

Proposed Noise Ordinance
FINAL DRAFT November 2020

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ARTICLE IV. - NOISE REGULATION

Sec. 10-81. 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. 10-82. 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 standards of the American National Standards Institute (ANSI) or its successor bodies.

Abutting means joining at a border or boundary.

Adjacent means the condition of being near to, adjoining or close to but not necessarily having a common dividing line. Two properties which are separated by only a street, alley or unopened/undeveloped right-of-way shall be considered as adjoining one another.

A-Weighted sound level (L_a, dB(A), dBA) means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network as specified in ANSI documents for sound level meters. The level so read is postscripted dB(A) or dBA.

Central Business district means any area with the following zoning designation: Central Business District.

Commercial district means any area with the following zoning designation: Neighborhood Business District, Office District, Office II District, Office/Business District, Community Business I District, Community Business District II, Urban Residential District, Neighborhood Corridor District, Haywood Road Form District, River Arts Form District, Urban Village District, Urban Place District, Resort District, Institutional District, Highway Business

District, Regional Business District, River District, Commercial Industrial District, Commercial Expansion District, Mixed Use Expansion District, Institutional Expansion District, Lodging Expansion District.

Construction means erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

Continuous sound means any sound which does not vary in sound level more than 5 dB(A) during a measurement period which shall be at least 60 minutes.

Cyclically varying sound means any sound which varies in sound level more than 5 dB(A) during a measurement period such that the same level is obtained repetitively at reasonably uniform intervals of time less than 10 minutes.

Daytime hours: 7:00 AM to 10:00 PM, local time.

Decibel (dB) means a logarithmic (dimensionless) measure used in describing the amplitude of sound.

Impulsive sound means any sound or vibration of short duration that has an abrupt increase and abrupt decay.

Industrial district means any area with the following zoning designation: Commercial Industrial District, Light Industrial District, Industrial District, Industrial Expansion District.

Intermittent sound means any source that ceases to emit sound at intervals. The levels during on periods may be either constant or varying.

Leq means the equivalent sound level, which is the constant sound level in a given time period that conveys the same sound energy as the actual time-varying sound. The applicable time period for the Leq must be specified.

Music venue means a building, building complex, and/or an indoor or outdoor area used to accommodate musical performances, including live music, the presentation of music played on sound equipment operated by the owner or by an employee, an agent or a contractor of the venue commonly known as a "disc jockey" or "DJ," and karaoke more than six times annually. A music venue may be a stand-alone use or may be associated with another use.

Mobile sound vehicle means any non-emergency vehicle specially equipped with mechanical loudspeakers or amplifiers for the purpose of directing sound more than ten feet beyond the vehicle.

Motor vehicles means road vehicles, such as automobiles, vans, motorcycles and trucks, as well as off-road vehicles such as dirt bikes, 4-wheelers, self-propelled construction and farming equipment; a vehicle powered by an internal combustion engine.

Nighttime hours: 10:00 PM to 7:00 AM, local time.

Noise Control Administrator means any officially designated employees or agents of the municipality that have primary responsibility for noise control and have received training in the standards for the measurement of sound levels.

Noise disturbance means any sound or vibration which:

- (1) May disturb or annoy reasonable persons of normal sensitivities; or

- (2) Causes, or tends to cause, an adverse effect on the public health and welfare; or
- (3) Endangers or injures people; or
- (4) Endangers or injures personal or real property.

To determine whether a noise constitutes a noise disturbance, the following factors incident to such noise are to be considered:

- (1) Whether the noise occurred during daytime or nighttime hours;
- (2) The volume and intensity;
- (3) Whether the noise has been enhanced in volume or range by any type of megaphone, amplifier, or other mechanical means;
- (4) The frequentness of the noise, and;
- (5) The nature and zoning of the area.

Pure tone means:

- (1) Any sound that can be heard as a single pitch or combination of pitches, or;
- (2) Any sound in which the one-third octave band sound pressure level in the band with the tone exceeds the level in the two contiguous one-third octave bands by 5 dB in bands 500 Hz and above, by 8 dB for bands between 160 and 400 Hz, and by 15 dB for bands below 160 Hz.

Public space means a legal open space on premises, accessible to a public way, roadway, or right-of-way and permanently devoted to public use, which abuts the premises and is permanently maintained, accessible to the fire department, and free of all encumbrances that might interfere with its use. Public space includes open spaces, including any park, lake, stream, stadium, athletic field, playground, school yard, street, sidewalk, greenway, plaza, square, bus, train or railroad depot, station, terminal, cemetery, open space adjacent thereto, or any other place commonly open to the public, including but not limited to, areas on private property commonly open to the view by the public.

Real property line means 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.

Residential district means any area with the following zoning designation: RS-2 Residential Single-Family Low-Density District, RS-4 Residential Single-Family Medium Density District, RS-8 Residential Single-Family High-Density District, RM-6 Residential Multi-Family Low-Density District, RM-8 Residential Multi-Family Medium Density District, RM-16 Residential Multi-Family High-Density District, Residential Expansion District.

Sound means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensitivity.

Sound level meter means a device used for measuring the intensity of sound. A sound level meter uses a microphone to measure the changes in air pressure produced by the sound source. Sound level meters typically report readings in decibels.

Sec. 10-83. General regulation.

- (a) No person shall make, continue, cause, or wrongfully permit to be made or continued, any noise disturbance originating from a residential district.

- (b) No person shall make, continue, cause, or wrongfully permit to be made or continued, any noise disturbance originating from a right-of-way, street or other public space.
- (c) Unless otherwise specified, no person shall cause or allow the emission of any sound originating from a district which, when measured pursuant to 10-84, exceeds the maximum decibel limits specified in Table 1.

Table 1. Exterior Sound Level Limits

Originating District dB(A)			
	CBD	Commercial	Industrial
Daytime	75	65	70
Nighttime	67	57	65

- (1) In the central business district (CBD), nighttime exterior sound level limits shall be reduced by an additional five decibels from 2:00 AM - 7:00 AM.
- (2) The exterior sound level limits shall be reduced by five decibels for any source of sound emitting a pure tone, continuous sound, cyclically varying sound, or repetitive impulsive sound.

Sec. 10-84. Sound measurement.

- (a) For the purpose of determining dB(A) as referred to in this article, the noise shall be measured on the A weighting scale set on slow response using a Class 1 or Class 2 Sound Level Meter of standard design and quality having characteristics established by the American National Standards Institute.
- (b) Measurements shall be made on the property where the noise is received, within a reasonable proximity of where the sound is typically received.
- (c) The exterior sound level limits are based on the Leq using a minimum measurement interval of one minute.

Sec. 10-85. Prohibitions.

Unless otherwise allowed by this Chapter, no person shall engage in any of the following enumerated activities:

- (1) Pointing active speakers into an adjacent occupied residential dwelling unit at all times;
- (2) Pointing active speakers into a right-of-way, street, or other public space between 10:00 PM and 7:00 AM;
- (3) Operating any motor vehicle with a non-functional or absent muffler-exhaust and/or noise control system;
- (4) Using unmuffled engine compression brakes except when required due to an emergency driving situation;
- (5) Sounding any natural or amplified signal from any bell, horn, chime, siren, whistle or similar device intended primarily for non-emergency or non-safety purposes for more than five minutes in any hourly period;
- (6) Operating a front-end loader for refuse collection in any residential district or within 100 feet of a residential district between the hours of 7:00 PM and 7:00 AM;

- (7) Operating a front-end loader for refuse collection in the central business district between the hours of 7:00 PM and 5:00 AM; and
- (8) Operating a Mobile Sound Vehicle between 10:00 PM and 7:00 AM.

Sec. 10-86. Exceptions.

The following are excepted from the application of this article:

- a. Governmental emergency vehicles in the course of performing their official duties;
- b. Construction activity performed by an agency of government or utilities regulated by the North Carolina Utilities Commission provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- c. Construction activity performed pursuant to a permit issued by the City's Chief Building Official or their designee under Section 10-87 of this article;
- d. Sound or noise originating from refuse collection, except as specified in Section 10-85 of this article;
- e. Barking dogs or other noise caused by animals regulated in Chapter 3 of the City Code;
- f. 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;
- g. Sound or noise emanating from film and video production activities for which permits have been issued by the city; provided all equipment are operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;
- h. Sound or noise from lawfully permitted fireworks displays occurring on Federally recognized holidays;
- i. Sound or noise emanating from aircraft operated in accordance with applicable federal rules and regulations;
- j. Railroad operations regulated by the Federal Railroad Administration;
- k. Musical accompaniment or other sound caused by permitted parades or military ceremonies; and
- l. Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools and McCormick Field between 7:00 AM and 10:00 PM, except where a permit is otherwise required by this article.

Sec. 10-87. Construction noise.

- (a) Construction equipment must be operated in accordance with manufacturer's specifications with all standard noise-reducing equipment in place and in proper condition.
- (b) Except where otherwise permitted in this article, no construction activity performed pursuant to a permit issued under Chapter 4 of the City Code may be performed outside the hours of 7:00 AM and 7:00 PM Monday through Saturday absent an after-hours permit issued by the City's Chief Building Official or their designee. The Chief Building Official may issue such a permit when, in their opinion, the noise caused by the construction activity will occur on a property, or site made up of multiple parcels, for no more than three twelve-hour periods within a single seven day period.
- (c) After-hours permit applicants must certify that written notice will be provided to addresses located within 500' of the real property line of the subject property where the construction activity is permitted at least 72 hours prior to the permitted date, including contact information, specific dates, times and activity purposes.

- (d) After-hours permits may require compliance with noise-mitigating measures as determined by the Chief Building Official, including but not limited to, limitations on the types of construction activity performed, equipment restrictions and the erection of noise producing barriers.
- (e) Following the issuance of an after-hours permit, if the Chief Building Official determines that the construction activity is causing noise in excess of the standards specified in Section 10-83 of this article, the Chief Building Official may modify or revoke the permit.
- (f) The Chief Building Official may permit emergency construction activities without an after-hours permit upon a determination that such work is necessary for the preservation of public health or safety. Such a determination may be made after the emergency construction activity has occurred.
- (g) Failure to obtain an after-hours permit, or comply with any condition contained therein, shall constitute a violation of this section, and the Chief Building Official shall be authorized to issue a stop work order for any permit issued to the violating party. In addition, violation of this section may subject the offender to a civil penalty in the amount of \$500.00.

Sec. 10.88. Permitting.

- (a) Music Venue permit
 - (1) A permit shall be required for the operation of any music venue in the City of Asheville.
 - (2) Application Requirements.
 - a. The applicant for an Music Venue Permit shall supply, at a minimum:
 - 1. The name of the business;
 - 2. The name of the business owner and contact information;
 - 3. The name and number of a contact person with availability during all operating hours;
 - 4. The nature of the business; and
 - 5. The general hours of operation.
 - (3) Fees for a Music Venue Permit shall be established and listed in the City's fees and charges manual.
 - (4) Permit Renewal Requirements.
 - a. A Music Venue permit shall be renewed every two years through a form provided by the City.
 - b. A Music Venue permit shall be updated through a form provided by the City upon:
 - 1. Change in venue ownership; or
 - 2. Change in venue contact details.
 - (5) Should the applicant fail to abide by all applicable requirements found within this or any section of the Municipal Code, the Noise Control Administrator shall be authorized to revoke the permit.
 - (6) Reissuance after Revocation.
 - a. A one-year probationary Music Venue permit may be reissued by the City after:
 - 1. At least 30 days; and
 - 2. Approval of a sound mitigation plan by the City that may include, among other things:
 - i. Restrictions on days of week or hours of noise producing activity;
 - ii. Placement, orientation, and operation of sound producing activity or equipment;
 - iii. Structural changes including but not limited to sound attenuation and baffling; and
 - iv. A schedule for implementation.
 - b. Probationary permits revoked for violations of this section shall not be eligible for reissuance for at least 60 days.

- (b) Sound Exceedance permit
 - (1) Except where otherwise permitted under this article, a Sound Exceedance Permit shall be required to lawfully exceed the standards set forth in Section 10-83.
 - (2) Unless otherwise allowed under this subsection, a Sound Exceedance permit may authorize the holder to exceed the standards set forth in Section 10-83 on a property, or site made up of multiple parcels, for no more than eight twelve-hour periods within a single twelve month period.
 - (3) Permitted Sound Exceedance may occur between 10:00 AM - 10:00 PM.
 - (4) In no event shall the emission of sound measure more than 85 dBA on a property with an occupied residential dwelling unit.
 - (5) Application requirements.
 - a. The applicant for a Sound Exceedance permit shall supply, at a minimum:
 - 1. Site plan showing the event space illustrating, at a minimum:
 - i. The location of any stages or performance zones;
 - ii. The location and direction of orientation of any loudspeakers to be used;
 - iii. The location of any audience seating or assembly area;
 - iv. The point(s) of ingress and egress for the site;
 - v. Land Use and zoning district of all abutting properties; and
 - vi. Any other information deemed necessary for enforcement of this article by the Noise Control Administrator.
 - 2. Date and time that sound exceedance is expected to begin and end.
 - 3. The name and contact information of a person ready and able to take action to cease the sound exceedance upon notice from the City.
 - 4. Permit applicants must certify that written notice will be provided to addresses located within 500' of the real property line of the subject property where the sound is to be produced at least one week prior to the permitted date.
 - 5. Applications must be submitted for review 14 days prior to the permitted date.
 - (6) Fees for a Sound Exceedance permit shall be established and listed in the City's fees and charges manual.
 - (7) A Sound Exceedance permit may authorize up to twelve additional twelve-hour periods within a single twelve month period with the approval of a sound impact plan. The Noise Control Administrator may issue such authorization when, in their opinion, the sound impact plan demonstrates the comprehensive management and reduction of off-site decibel impacts.
 - a. The required elements of a sound impact plan shall include at a minimum:
 - 1. A noise model performed by an acoustical engineer that provides expected off-site decibel impacts;
 - 2. Sound-mitigating design features, including stage construction and orientation, buffering, size, location, and loudspeaker orientation;
 - 3. Prescribed decibel levels and hours of operation; and
 - 4. Availability and use of decibel meters on-site;
 - (8) Should the applicant fail to abide by all applicable requirements found within this or any section of the Municipal Code, the Noise Control Administrator shall be authorized to modify or revoke the permit.
 - (9) Reissuance after revocation.
 - a. A one-year probationary Sound Exceedance permit may be reissued by the City after:
 - 1. At least 30 days have passed since revocation; and
 - 2. Approval of a sound mitigation plan by the City that may include, among other things:
 - i. Restrictions on days of week or hours of noise producing activity;
 - ii. Placement, orientation, and operation of sound producing activity or equipment;

- iii. Structural changes including but not limited to sound attenuation and baffling; and
 - iv. A schedule for implementation.
- b. Probationary permits revoked for violations of this section shall not be eligible for reissuance for at least 365 days from the date of the last violation.

Sec. 10.89. Administration.

This article may be enforced by any city employee as permitted by the City Manager.

Sec. 10.90. Non-exclusivity.

Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this article, or from pursuing said remedy simultaneously with proceedings under this article, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

Sec. 10.91. Violations; owner and occupant responsibility.

Violations of this article shall subject the offender to penalties as set forth in [section 10-92](#), subject to the limitations set forth below.

- (1) Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.
- (2) An owner of any premises subject to this article, as well as any person responsible for such premises, shall be responsible for any actions by tenants, guests, or other licensees that constitute violations of this article. This section shall in no way relieve any other person from responsibility for violations of this article.

Sec. 10.92. Penalties.

- (a) Violations of the provisions of this article by the same person for the same activity occurring within two years of the first such violation shall be subject to civil penalties as follows:
 - (1) First violation (per City Code section 1-5) \$100.00
 - (2) Second violation \$200.00
 - (3) Third violation \$300.00
 - (4) Fourth or subsequent violation \$500.00, per offense
- (b) In addition to the revocation or denial of permits, violations of the provisions of this article requiring permits shall be subject to civil penalties as follows:
 - (1) Operating without a permit \$500, per offense
 - (2) Violation of a probationary permit condition \$500, per offense
- (c) In addition to the civil penalties provided for above, the city may enforce the provisions of this article by appropriate equitable remedies as set forth in [section 1-5\(d\)](#).

Sec. 10.93 - Appeals

- (a) Appeals from the revocation of any permit, or the issuance of any civil penalty, may be made to the Development Services Director, but must be in writing and delivered to the Development Services Department within ten business days of the decision being appealed.
- (b) The Development Services Director may consider such appeal with or without a hearing, and shall issue and serve a written decision of such appeal within thirty business days of its receipt; which time may be extended by the Development Services Director for good cause.
- (c) No appeal of any permit decision may be heard except those filed by a permit applicant or permit holder within the prescribed time period for filing such appeals.

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