITATIONS ON SOUND FROM SPECIFIC SOURCES

No person shall cause sound, or for any person in possession of property to permit sound originating from such property, to intrude into the real property of another person whenever such sound exceeds the exterior sound level limits established by Sec. 22.3.1.

Sec. 22.4.1 Sounds created by construction and maintenance equipment

- A. The exterior sound level limits established by Sections 22.3.1 and 22.3.2 measured from the property line of the real property of another person or at a distance of 50 feet from the construction and maintenance equipment making the sound may be exceeded during the following times by the sound levels specified in subsection 22.4.1.B for the types of equipment listed in that subsection 4.1.B.
1. Within all zones, between 7 a.m. and 7 p.m. on weekdays and between 9 a.m. and 7 p.m. on weekends and legal holidays.
- B. During the time periods specified in subsection 22.4.1.A.1, the exterior sound level limits, as measured from the property line of the real property of another person or at a distance of 50 feet from the construction or maintenance equipment making the sound, whichever is greater, may be exceeded by no more than the following dB(A)'s for the following types of equipment:
1. Twenty-five dB(A) for equipment on construction sites, including but not limited to crawlers, tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, graders, off-highway trucks, ditchers, trenchers, mini-excavator, skid steer, tractor loader backhoe, chipper shredder or stump grinder, compactors, compressors, and pneumatic-powered equipment.
 2. Twenty dB(A) for portable powered equipment used in temporary locations in support of construction and maintenance activities, including but not limited to chainsaws, log chippers, powered hand tools; table saws, routers, circular saws, lathes, and jointers.
 3. Fifteen dB(A) for powered equipment used in temporary or periodic maintenance or repair of the grounds and appurtenances of residential property, including but not limited to lawn mowers, leaf blowers, edge trimmers, or tree trimmers.
- C. Sounds created by impact types of equipment, including but not limited to pavement breakers, piledrivers, jackhammers, sandblasting tools, or by other types of equipment that create impulse sound or impact sound or are used as impact equipment, as measured at the property line or 50 feet from the equipment, whichever is greater, may exceed the exterior sound level limits established in subsection 4.1.B in any one hour period between the hours of 8 a.m. and 5 p.m. on weekdays and 9 a.m. and 5 p.m. on weekends and legal holidays, but in no event may the sound level exceed the following:
1. Leq 90 dB(A) continuously;
 2. Leq 93 dB(A) for 30 minutes;
 3. Leq 96 dB(A) for 15 minutes; or
 4. Leq 99 dB(A) for 7½ minutes;

provided that sound levels in excess of Leq 99 dB(A) are prohibited unless authorized by permit obtained from the Director; and provided further that sources producing sound levels less than 90 dB(A) shall comply with subsection 4.1.A and 4.1.B of this section during those hours not covered by this subsection 4.1.C.

- D. The standard of measurement shall be a one-hour Leq. Leq may be measured for times not less than one minute to project an hourly Leq. Reference to one hour is for measurement purposes only and shall not be construed as limiting construction or maintenance to a one-hour period.
- E. The exterior sound level limits established in this section shall be reviewed periodically by the City to assure that the exterior sound level limits are technically feasible.

Sec. 22.4.2 Sounds created by outdoor music

- A. Except in accordance with a permit issued pursuant to Article VI, no busker or commercial establishment, including but not limited to restaurants, bars, or nightclubs, shall operate or allow the operation of an outdoor music event that exceeds sound level maximums defined in Sec. 22.3.1.
- B. Except in accordance with a permit issued pursuant to Article VI, it shall be unlawful for any person or group of persons to conduct an outdoor music event that exceeds sound level maximums defined in Sec. 22.3.1.
- C. Due to the low frequency content of outdoor music dB(C) adjustments to maximum sound levels shall be applied. For each 10 dB that dB(C) measurements exceed dB(A) measurements, the maximum allowable dB(A) sound level shall be decreased by 5 dB(A). Violation shall be determined by the revised dB(A) maximum. (For example: A citizen complains. The enforcement officer comes to the citizen’s residential property line at 11:00 PM and measures 44 dBA, which is lower than the residential nighttime maximum sound level of 45 dBA. The enforcement officer can hear heavy base. They remeasure on the dBC scale, and they get 55 dBC. According to Sec. 22.3.2 D, this base presence requires that the maximum sound level allowable be reduced from 45 dBA to 40 dBA. The sound producer is now in violation, the enforcement officer can write a warning or citation.)
- D. The decibel limits prescribed in this section shall be measured at the property line of the property at which the sound is being created.

Sec. 22.4.3 Sounds created by Busker outdoor music

- A. Within the CBD and no closer than 500 feet of residential zones that adjoin the CBD, the sound level of Busker street performance, measured at a distance of 15 feet or more from the location where the sound is being produced, may not exceed 75 decibels between 10 a.m. and 10 p.m. or the legal daytime busking operating period.
- B. When amplified sound is used, devices may not be connected to City power sources, including receptacles on City buildings or street lights.

Sec. 22.4.4 Sounds created by motorized vehicles

- A. No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category of motor vehicle shown below. Noise shall be measured at a distance of at least 25 feet (7.5 meters) from the near side of the nearest lane(s) being monitored and at a height of at least four feet above the immediate surrounding surface.

Source	Speed Limit 35 mph or Less	Speed Limit Over 35 mph
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Motor vehicles with a manufacturer's gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle, except those operated by an interstate motor carrier	91 dB(A)	95 dB(A)
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76 dB(A)	80 dB(A)

- B. No person shall operate a motor vehicle not equipped as required by exhaust system regulations of NC Statute 20-128.
- C. No person shall use exhaust braking (Jake braking) except to avoid a collision.
- D. No person on residential property shall repair or test a motor vehicle in a manner that exceeds Sec. 22.3.1 and 22.3.2 exterior sound level limits.
- E. No person shall operate a vehicle's entertainment system in a manner that exceeds Sec. 22.3.1 and 22.3.2 exterior sound level limits.
- F. No person shall operate a vehicle's throttle (revving the engine) in a manner that exceeds Sec. 22.3.1 and 22.3.2 exterior sound level limits.
- G. No person shall operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, provided that sound resulting from emergency braking to avoid imminent danger shall be exempt from this section.
- H. No person shall operate the primary engine of a motor vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or more (GVWR) or the vehicle's auxiliary power system for more than 20 minutes within 150" of a residential property unless the vehicle is within a completely enclosed structure.

Sec. 22.4.5 Sounds created by Mechanical Stationary Sources

- A. No person shall operate or permit operation of any mechanical stationary source including but not limited to air handling units, refrigeration units and circulating devices in such a manner as to generate sound greater than sound level limits in Section 22.3.1 and 22.3.2
- B. The limitation contained in this section shall apply at all times, unless the mechanical stationary source is subject to other operating hours pursuant to a permit or other written authorization issued by the Director.
- C. The Director may promulgate regulations specifying uniform noise mitigation procedures for air handling units and refrigeration units.

Sec. 22.4.6 Sounds created by Mechanical Device Operated by Compressed Air

No person shall use any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced below sound level maximum limits set in section 22.3.1 and 22.3.2.

Sec. 22.4.7 Sounds created by Vehicle Emergency Signal, Horn, Alarm

No person shall excessively sound any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.

Sec. 22.4.8 Sounds created by Stationary Emergency Signal, Horn, Alarm

No person shall intentionally sound or permit the sounding outdoors of any fire alarm, burglar alarm, siren or similar stationary emergency signaling device except in the following instances: For emergency purposes; or for testing, provided that: each time such a test is performed, the test shall use only the minimum cycle test time and in no case shall exceed four minutes nor shall it occur before 9:00 A.M. or after 5:00 P.M.; and periodic testing of any stationary emergency signaling device shall occur at the same time of day.

Sec. 22.4.9 Sounds created by Stationary non-emergency Signal, Bell, Chime, Gong, Whistle

No person shall sound or permit the sounding of any signal from any stationary bell, chime, siren, whistle or similar device, or any recording or electronic reproduction thereof, intended primarily for non-emergency purposes from any place in such a manner as to create a noise disturbance within a residential district for more than five minutes in an hourly period, or on a consistent basis

Sec. 22.4.10 Sounds created by Loading & Unloading

No person shall undertake or cause the loading, unloading, opening, closing or other handling of boxes, crates, containers, building, materials, or similar objects between the hours of 10:00 P.M. and 7:00 A.M. in such a manner as to cause a noise disturbance within a residential district or the CBD.

Sec. 22.4.11 Sounds created by Refuse Collection

- A. No person authorized to engage in waste removal, collection, or disposal services or recycling removal or collection services in residential zones or within 500 feet of a residential zone shall operate before 7:00 A.M. or after 7:00 P.M.
- B. No person authorized to engage in waste removal, collection, or disposal services or recycling removal or collection services in all other defined zones shall operate before 7:00 A.M. or after 9:00 P.M.
- C. It shall be unlawful for any person authorized to engage in waste removal, collection, or disposal services or recycling removal or collection services to provide such services so as to create an unnecessary amount of noise, in the judgment of the director. For the purpose of this Section, noise emitted by equipment shall not be deemed unnecessary or without justification if the person engaged in such services has to the extent the director has judged reasonably feasible, incorporated available sound deadening devices into equipment used in rendering those services.
- D. Notwithstanding the foregoing, it shall be unlawful for any person authorized to engage in waste removal, collection, or disposal services, or recycling removal or garbage collection services to operate hydraulic compaction or mechanical processing systems on any truck mounted waste, recycling, or garbage loading and/or compacting equipment or similar mechanical device so as to create mechanical or hydraulic noise exceeding 75 dBA when measured at a distance of 50 feet from the equipment.

Sec. 22.4.12 Sounds created by Fireworks, explosion, firearms

No person shall discharge or permit discharge of fireworks, any exploding device, starter pistol, air gun or a firearm.

Sec. 22.4.13 Public Nuisance Noise

- A. Animal Noise. No person shall own or keep a dog that barks unattended or without action to stop the dog from barking for a continued duration of 20 minutes or more.
- B. Mechanical sound-making devices. It is unlawful for any person or persons occupying a residence to play, use, operate, or permit to be played, used, or operated any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for producing, reproducing or amplifying of sound and/or noise which disturbs the peace and quiet of the city. Or that exceeds the sound level limits established in Sect 22.3.1 and Sec. 22-3.2
- C. No person shall cause or permit a person, entity, or establishment to make, continue, or allow to be made or continued, any clamorous singing, yelling, shouting, whooping, bellowing, hollering, or other loud, obstreperous, wanton and unnecessary noises, or to make, continue, or allow to be made or continued, any loud gatherings, either in the day time or at night, which disturb the peace and quiet of the city, Or that exceeds the sound level limits established in Sect 22.3.1 and Sec. 22-3.2 whether in the public street, on privately owned or controlled property, or within enclosures, public or private.

ARTICLE V – EXCEPTIONS

Sec. 22.5.1 Exceptions

The following sounds are excepted from the applications of this chapter:

1. Sound or noise of safety signals, warning devices, emergency pressure relief valves, church bells, and the bells or chimes of the Asheville City Building and Municipal Building between the hours of 7:00 a.m. and midnight.
2. Sound or noise emanating from street fairs, festivals, or celebrations conducted by or with the city;
3. Sound or noise emanating from film and video production activities for which permits have been issued by the city; provided all equipment such as generators are properly muffled;
4. Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
5. Sound or noise from lawful fireworks;
6. Musical accompaniment to parades or military ceremonies;
7. Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools and McCormick Field; fireworks are not an exception.
8. Municipal emergency vehicles in the course of performing their official duties
9. Railroad operations, to the extent said operations are in furtherance of interstate commerce; and
10. Unamplified noncommercial speeches made from a fixed location in non-residentially zoned areas;
11. Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission.
12. Sound or noise emanating from aircraft flight activity at the Asheville Regional Airport, provided said activities are conducted in accordance with FAA regulation.
13. Sound from the combined activities of starting, servicing, idling, revving or testing motorized vehicles unrelated to use of the vehicle for the purpose of ingress and egress. These activities may for up to five

minutes in any four-hour period between the hours of 7:00 a.m. and 8:00 p.m. If there is more than one vehicle involved, the five-minute limitation applies to all of the vehicles combined;

14. The operation of motorized vehicles for the purpose of ingress and egress to the property, including idling a vehicle to warm the engine prior to departure from property. However, for purposes of warm-up of a vehicle, idling is limited to 5 minutes for all vehicles except commercial diesel vehicles, which are limited to 10 minutes;
15. Sounds, including sounds created by sound amplification equipment, emanating from any event or activity for which a permit to exceed has been issued according to Article VI in which case the provisions of the permit shall control.
16. Sounds generated by a generator employed to provide emergency electrical power.

ARTICLE VI – PERMITS TO EXCEED SOUND LEVEL

Sec. 22.6.1 Application—Generally

- A. Any person who owns or is in possession of any property or use, or any process or equipment, may apply to the Director for a Permit providing exceptions from the rules or regulations promulgated hereunder governing the quality, nature, duration or extent of discharge of sounds exceeding the limits set forth in Sec 22.3.1 and Sec. 22.3.2.
- B. The provision of exceptions to exceed sound level limits may be granted as Temporary, Technical, Economic or Outdoor Music Event permits as enumerated in Sec. 22.6.7, Sec. 22.6.8, Sec. 22.6.9, and Sec 22.6.10.

Sec. 22.6.2 Permit Fee

Along with a permit application, a fee of \$25 shall be paid to the Director and shall be applied to any expenses incurred by the Director in carrying out the provisions of this article.

Sec. 22.6.3 Discretion of Director

- A. A permit or its extension shall not be a right of the applicant or holder thereof but shall be at the reasonable discretion of the Director.
- B. The Director may grant a permit if the Director finds that:
 1. The relative interests of the applicant and city residents are balanced.
 2. The proposed or occurring sound(s) in excess of allowable limits do not endanger public health or safety; and
 3. The applicant demonstrates that the criteria required for the permit are met; and
 4. For Temporary Permits, if the scale and duration of the requested exception to sound level limits is more appropriate for a Temporary Permit than a Technical or Economic Permit.
- C. In addition to all the conditions of Sec. 22.6.3.B, the Director may consider, but shall not be limited to, the following in issuing or denying such permit:
 1. The timeliness of the application;
 2. The nature of the requested activity;

3. Previous experience with the applicant;
4. The time(s) of the event;
5. Other activities in the vicinity of the location proposed;
6. The number of permit applications in the past year;
7. The effect of the activity on any residential district of the city and, previous violations, if any, of the applicant. In assessing “other activities in the vicinity” and the frequency of applications in the vicinity, the Director shall not issue more than two (2) permits per month within a one thousand-foot radius of each other, or issue permits for events on consecutive weekends (Friday and Saturday) within a one-thousand-foot radius of each other;
8. Responses from adjoining property owners during a public notification period;
9. The reputation, character, and criminal record of the applicant and/or owner of the event site;

Sec. 22.6.4 Permitting Criteria

- A. Applications shall be accompanied by information and data as set forth in this Article VI.
- B. Technical, Economic or Outdoor Music Permits may be granted only after public notice by the Applicant and an opportunity for public comment.
- C. Technical, Economic, and Outdoor Music Permits exceptions may be granted only after submittal of a Management and Mitigation Plan from the Applicant.
- D. Permit holder(s) shall agree to cooperate with the enforcement department in enforcing sound levels permitted under the ordinance or the Noise Management and Mitigation Plan. Failure of such signer(s) of a permit to be present or to assist the enforcement officer in complying with the terms of the permit will be cause for immediate revocation of said permit.

Sec. 22.6.5 Public Notice

Permit applicants seeking exceptions from sound level limits through Technical, Economic, or Outdoor Music Permits shall give public notice and provide an opportunity for public comment.

1. The Permit Applicant shall give notice of the application to adjoining property owners and the neighborhood association representing those property owners at least fifteen (15) days prior to the effective date of the permit.
2. When the location of a permit application is at or within an apartment complex or other multi-family dwelling development, adjoining property shall mean to include all units within the development and those adjoining properties outside the multi-unit complex.
3. Notice by the Applicant to the adjoining property owners shall include a statement indicating that comments or concerns regarding the issuance of a permit at the proposed location may be made to the Director within five (5) days of receiving the notice.
4. Upon notification of the applicant’s permit request, adjacent property owners and/or neighborhood association will have five (5) days in which to submit comments, questions or letters to the Director.
5. The director shall make the decision to grant or deny the permit no less than five (5) days before the effective date of the permit.

6. The Director shall notify the permit applicant and the adjacent property owners and neighborhood association in the area affected whether the permit is granted or denied within one (1) day of the Director's decision.

Sec. 22.6.6 Noise Management and Mitigation Plan

Permit applicants seeking exception to sound level limits on Technical, Economic or Outdoor Amplified Concert grounds shall provide and include a Noise Management and Mitigation Plan.

- A. As part of the application for a permit, an Applicant shall submit a Noise Management and Mitigation Plan to be approved by the Director, which shall contain the following components:
 1. Identification of the exterior sound level limits of Sec. 22.3.1 and 22.3.2 being exceeded or expected to be exceeded,
 2. Estimates of the amount(s) by which these levels are expected to be exceeded and by what equipment, and
 3. The expected sources of the sound during each of the time periods (e.g., types of equipment or activity causing the exterior sound level limits to be exceeded);
 4. Measures and provisions to be taken to avoid exceeding the exterior sound level limits of Sec. 22. 3.1 and 22.3.2
 5. Provisions to mitigate sounds that exceed the exterior sound level limits and that cannot otherwise be avoided.
 6. A process for informing the public in the affected areas about the provisions of the permit.
- B. The Director may require components of Sec. 22.6.6.A for a Temporary noise permit as the Director determines appropriate to fit the circumstances.
- C. The Director may impose conditions, including but not limited to conditions relating to types of equipment, hours of use, and duration, to mitigate the adverse impacts of granting the permit. The Director may also include conditions proposed by the applicant as part of the permit application.

Sec. 22.6.7 Temporary Permit

The Director may grant a Temporary Permit, not to exceed 14 days, for any activity, use, process or equipment that the Director determines, in accordance with rules and regulations, does not disturb a substantial number of people and does not endanger public health or safety. Temporary Permits may be granted for Outdoor Music Events but shall require applications to be in compliance with Sec. 22.6.5 and Sec. 22.6.6.

Sec. 22.6.8 Technical Permit

A Technical Permit may be granted by the Director on the grounds that there is no practical means known or available for the adequate prevention, abatement or control of the excessive sound involved. The Director shall determine the duration of each Technical Permit. The holder of a technical permit shall make reports to the Director, on a schedule prescribed by the Director, detailing actions taken to implement a Noise Management and Mitigation Plan that reduces the sounds in excess of sound level limits.

Sec. 22.6.9 Economic Permit

An Economic Permit may be granted by the Director on the grounds that compliance with the particular requirement or requirements from which the permit is sought will require the taking of measures that, because of their extent or cost, must be spread over a period of time. The duration of an Economic Permit shall be for a period not to exceed such reasonable time as is required in the view of the Director for the taking of the necessary measures as detailed in the Noise Management and Mitigation Plan. An Economic Permit shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable.

Sec. 22.6.10 Outdoor Music Event Permit

- A. A permit to exceed sound level limits as set forward in Sec. 22.3.1 and Sec. 22.3.2 for amplified or non-amplified outdoor music events may be granted by the Director in accordance with the provisions set forth in this Article VI. Additional restrictions shall apply as follows:
 - 1. The Noise Mitigation and Management Plan submitted by the applicant to the Director will stipulate additional adherence to the following provision:
 - a. Amplified or non-amplified equipment or sound instruments shall be arranged so as to minimize the disturbance to others resulting from the position or orientation of the equipment or instrument, or from atmospherically or geographically caused dispersal of the sound beyond the property line.
 - 2. At no time shall the sound levels exceed 95 dBA as measured at the event property line, nor more than 80 dBA as measured 1000 feet from the event site (or at the nearest receiving residential property line.)
 - 3. An outdoor music event shall not exceed three hours in length
 - 4. An outdoor music event shall not extend beyond 10 p.m.
 - 5. The number of outdoor music events shall not exceed four (4) per week
- B. A permit for recurring outdoor music events may be granted by the Director in accordance with the provisions set forth in this Article VI. Additional provisions shall apply as follows:
 - 1. Permit applications must stipulate the number and defined dates of the concerts.
 - 2. Permits issued pursuant to this section shall be for a term of not more than one year and shall expire on December 31.
 - 3. In the event that the Director determines that the permit applicant adequately executes the Noise Management and Mitigation Plan, the director may renew the annual permit at the applicant's request.

Sec. 22.6.11 Effective Date of Permits

- A. A Temporary Permit shall become effective on the effective date stated on the permit form. Any other permit shall be effective thirty (**30**) days following the mailing of the decision granting the permit, unless it is appealed to the Noise Control Commission, in which case the effective date is the date of the Board's written decision on the appeal.

Sec. 22.6.12 Extension of Permits

- A. Technical and Economic Permits granted pursuant to this chapter may be extended on terms and conditions and for periods that would be appropriate on the initial granting of a permit. No extension of a

technical or Economic Permit shall be granted except on application made at least 60 days prior to the expiration of the permit and after public notice in accordance with rules adopted by the Administrator.

- B. Temporary Permits may not be extended, but more than one Temporary Permit may be granted by discretion of the Director.

Sec. 22.6.13 Revocation of Permit

- A. Standards for revocation. Any permit may be revoked if:
 - 1. The conditions of the permit have been, or are being violated and issuance of a notice of violation or cease and desist order has been, or would be ineffective to secure compliance because of circumstances related to the violation; or
 - 2. The permit was obtained with false or misleading information.
- B. Notice of Revocation. Whenever the Director determines there are grounds for revoking a permit, the Director may issue a Notice of Revocation.
 - 1. The Notice of Revocation shall identify the reason for the proposed revocation, including the violations, the conditions violated, and/or the alleged false or misleading information provided.
 - 2. The Notice of Revocation shall be served on the owner of the property on which the Permit is in effect, or is occurring, or holder of the permit.
 - 3. The Notice of Revocation shall be served as a summons or sent by first class mail. The Notice of Revocation may also be posted in a conspicuous place on the site. For purposes of this section, service is complete at the time of personal service, or if mailed, three days after the date of mailing. When the last day of the period so computed is a Saturday, Sunday or City holiday, the period runs until 5 p.m. on the next business day.
 - 4. The Director shall identify in the Notice of Revocation a date certain on which the revocation will take effect unless review before the Director is requested and pursued pursuant to Sec. 3.6.C
- C. Review by the Director.
 - 1. Any person aggrieved by a Notice of Revocation of a noise permit may obtain a review by making a request in writing to the Director within three business days of the date of service of the Notice of Revocation.
 - 2. The review shall occur within five business days after receipt by the Director of the request for review.
 - 3. Any person aggrieved by or interested in the Notice of Revocation may submit additional information to the Director for consideration as part of the review at any time prior to the review.
 - 4. The review will be made by a representative of the Director who will review all additional information received and may also request a site visit. After the review, the Director may:
 - a) Sustain the Notice of Revocation and set or modify the date the revocation will take effect;
 - b) Withdraw the Notice of Revocation;
 - c) Modify the Notice of Revocation and set or modify the date the revocation will take effect; or
 - d) Continue the review to a date certain for receipt of additional information.

D. Order of the Director.

1. The Director shall issue an Order of the **Director** containing the decision within ten days after the review and shall cause the same to be sent by first class mail to the person or persons requesting the review, any other person on whom the Notice of Revocation was served, and any other person who requested a copy before issuance of the Order of the Director.
2. The Order of the Director is the final order of the City and the City and all parties shall be bound by the Order unless appeal is sought pursuant to Sec. 22.6.14.

Sec. 22.6.14 Appeal Procedure

- A. Any person aggrieved by the denial, approval, or the terms and conditions imposed on a permit or by the extension of a permit by the Director, or from the requirements of any provision of this Chapter 22, may appeal such decision or provision by filing an appeal in writing with the Noise Control Commission (herein known as Commission) by 5 p.m. of the tenth day following the date of the issuance of the decision on a permit application. When the last day of the appeal period is a Saturday, Sunday, or federal or City holiday, the appeal may be filed until 5 p.m. on the next business day.
- B. In form and content, the appeal shall conform to the rules of the Commission.
- C. The Commission shall consider the appeal in accordance with the procedure established for hearing contested cases as set forth in Sec. 24.5.
- D. Appeals shall be considered de novo, and the Director's decision on the permit shall be given no deference.
- E. The Commission may affirm, reverse or modify the Director's decision or remand to the Director for additional review and analysis.
- F. The Commission shall issue a written decision within 15 days of the conclusion of the hearing. The written decision shall be posted on the City website for the Commission under "Decisions".
- G. The decision of the Commission is the final decision of the City, and the appellant and the Director are bound by the terms and conditions of the Commission's decision.

ARTICLE VII NOISE CONTROL COMMISSION, ENFORCEMENT, CIVIL PENALTIES AND APPEALS

Sec. 22.7.1 Noise Control Commission, power, duties and membership

The City Council shall create a noise control commission.

The commission shall review and receive regular reports from the Director regarding permits to exceed sound limits as set forth in Article 6 and noise mitigation plans, review the effectiveness of enforcement, including but not limited to evaluating response time, assessing level of citations to complaints, monitoring follow up of actions taken after warnings, and undertaking equity reviews to ensure that enforcement is being handled fairly. The commission and the Director shall regularly review the effectiveness of World Health Organization health standards for community noise levels and shall twice annually review ordinance and recommend any changes to the City Council. The commission shall hear appeals from violations of any provision in this chapter as set forth in this section.

The commission shall consist of eight **(8)** members as follows:

The following members will be designated by and serve at the pleasure of the city manager:

- **One** city code enforcement officer or building safety enforcement officer;
- **One** city police officer;
- **One** city animal control officer (or employee of contracted animal control agency);

The following members will be appointed by the City Council to three-year terms and serve at the pleasure of the Council:

- **One** representative from the business, construction or institutional sector;
- **One** person with a background in environmental engineering, acoustical or noise engineering,
- **One** person with a background in environmental law, public health, or related fields of study.
- **Two** city residents.

The commission shall formulate and adopt rules of procedure under which it will operate. Each newly designated or appointed member of the commission shall receive training in the provisions of the Noise Control Ordinance and the commission's Rule of Procedure

Sec. 22.7.2 Complaints

Complaints alleging a violation of any provision of this chapter shall be filed with a noise enforcement officer; through a city-sponsored telephone number, mobile device app; or through a city-sponsored online complaint form. The city shall keep a record of all complaints filed pursuant to this chapter, tracking the progress of each complaint, including and showing the final outcome of each complaint, and make that record public on the city website. The commission shall have access to all complaint records.

Sec. 22.7.3 Enforcement

For the purposes of this section, the Director of Development Services, the Chief of Police or any other person granted enforcement authority shall enforce provisions of this ordinance.

If a noise enforcement officer measures a decibel level five (5) dB(A) or less higher than the maximum sound levels set forth in Sec. 22.3.1 and Sec. 22.3.2, and provided the noise producer has not been issued a noise violation citation within the previous 12 months from the date of the measurement, the noise enforcement officer may issue a warning notice to the noise producer, instead of a citation.

A noise producer issued a warning notice shall take noise mitigation steps to bring the decibel level into compliance with Sec. 22.3.1 and Sec. 22.3.2 within **5** days, and shall report those noise mitigation steps to the noise enforcement officer. Failure to bring the noise violation into compliance or to report the steps taken to mitigate the noise, shall result in a citation.

Sec. 22.7.4 Citations

Citations shall be in the form of a civil penalty and issues by a noise enforcement officer.

Sec. 22.7.5 Civil Penalties

Any person who violates any of the provisions of this chapter shall be subject to a civil penalty herein provided:

- First offense within a calendar year \$50
- Second offense within a calendar year \$500

- Third offense within a calendar year \$1,000

In the case of a second or third offense within a calendar year, each day of a continuing violation shall constitute a separate violation.

Sec. 22.7.6 Chronic noise producers

- A. The purpose of this section is to establish a collaborative process through which the city and any person that has been identified as a chronic source of objectionable noise (i.e., "chronic noise producer") will develop and implement a noise mitigation plan intended to bring the noise to acceptable levels.
- B. The Director may designate a person as a "chronic noise producer "based on the number of civil penalties. In making such a designation, the Director shall take into consideration the following factors:
 - a. The number and frequency of valid noise complaints;
 - b. The proximity and physical relationship between the noise producing location and complaining locations;
 - c. The severity of sound events, both observed or measured;
 - d. The times and days of the week of sound events;
 - e. The person's history of cooperation and efforts to alleviate the problem; and
- C. The history, context and zoning of the location, including whether the sound producing activity predates the occupation of the complaining locations.
- D. Data showing how many times noise enforcement officers have responded to noise-related calls about the chronic noise producer.
- E. Upon a chronic noise producer designation, the Director shall inform the person who it has been designated a chronic noise producer along with the information that established the basis for the designation.
- F. The Director shall schedule a mandatory initial meeting with the person that it has been designated a chronic noise producer. At the initial meeting, the Director and the person shall review the information that formed the basis for the designation and any evidence or information concerning the complained of noise provided by the person. Following the initial meeting, the Director shall determine whether a mitigation plan is warranted. If the chronic noise producer has remedied the violations, has ceased to use the source of the noise violation or has ceased business the Director shall determine that a mitigation plan is not warranted, shall notify the person and the commission of that determination and no further action shall be taken under this section.
- G. If the Director determines that a mitigation plan is warranted, the Director and the person shall together develop and sign a noise mitigation plan. The plan may include, among other things:
 - a. Restrictions on days of week or hours of noise producing activity;
 - b. Placement, orientation, and operation of sound producing activity or equipment;
 - c. Structural changes including but not limited to sound attenuation and baffling;
 - d. Self-monitoring and reporting requirements;
 - e. A schedule for implementation; and
 - f. A schedule for review for possible revision or termination of the plan.
- H. In the event that a person designated as a chronic noise producer: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan; (ii) refuses to agree to a noise mitigation plan; or (iii) fails to implement or comply with an agreed upon noise mitigation plan, the Director may designate the person as being in non-cooperative and shall notify the person and the commission of that determination.

Should a person designated as non-cooperative abate the noise disturbance that is the basis for the designation, the Director shall remove the designation and notify the person and the commission of that determination.

- I. Pursuant to this section, a person who has been designated a chronic noise producer or non-cooperative may appeal such designation within ten days after receiving notice of such designation to the appeals board as set forth in this section.
- J. If a chronic noise producer's status of non-compliance is upheld by the appeals board, and the non-compliance continues for more than 30 days, the Director shall recommend the City seek injunctive relief in the appropriate general court of justice.

Section 22.7.7 Appeals

- A. Any person who violates any provision of this chapter, except those receiving a citation from a noise enforcement officer, shall be notified by the Director of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with this chapter, if compliance is at all practicable, and a reasonable time period within which compliance must be achieved.
- B. If any aggrieved person disagrees with a decision of the Director, such person may request a hearing within ten working days of receipt of the violation. The request must be in writing and directed to the commission's secretary. The secretary shall immediately assemble an appeals board from among the membership of the commission; the chairperson of the commission shall always serve on the appeals board as the chairperson and shall not vote except to cast the deciding vote in case of a tie. The members to sit on the board shall be selected on a rotating basis except that at least one member of the appeals board must be either a sound engineer or public health professional. The owner shall have the right to be represented by counsel and to examine and cross examine witnesses at said hearing. The city attorney shall serve as the appeals board's legal advisor during said hearing. The appeals board shall render its written decision within 30 days after the hearing.
- C. The appeals board may modify, amend or revise the Director's decision. The decision of the appeals board shall be served upon the appealing party by registered or certified mail, return receipt requested, or by hand delivery.
- D. A person given a citation by a noise enforcement officer for violating any provision of this chapter may appeal the citation to the appeals board, or as a civil appeal to the Buncombe County District Court.
- E. Residents may also file a complaint with the Commission against a sound producer for violating provisions of this chapter.
- F. If any aggrieved party is dissatisfied with the decision of the appeals board, an appeal may be taken to the Buncombe County District Court. Notice of the appeal must be filed within ten working days of receipt of the appeals board's decision. The parties may stipulate that the appeal to the Buncombe County District Court shall be a review of the record only. In the absence of a mutual stipulation, the review shall be de novo.
- G. Any aggrieved party may request an injunction to preserve the status quo during the pendency of any appeal in accordance with applicable North Carolina law.
- H. In the case of an appeal as set forth in this section, the appeals board shall determine and assess the civil penalty, if any, at the time of the appeals hearing. In the absence of an appeal, the Director shall submit a request to the chairperson of the appeals board who shall assemble the appeals board and assess the civil

penalty with supporting documentation upon prior notice to the violating party of the date and time of the appeals board hearing. At least ten days notice shall be given to the violating party of the date, time and location whereby the appeals board will consider the request to assess a civil penalty.

- I. In determining the amount of the civil penalty, the appeals board may take into consideration the amount of money that the violator would be required to spend in order to be in compliance with the provisions of this chapter. The appeals board may recommend that the amount of the civil penalty be modified as part of a negotiated settlement with the city. Upon failure of the violator to pay the assessed penalty or reach an equitable settlement within 30 days, an action in the nature of debt in the name of the city in the appropriate division of the general courts of justice may be instituted by the city attorney for recovery of a debt.