

CAN Noise Ordinance Feedback November 15, 2019, Updated 11/18/2020

CAN offers this updated version of our feedback to the city on November 2019 to help you understand how the City's Draft ordinance release on November 18, 2020 addresses or fails to address the needs of the citizens that participated in creating the CAN Noise Ordinance that we delivered in late 2019. After receiving the CAN Noise Ordinance, the City made initial comments to the sections of that document. Those comments are in this document. CAN's response to those comments in an effort to retain key content, are also in this document.

A year ago when this document was presented to the city for further discussion, there were several important areas of the document that CAN thought the city agreed with:

1. Night time residential maximum sound levels that would protect sleep
2. Public notification and feedback for outdoor music permits
3. Maximum sound levels from buskers in the Central Business district

None of these topics are included in the released city ordinance, and because we thought we had support, you will not find additional discussion in this document. CAN will dispute these missing neighborhood resident protections.

What we have added is a new set of comments to help you understand if the city retained the spirit of our recommendations, or did not. Those comments are indicated by these words: **November 18, 2020 City Noise Ordinance.**

The purpose of this document is to facilitate discussion of changes and comments made by the city of Asheville to the first draft of a noise ordinance produced by the Coalition of Asheville Neighborhoods and citizens from 14 neighborhoods. Our objective is to reach consensus on the document's next version. While it is difficult to categorize our feedback by importance, to facilitate focussed discussion we have identified critical items that express the community needs that are the bedrock of the CAN draft ordinance. These critical items are:

- 22.1.1 & 22.7.1 & 22.3.1 TABLE 1
CAN Critical Objectives: Continue to use WHO scientific data as the support for residential maximum sound levels. Retain the WHO scientific based residential maximum sound levels: day 55 dBA, night 45 dBA
November 18, 2020 City Noise Ordinance: WHO not referenced, no residential maximum sound levels.
- 22.1.2
CAN Critical Objective: Eliminate the enforcement loophole created by the word intentional.

November 18, 2020 City Noise Ordinance: The word intentional was removed from all noise descriptive text

- 22.4.4

CAN Critical Objective: Retain the vehicle maximum sound limits to allow objective measures when enforcement receives citizen complaints

November 18, 2020 City Noise Ordinance: All specific vehicle maximum sound limits removed. Only remaining vehicle noise are North Carolina statutes.

- 22.4.10 & 22.4.11

CAN Critical Objective: Partner with the city and the business community / haulers to understand what the real financial impact will be. Find some acceptable way to protect the CBD resident's health related to sleep that is interrupted earlier than reasonable. Work toward compromise as required.

November 18, 2020 City Noise Ordinance: "Front Loading" refuse trucks prohibited in the CBD before 5:00 AM. This is better than what happens now, but will continue to impact sleep or force CBD residents to install sound block protection.

- 22.5.1

CAN Critical Objective: Landscaping equipment and other tools have to be added back once it is removed from the construction section.

November 18, 2020 City Noise Ordinance: Landscaping equipment noise is considered a nuisance (as is all residential noise) and is not subject to maximum sound level limits. Enforcement may cite based on a resident complaint if they judge its use to be "unreasonable".

- 22.6.14.A

CAN Critical Objective: Provide an appeal process that can be used by the applicant or the public to obtain or revoke a permit.

November 18, 2020 City Noise Ordinance: Public appeal process removed. Appeals are made to the noise ordinance administrator (DSD employee), but there is no public involvement in the appeal decision.

- 22.7.2

CAN Critical Objective: Provide a path for citizens to complain to the commission when there is objective evidence of violation and other paths of complaint are not resolving the source of the sound

November 18, 2020 City Noise Ordinance: Commission is abolished, no citizen oversight.

The remainder of this document provides CAN reasoning on every section in numerical order where changes or comments warrant discussion and collaboration. Where there were changes or comments from the city and we did not offer a CAN objective or reasoning, we accept the changes. It is possible that we may have missed a comment that the city seeks to discuss, we would gladly participate in that discussion.

Detailed discussion content on each section

22.1.1 - Critical Item

CAN Objective: Continue to use WHO scientific data as the support for residential maximum sound levels.

City's Comment: Not sure the city wants to explicitly rely upon another organization's document. References to the WHO may work better in a city policy document, not an ordinance. That said, we agree with having a clear public health connection.

November 18, 2020 City Noise Ordinance: No WHO or other scientific guidelines. No residential maximum sound limits.

CAN Comments:

- Please share why you feel this is a problem for an ordinance
- The majority of noise ordinances reference ANSI standards for properly calibrated sound level meters, referencing WHO is analogous
- WHO is the best possible science to use to demonstrate the impact of noise on public health
- If there is no scientific standard such as WHO how will the city defend residential maximum sound levels?
- Please consider our following rewrite

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, based on decades of scientific research by the World Health Organization and Environmental Protection Agency, deems it necessary and desirable to prohibit unwanted, excessive, and avoidable 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.

22.1.2 - Critical Item

CAN Objective: Eliminate the enforcement loophole created by the term intentional.

City's Rewrite:

Sec. 22.1.2 Unlawful Noises

It shall be unlawful for any person to intentionally produce, cause to be produced, or participate in producing sound, sound vibration, and noise originating within the corporate limits of the City of Asheville that is unreasonably loud and excessive, or exceeds the standards established by this chapter. Nothing in this chapter 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.

November 18, 2020 City Noise Ordinance: This text is absent.

CAN Comments:

- We understand your objective to allow enforcement to apply judgement
- Please consider the following rewrite:
It shall be unlawful for any person to intentionally produce, cause to be produced, or participate in producing sound, sound vibration, and noise originating within the corporate limits of the City of Asheville that exceeds the standards sound level limits established by this chapter, or that is deemed unreasonably loud and/or excessive. Nothing in this chapter 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.

22.1.3

CAN Objective: Clearly address to elected council that the proposed ordinance is equitable

City's Comment: This may not be necessary - check with Eric Edgerton

November 18, 2020 City Noise Ordinance: Equity statement is absent.

CAN Comments:

- We understand it may not be necessary
- We believe that by including it we gain support from key decision makers
- We suggest to keep the content as is

22.2.1

CAN Objective: Confirm agreement that Leq5 is acceptable enforcement measurement

City's Comment: Why 24 hours for Equivalent A-Weighted Sound Level (Leq)? Suggest adding a measurement article or section that can be used as clear guidance for enforcement staff. This should probably be after definitions, but before Article III.

November 18, 2020 City Noise Ordinance: Leq5 is noted. Detailed measurement guidance is not included.

CAN Comments:

- We agree that measurement definition is needed
- There are pros and cons to including in the ordinance or a companion manual
- *Vibration* will have to be restored in the City's version with its use above
- Add *Noise Disturbance* if the City wants to reintroduce the term
- Ideally, Leq would be determined over periods of time equivalent to EPA recommendations, but I suspect and as my research seems to bear out, it is an impossible metric in noise enforcement. Leq5 (five-minute measurement intervals) used by the City in its ambient sound sampling is described by multiple credible sources as the minimum measurement interval for determining Leq, with more being better. We would recommend Leq10, is that acceptable?

ARTICLE III ENVIRONMENTAL SOUND LEVELS.

CAN Objective:

Remove the term intentionally from the modified text to eliminate an enforcement loophole

The City's Rewrite:

Except as allowed in this chapter, no person shall intentionally produce or 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.

November 18, 2020 City Noise Ordinance: The word intentional was removed from all noise descriptive text

CAN Comments:

- Do you have examples where unintentional sound will routinely happen?
- In the rare case where it is a one time unintentional sound, a warning would be appropriate
- All sound producers would be able to claim that they did not intentionally create levels above maximums

22.3.1

CAN Objective: Compromise on 9:00 PM as the start of residential night

City's Comment: 10:00pm is common in other ordinances - I've seen 9:00pm (Charlotte) for weekdays and as late as 12:00am (Wilmington) for weekends.

November 18, 2020 City Noise Ordinance: The city's ordinance remains with 10:00 PM as the beginning of night time.

CAN Comments:

- Sleep is critical to public health, residents begin to sleep before 10:00 pm, therefore 9:00 PM as the start of night maximum residential sound limits would protect them.

TABLE 1 - Critical Item

CAN Objective: Retain the WHO scientific based residential maximum sound levels: day 55 dBA, night 45 dBA

City's Comment: Base or Amplified Sound at Night: Seattle - 45-50, San Fran - 53 (or 8 over ambient), New York - 7 over ambient, Charlotte - 50, Wilmington - 55, Raleigh - 45

November 18, 2020 City Noise Ordinance: WHO not referenced, no residential maximum sound levels.

CAN Comments:

- What are the reasons for deviating from WHO scientific data on public health
- This is the most important connection to public health, allowing higher maximum sound levels could actually lead to claims that this is not about public health
- Other city ordinances may have origins prior to WHO findings
- Other city ordinances may focus on nuisance rather than public health
- Asheville should be a national leader in the movement of healthy communities. This city is one of the highest quality of life communities in the country and should take every measure and be a national leader in promoting the well-being of its residents. Why would Asheville look to and compare itself to cities whose quality of life doesn't even come close to ours?

22.3.2.D

CAN Objective: Set specific dBC levels for appropriate locations

City's Comment: San Fran just sets dBC ten decibels higher, which makes for easier enforcement.

November 18, 2020 City Noise Ordinance: No dBC noise limits. Almost all certified noise measurement devices have a dBC measurement that could be used.

CAN Comments:

- We agree that specific dbC maximums would lead to more effective enforcement
- We have some examples from West Asheville
- We may need more measurements to be confident that the dBC maximum sound level does protect public health

22.4.1

CAN Objective: Constrain construction to start no earlier than 8:00 AM and stop no later than 6:00PM to protect residential zones rather than the complex set of measurements stated

City's Comment: The suggested revisions are modeled from the original changes proposed by the Legal staff.

November 18, 2020 City Noise Ordinance: Construction may now begin at 7:00 AM which may impact sleep for some residents.

CAN Comments:

- Can you explain your rationale for going with the changes initially proposed by the legal department?
- We recognize our original content is likely too complex to enforce
- The best way to protect residential areas are time constraints on construction
- Permits to construct outside the 8-6:00PM window should conform to Article VI and be approved by the director
- Can we find criteria for evaluating construction sound levels that are more objective than “in their opinion” and “noise disturbance”.
- If there is no way for the public to influence permits, complaints will go up
- Landscaping equipment constraints need to be added elsewhere
- Use of power tools in residential areas need to be added elsewhere

22.4.2

CAN Objective: Collaborate with sound measurement team to set dBC limits that protect public health

City's Comment: See comment above regarding Section 22.3.2 - I think this can be made simpler by following San Fran's lead. I like the idea of incorporating an alternate dBC standard for music; however, this section needs to be simplified.

November 18, 2020 City Noise Ordinance: No dBC noise limits. Almost all certified noise measurement devices have a dBC measurement that could be used.

CAN Comments:

- Suggest that we not define dBC maximums only for music, it is better to be generic to protect public health
- Agree with measurement process and location to be in a new article or companion document
- Would a companion document have the same basis in law as ordinance language?

22.4.3

CAN Objective: Offer an improved 22.4.3 that can govern all public space sound production

City's Comment: How does this work with what we learned from the buskers?

November 18, 2020 City Noise Ordinance: Public space noise has no maximum sound limits. While residents can still complain about noise as a nuisance, this becomes purely “subjective” rather than the goal of objective measures.

CAN Comments:

- Three email attempts to engage Andrew Fletcher from Rick Freeman have received no response. We do not have other contact information
- Do street performers play in other districts, beyond the CBD?
- Proposed replacement language eliminates the focus on buskers:

New Definition: Street Performer

Any person or persons who create sound by speaking, singing, playing instruments or other amplified sound with the intention of attracting attention to themselves in a public area of the CBD.

Sec. 22.4.3 Sounds created by street performers

- A. Within the CBD and no closer than 500 feet of residential zones that adjoin the CBD, the sound level created by street performers, measured at a distance of 15 feet or more from the location where the sound is being produced, may not exceed 75 dB(A) between 10 a.m. and 10 p.m. or the legal daytime street performing 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.

22.4.4 - Critical Item

CAN Objective: Retain the vehicle maximum sound limits to allow objective measures when enforcement receives citizen complaints

City's Comment: I do not think it is practical to expect consistent enforcement of decibel levels on motor vehicles. Realistically, let's give APD some discretion to address loud vehicles when necessary. We can potentially reference back to exterior sound level limits if everyone still thinks the section needs some objectivity.

November 18, 2020 City Noise Ordinance: All specific vehicle maximum sound limits removed. Only remaining vehicle noise are North Carolina statutes.

CAN Comments:

- We agree that enforcement should be driven by citizen complaints and would support making that clear in the ordinance
- Properly maintained vehicles may exceed residential limits that is why we need different maximum sound levels
- The table of sound level limits is borrowed from Savannah SC and Santa Fe NM which provides confidence that it is effective
- While refuse haulers have a section dedicated to their operation, other commercial vehicles operating in residential areas, especially before 7:00 AM contribute to sleep interference

22.4.6-9

CAN Objective: Locate these sections where most effective

City's Comment: Should these be simplified and consolidated into a general "Prohibitions" section or article? Article IV should be reserved for specific sounds/sources of sounds that present unique challenges and warrant specific standards.

November 18, 2020 City Noise Ordinance: We supported simplification, without losing important content.

CAN Comments:

- We are ok with moving the sections to Prohibitions if the city believes it is easier to understand.
- We need to remember that landscaping equipment and tools need to be documented in this article or prohibitions

22.4.8

CAN Objective: Retain the 9:00 AM to 5:00 PM constraints for testing these devices

City's Comment: I worry about emergency system testing that may be applicable to shift work.

November 18, 2020 City Noise Ordinance: This specific exemption is retained with no time prohibitions

CAN Comments:

- Do you have examples where you know this will lead to a violation?
- This section does not prohibit emergency system testing in second and third shifts it prohibits the use of the loud signals that would disturb neighbors
- Unlikely this section would impact any indoor facilities
- These types of sounds, both impulse and continuous are known impacts on sleep

22.4.10 - Critical Item

CAN Objective: Partner with the city and the business community / haulers to understand what the real financial impact will be. Work toward compromise if required.

City's Comment: Would like to learn more from the business community about typical loading times.

November 18, 2020 City Noise Ordinance: "Front Loading" refuse trucks prohibited in the CBD before 5:00 AM. This is better than what happens now, but will continue to impact sleep or force CBD residents to install sound block protection.

CAN Comments:

- We understand that businesses need material to serve their customers
- Businesses established in or near residential areas have public health responsibilities
- We understand that the loading/unloading personnel are often vendors and not directly managed by the business
- Loading and unloading can still operate at night, but sound levels need to be managed when in the CBD or in/near residential areas
- A discussion between the city, CAN, citizens and businesses that would violate this section would be very helpful

22.4.11 - Critical Item

CAN Objective: Find some acceptable way to protect the CBD resident's health related to sleep that is interrupted earlier than reasonable

City's Comment: Based on the stakeholder meeting, we know private haulers start before 7:00am. I think we need to allow earlier start times in nonresidential districts. We need to verify this measurement (refuse vehicle 75 dBA at 50 feet) if it is to be included.

November 18, 2020 City Noise Ordinance: "Front Loading" refuse trucks prohibited in the CBD before 5:00 AM. This is better than what happens now, but will continue to impact sleep or force CBD residents to install sound block protection.

CAN Comments:

- Our primary concern is disturbed residential sleep before 7:00AM
- We propose the same meeting approach as loading/unloading: city, CAN, residents and haulers work together to find a solution
- We do not have a problem with earlier starts in nonresidential districts as long as the refuse collection is not adjacent to residential districts
- We agree with measuring dBA on existing refuse haulers that are properly maintained
- Another possible compromise would be to only allow pre-7:00 AM refuse collection to 1 or 2 days per week per CBD "residential area"

22.4.12

CAN Objective: Retain prohibitions on fireworks both from businesses and citizens

City's Comment: There is an exception for lawful fireworks. The primary complaint is the Tourists, who currently operate under the exemption. I would prefer to create frequency or other limits around lawful fireworks. This can be done in this section, or as part of the exception,

November 18, 2020 City Noise Ordinance: Tourists may still display fireworks before 10:00 PM.

CAN Comments:

- Discussion with Tourist leadership indicates a willingness to move toward a laser light show
- Many of the complaints we have heard are also about citizens breaking the law and setting off fireworks in residential areas around the 4th of July.
- Other businesses should follow the permit process which requires nearby resident input and remediation

22.4.13.B.

CAN Objective: Protect the public health of anyone who wishes to sleep with their windows open anywhere in the city and certainly in a densely populated residential area

City's Comment: Somewhat subjective and may have unintended consequences in areas with high density and no AC.

November 18, 2020 City Noise Ordinance: No residential maximum sound level limits and lack of WHO or other science reference demotes this to just a nuisance, not public health

CAN Comments:

- Section 22.4 is where we put subjective situations, which we know will happen and need a clear ordinance section that guides complaints and enforcement
- Agree to move animal noise to animal control
- Many residents prefer to live with their windows open, we have excellent “mountain air”
- We wanted to allow enforcement discretion when the actions of neighbors may not exceed the maximum sound levels on 22.3 but can be observed to prevent sleep. This is why we have “peace and quiet”.
- We can define peace and quiet, to guide the subjective judgement

22.4.13.C

CAN Objective: Retain this section that defines sound creation acts that allow enforcement discretion when the action does not exceed levels but in the judgement of the enforcement officer is creating a public health problem.

City's Comment: Similar to above, can this be into a general "Prohibitions" section or article?

November 18, 2020 City Noise Ordinance: CAN agrees that there are some circumstances when noise may not exceed maximum sound levels and that enforcement must have the flexibility to solve the problem. However, we disagree with the strategy that ALL residential noise is a nuisance and therefore subjective.

CAN Comments:

- This is the same argument that sound creation which may not exceed maximum sound levels but create a public health problem be grouped together to explain the unique challenge to enforcement and filing complaints.

22.5.1 - Critical Item

CAN Objective: Landscaping equipment and other tools have to be added back once it is removed from the construction section.

City's Comment: How is outdoor lawn equipment addressed? Is this intended to be part of the construction and maintenance equipment section? Or are the basic sound level limits applicable?

November 18, 2020 City Noise Ordinance: Landscaping equipment noise is considered a nuisance (as is all residential noise) and is not subject to maximum sound level limits. Enforcement may cite based on a resident complaint if they judge its use to be “unreasonable”.

CAN Comments:

- Together we need to write new sections to cover landscaping and tools that are used either outdoors or where the sound can exit the building at high levels

22.5.1.2

CAN Objective: Street fairs, festivals, or celebrations obtain permits if they will exceed maximum sound limits.

City's Comment: Should there be some limits to this?

November 18, 2020 City Noise Ordinance: Continues to be an exception where no noise limits are applied and there is no method for public input.

CAN Comments:

- Our goal is to have event leaders to recognize that the sound they create can have a negative impact on public health.
- Many of these are annual events, and once they have gone through the permit process and worked out mitigation and public feedback, the process will be easier for subsequent year.

22.5.1.13-14

CAN Objective: Put these sections wherever they make the most sense, vehicle section is fine

City's Comment: Is this covered, or can it be integrated into the motor vehicle section above?

November 18, 2020 City Noise Ordinance: CAN language removed, only NC statutes remain to define noise nuisance from vehicles

CAN Comments:

- Move to vehicle section

22.6.1.A

CAN Objective: Establish a permit process that is effective and understandable

City's Comment: I appreciate the effort at balance, but there should probably be instances that just can't be exceeded even with a permit. Perhaps this section can explicitly list what is eligible for a permit to exceed sound levels and what standards apply?

November 18, 2020 City Noise Ordinance: There is a good permit system ONLY for music venues. It is intended to allow the city to revoke a business's permit to play music if they continually violate sound level limits. There is an additional permit that allows the business to exceed limits 12 times in a one year period.

CAN Comments:

- We do not have a list
- Together we could evaluate the Prohibited sounds and unlawful sounds sections and add designations for those which are not eligible for a permit?

22.6.3.C.7

CAN Objective: Protect residents from multiple events that create a constant health issue due to multiple event venues surrounding the residential area

City's Comment:

Understand the intent, but I'm concerned about pitting neighboring property owners/events against each other.

November 18, 2020 City Noise Ordinance: Permits to exceed sound 8 times for a maximum of 12 hours (10:00 AM to 10:00 PM) per year DO NOT prevent these events to be on consecutive days.

CAN Comments:

- To avoid contention, event organizers can mitigate sound levels
- Event organizers need to have dialogue with the city and adjacent residents and/or associations to recognize the health burden they are creating by frequent events in on area

22.6.3.C.9

CAN Objective: Retain criminal record as one guideline element

City's Comment: Deleted The reputation, character, and criminal record of the applicant and/or owner of the event site;

November 18, 2020 City Noise Ordinance: no qualifications or prohibitions for the applicant are required.

CAN Comments:

- This is a set of guidelines that the director may apply
- Could agree with deleting unmeasurable elements such as reputation and character, but would like to discuss recent examples of “bullying” on social media related to citizen complaints.
- Criminal record is pertinent in our opinion, why is this bad?

22.6.5

CAN Objective: Establish a reasonable, measurement method used by the applicant to ensure that the public is aware of permits that will allow daytime and nighttime maximum sound levels to be exceeded.

City's Comment: Let’s discuss the role city's notification tool can play with this requirement.

November 18, 2020 City Noise Ordinance: Properties within 500’ are to be notified. This does not include an opportunity for these residents to oppose the permit as CAN had documented.

CAN Comments:

- We are open to good discussion
- We are worried that residents who are not “digital” will be left out
- Asheville has a large retiree population that should be considered

22.6.5.1

CAN Objective: Include registered neighborhood associations in the process of public notifications

City's Comment: How does an applicant access this information?

November 18, 2020 City Noise Ordinance: Not included.

CAN Comments:

- The city maintains a list of registered associations with contact information
- We believe that representatives from registered associations can be helpful to the applicant to understand probably public feedback

22.6.5.2

CAN Objective: Ensure that renters participate in public feedback on permits.

City's Comment: If the tenants rent, how is this done?

November 18, 2020 City Noise Ordinance: No specific requirements for how to notify residents in multi-family housing.

CAN Comments:

- Just a reminder, this is the applicant's job
- The tenants are the people subject to public health issues
- Registered may be able to provide methods to reach tenants
- Fall back plan is distribution of leaflets. In multifamily dwellings this could be door to door or notices at common entrances

22.6.5.6

CAN Objective: Make sure that the public is aware of granted permits before the event starts so they can be prepared. Also minimize the number of complaints for approved permits

City's Comment: I do not think the city has capacity or resources to notify adjacent property owners. I could see making the decision available to the public via the city's notification tool.

November 18, 2020 City Noise Ordinance: Residents within 500' are notified one week in advance of the permitted event. No specific method for notification is stated.

CAN Comments:

- We are equally worried about the burden on the city and want to find the best option.
- Having just experienced the city's notification tool used with water pipe switch over, it is pretty effective. Can it be directed at a subset of the public?
- Just want to make sure there are not so many notifications to the entire city that people start opting out
- Registered associations require contact information, that would reduce the burden
- Core to this public health ordinance is an educated and informed public. If the public does not know a permit is granted the cost of dealing with complaints may increase.

22.6.10

CAN Objective: Work within existing applications where appropriate, referencing these sections of this ordinance to make sure qualified people are making the decisions

City's Comment: There may be an opportunity to somehow integrate this into the existing permit for special events (Temporary Use Permit). However, I agree with enumerating additional standards for any permit issued to exceed sound levels.

November 18, 2020 City Noise Ordinance: Permit requests are evaluated and granted/denied by the noise ordinance administrator

CAN Comments:

- We would be happy to discuss how this could work
- We think that the director (or those noise ordinance work is done by) are the best to evaluate permits to exceed sound levels
- Perhaps what is best is to inform Temporary Use Permit applicants that the existing application process will now include all the specifics documented in the noise ordinance if the temporary use include outdoor music

22.6.10.2

CAN Objective: Seek maximum sound levels that allow enjoyment of outdoor music events by attendees without creating an undue burden on adjacent residents

City's Comment: Don't have to figure this out at this point, but I actually think this (95 dBA) is too high. (1000 feet from event site boundary) Difficult to enforce.

November 18, 2020 City Noise Ordinance: 85 dBA measured at nearest residence is maximum allowable under the permit to exceed. This is a good compromise for a maximum of 8 events of 12 hour maximum duration per 12 month period

CAN Comments:

- WHO states that dBA levels between 85 dBA to 112 dBA is standard for outdoor rock concerts, but only for a specified time before it would start causing harm to hearing. We picked 95 dBA to be in the middle, would support a lower level.
- We debated the 1000 feet measurement compared to residential property line. We can discuss the pros and cons. In all cases the measurements need to be made in multiple directions from the source of the sound. Certainly along the direction the speakers point, but that may not be good enough with our topology

22.6.10.3-5

CAN Objective: Find a reasonable time, length and frequency to not force the residents that receive sound from the event to have to leave their residence for extended periods

City's Comment: Need to discuss, but I would rather further limit the total number of events in a time-period and not address an individual event time duration. For example, no more than 8 to 12 permits per year with a 10:00 weekend/9:00 weekday end-time.

November 18, 2020 City Noise Ordinance: Consecutive days are allowed out of the maximum of 8 events per 12 month period.

CAN Comments:

- Let's discuss what you find impractical about our content
- We were specifically trying to prevent multi-day, long duration events that make it impractical for residents receiving the highest sound levels to remain at their homes during the events

22.6.14.A - Critical Item

CAN Objective: Provide an appeal process that can be used by the applicant or the public to obtain or revoke a permit.

City's Comment: Specifically as it relates to this phrase: "from the requirements of any provision of this Chapter". This allows everything to be appealed. I don't think this is a good idea. Related to permit issuance, yes - because a person doesn't like a decibel level, probably not.

November 18, 2020 City Noise Ordinance: Commission is abolished, no citizen oversight. Appeals are directed to the noise ordinance administrator with no public input defined.

CAN Comments:

- The director has discretion which we all agree is proper
- That means that unintended consequences can happen once a permit is awarded, the public needs a way to appeal and get the permit revoked if there is objective proof of these consequences

22.7.1 - Critical Item

CAN Objective: Continue to use WHO scientific data as the support for residential maximum sound levels

City's Comment: Can this be more generally oriented toward public health concerns?

November 18, 2020 City Noise Ordinance: WHO not referenced, no residential maximum sound levels.

CAN Comments:

- Discuss with the City why he feels that WHO scientific finds are not the best definition of public health concerns
- What would be a better scientific source?

22.7.2 - Critical Item

CAN Objective: Provide a path for citizens to complain to the commission when there is objective evidence of violation and other paths of complaint are not resolving the source of the sound

City's Comment: Is this Commission handling complaints in addition to appeals and chronic violators? I mentioned this in an earlier comment, but I think the city should move away from a Commission handling complaints (Sec. 22.7.2 Complaints). I think the best role for a Commission is to hear appeals, manage chronic noise producers/noise mitigation plans, and otherwise operate at a policy level.

November 18, 2020 City Noise Ordinance: Commission is abolished, no citizen oversight. It is not defined whether or how to complain to the noise ordinance administrator

CAN Comments:

- We want to understand the concerns about the Commission handling well defined complaints
- We want to understand why not identify the methods to file a complaint in the ordinance
- We suggest updating this section to clarify the circumstances when a complaint can be taken directly to the commission. We should discuss those requirements
- There has been very strong residential input that this path is needed due to evidence
- Let's not accidentally include a barrier to citizen action in public health problems

22.7.3

CAN Objective: Allow for warnings when the sound producer is unaware of the problem they are creating

City's Comment: I like the idea of creating a decibel level tolerance for an initial visit to a property (the tolerance may need to be lessened); however, the required proactive five day follow-up will be difficult from an administrative perspective. I would prefer for the warning to be just that, and future complaints then result in the standard enforcement process/citations (even this requires the city to develop an automated tracking mechanism).

November 18, 2020 City Noise Ordinance: No details are provided about how enforcement judges circumstances. If the complaint is from a residential area, it is considered a nuisance and does not require enforcement to measure sound levels.

CAN Comments:

- Let's discuss the most effective method to allow a warning but prevents multiple warnings without action by the sound producer
- Perhaps only one warning per twelve month period
- We understand that this requires some system that tells enforcement whether the sound producer has warnings or citations

22.7.7

CAN Objective: To define the most straightforward and easily implemented appeal board.

City's Comment: It reads like the appeals board is made up of only a portion of the overall Commission membership. If this is the case, more detail is needed.

November 18, 2020 City Noise Ordinance: Commission is abolished, no citizen participation in the appeals process.

CAN Comments:

- Let's discuss the pros and cons of the entire commission membership being the appeals board
- The existing approach was adopted from the Tree Ordinance: If any aggrieved person disagrees with a decision of the public works 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 tree commission's secretary. The secretary shall immediately assemble an appeals board from among the membership of the tree commission. The chairperson of the Asheville Tree 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.

22.7.7

CAN Objective: Clarify that appeals board cannot set a civil penalty beyond what is provided in Section 22.7.5

City's Comment: Am I understanding correctly that the appeals board can set the civil penalty amount? Could this be an amount greater than what is outlined in Section 22.7.5? I could see the appeals board waiving a penalty, but think there needs to be structure around what can be assessed (if that's the intent).

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CAN Comments:

CAN Noise Ordinance Feedback November 15, 2019, Updated 11/18/2020

- What the appeals board can do as modify a civil penalty, pursuant to the proposed Sec, 27.7 I
- In other words, if a noise offender has been issued a second violation, and appeals it to the appeals board, and during the hearing provides verifiable information that he/she has agreed to make changes to mitigate the noise, the appeals board could reduce the \$500 civil penalty, or waive the civil penalty.