

ARTICLE IV. - NOISE REGULATION^[4]

Footnotes:

--- (4) ---

Editor's note—Ord. No. 2726, § 1, adopted June 27, 2000, amended the art. IV in its entirety, including its title. See the Code Comparative Table.

State Law reference— Authority to adopt ordinances and regulations to promote and protect the health, welfare and safety of its citizens, G.S. 160A-174; authority to regulate, restrict or prohibit the production or emission of noises or amplified speech, G.S. 160A-184.

Cross reference— Quiet zones, § 19-8.

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.

(Ord. No. 2726, § 1, 6-27-00)

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:

Amplified sound means any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.

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

Daytime hours: 7:00 a.m. to 11:00 p.m., local time.

Motorized vehicles means:

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

- (1) Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
- (2) Common carriers of passengers as defined in G.S. 20-4.01(27)c.
- (3) Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.
- (4) Truck tractors as defined in G.S. 20-4.01(48).
- (5) Farm tractors as defined in G.S. 20-4.01(11).

Nighttime hours: 11:00 p.m. to 7:00 a.m., local time.

Noise means any sound or combination of sounds which, because of its volume or quality, tends to disturb reasonable persons of normal sensitivity or to interfere with normal human activity.

Noise disturbance means any unreasonably loud and raucous sound or noise which:

- (1) Endangers or injures the health or safety of humans or animals;
- (2) Endangers or injures personal or real property; or
- (3) Disturbs a reasonable person of normal sensitivity.

To determine whether a noise or sound constitutes a noise disturbance, the following factors incident to such noise are to be considered: whether the noise occurred during daytime or nighttime hours, proximity to residential areas, whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; and the nature and zoning of the area.

Person means any individual, association, firm, partnership, corporation, or business entity.

Residential areas: Any area in the city that is zoned the following: 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.

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.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, §§ 1(a), (b), 11-13-12)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 10-83. - General regulation.

Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the city, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-84. - Noise producing activities; frequent sources of complaint; noise sensitive areas.

In addition to the general prohibition set forth above, the following activities are recognized as tending to produce unreasonably loud and raucous noises and as tending to constitute noise disturbances when conducted or permitted in an unreasonable manner. No person shall engage in any of the enumerated activities so as to cause a noise disturbance on neighboring premises.

- (1) Operation of radios, televisions, or other personal sound reproduction devices in such a manner as to be plainly audible by persons other than those for whose use the device is being operated, including the operation of automobile sound systems in such a manner as to be plainly audible by pedestrians or the occupants of other vehicles.
- (2) Playing of any amplified or nonamplified musical instrument;
- (3) Keeping of any animal or bird that frequently or for long periods of time makes noises that tend to annoy or disturb others;
- (4) Operation of domestic power tools or mechanical devices;
- (5) Repair or testing of any motor vehicle, however fueled or powered;
- (6) Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);
- (7) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily;
- (8) Operation of model cars, boats, or airplanes, go carts, mini bikes, or all-terrain vehicles or other unlicensed toy or recreational vehicles or devices powered by an internal combustion engine;
- (9) Street vending or peddling; or
- (10) Sounding of any automobile horn except as a warning or danger signal, or as required by law.
- (11)

The erection (including excavating), demolition, alteration or repair of any building or other structure within 500 feet of a residential district as established pursuant to the city zoning ordinance, other than between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday, except by permit from the building inspector when, in his opinion, such work will not adversely affect other persons. Following the issuance of such a permit, if the building inspector shall determine that the building operations are adversely affecting others, he shall be authorized to modify or revoke the permit. The building inspector may permit emergency work in the preservation of public health or safety at any time. This subsection shall not apply to activities associated with street and highway construction.

- (12) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other official emergency vehicle.
- (13) The blowing of any steam whistle attached to any stationary boiler, except as a warning of danger.
- (14) The operation of machinery in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates, and containers.
- (15) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise.
- (16) The firing or discharge of firearms in the streets or elsewhere, except by permit from the police department, or otherwise as permitted by law.
- (17) Yelling, shouting.
- (18) Parties.
- (19) The sounding of a security alarm for more than 20 minutes after the owner or responsible party has been notified by law enforcement personnel.

It is further recognized that certain uses, including churches, synagogues and other places of worship, medical and convalescent facilities, schools and courthouses are particularly sensitive to sound and noise. Noise-producing activities, including those specified above, may become noise disturbances when conducted in the immediate vicinity of those uses during their hours of operation.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, § 1(c), 11-13-12)

Sec. 10-85. - Exceptions.

The following are excepted from the application of this article:

- (1) Construction activity performed by an agency of government provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- (2) 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.
- (3) Sound or noise emanating from street fairs, festivals, or celebrations conducted by or with the city;
- (4) 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;
- (5) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
- (6) Sound or noise from lawful fireworks;
- (7) Lawnmowers and agricultural equipment operated between the hours of 8:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;
- (8) Musical accompaniment to parades or military ceremonies;

- (9) Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools and McCormick Field;
- (10) Governmental emergency vehicles in the course of performing their official duties;
- (11) Railroad operations, to the extent said operations are in furtherance of interstate commerce; and
- (12) Unamplified noncommercial speeches made from a fixed location in non-residentially zoned areas; and
- (13) Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission.
- (14) Commercial refuse collection vehicles operating between the hours of 6:00 a.m. and 9:00 p.m.
- (15) Sound or noise emanating from aircraft flight activity at the Asheville Regional Airport, provided said activities are conducted in accordance with FAA regulations.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, § 1(d), 11-13-12)

Sec. 10-86. - Noise ordinance appeals board; powers and duties.

(a) *Composition of board; terms.* There is hereby established a Noise Ordinance Appeals Board (herein "board") to consist of five members and two alternates as follows:

Members:

- One city zoning or building safety enforcement officer;
- One city police officer;
- One city animal control officer (or employee of contracted animal control agency);
- Two city residents.

Alternates:

- One city employee;
- One city resident.

The city employees will be designated by and serve at the pleasure of the city manager; the residents will be appointed by the city council for three-year terms, and will serve at the pleasure of the city council.

- (b) *Purpose.* The board will advise the city on matters related to noise and noise control, and will hear and decide appeals and complaints from citizens as set forth below.
- (c) *Appeals.* Persons receiving civil citations may appeal the citations to the board in writing within 15 days of issuance. After due consideration of said appeal, the board may direct that said civil citation be withdrawn or that the penalty be reduced by the issuing agency.
- (d) *Complaints.* Upon the written and verified complaint of two or more individuals from at least two separate households that a person or persons are violating provisions of this article, and after said person or persons have had notice and opportunity to be heard on the complaint, the board may find that a violation of this article has occurred, and such finding shall be a sufficient basis for issuance of a civil citation as provided in section 10-86.
- (e) *Procedure; appeal.*
 - (1) *Filing; hearing.* Appeals or complaints pursuant to paragraphs (c) and (d) above may be delivered to the city manager or an office or official designated by the city manager. Hearing of a complaint shall occur within 15 days of receipt thereof. If appellant or at least two of the complainants who filed the complaint fail to attend the hearing, the appeal or complaint shall be dismissed. Board decisions shall be issued and served within ten days of the hearing. The times for conducting hearings and issuing decisions may be extended by order of the board.

- (2) *Appeal.* Appeals from decisions of the board may be made to the city manager, but must be in writing and delivered to the city manager within ten days of issuance. The manager may consider such appeal with or without a hearing, and shall issue and serve a decision on such appeal within ten days of its receipt; which time may be extended by the city manager.
- (3) *Manner of service; computation of time.* Whenever delivery or service of a notice, order or decision is required by this section, such delivery or service shall be as provided in Rule 5(b) of the North Carolina Rules of Civil Procedure for pleadings subsequent to original complaint. The times prescribed in this section for taking any action in response to a notice, order or decision delivered or served as provided herein shall be computed in accordance with Rule 6(a) of North Carolina Rules of Civil Procedure.
- (4) *Finality of decisions.* Board decisions that are not appealed to the city manager are final upon expiration of the time for taking an appeal. Decisions of the city manager are final upon issuance.
- (f) *Rules.* Prior to consideration of any appeal or complaint under this section, the board shall adopt rules of procedure consistent with this section, which rules shall be subject to the approval of the city attorney.
- (Ord. No. 2726, § 1, 6-27-00; Ord. No. 3042, § 1, 7-22-03; Ord. No. 4136, § 1(e), 11-13-12)

Sec. 10-87. - 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 chapter, or from pursuing said remedy simultaneously with proceedings under this chapter, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-88. - Violations; owner and occupant responsibility.

Violations of this article shall subject the offender to penalties as set forth in section 10-89, 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 who is not also an occupant of the premises shall be responsible for any actions by tenants, guests, or other licensees that constitute second or subsequent violations of this article; provided, that no absentee owner shall be liable unless notified of first or previous violations of the article, and further provided that such first or previous violations shall have occurred within the previous 12-month period. Notice of any first or previous violations pursuant to this paragraph shall be effected by registered or certified mail. No absentee owner may be subjected to criminal liability under this section, but shall be subject to civil penalties and equitable relief as provided in herein. This section shall in no way relieve any other person from responsibility for violations of this article.
- (3) The person responsible for any premises shall be responsible and liable for any violations of this article by tenants, guests, or licensees on the premises if the person responsible is actively or constructively present at the time of the violation.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-89. - Enforcement; penalties for violation; remedies; additional civil penalty for subsequent offenses.

- (a) Violations of the provisions of this article shall be subject to the civil penalties set forth in City Code section 1-5(c). In addition to the penalties set forth therein, second or subsequent violations of the provisions of this article by the same person for the same activity occurring within one year of the first such violation shall be subject to civil penalties as follows:

First violation (per City Code section 1-5)\$50.00

Second violation100.00

Third violation200.00

Fourth or subsequent violation, per offense300.00

The penalties set forth above shall be incorporated into appendix B, Schedule of civil penalties.

- (b) 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).
- (c) This article may be enforced by employees of the city police department as designated by the chief of police, and by other employees of the city as designated by the city manager. Animal control officers employed by the city, or employees of an animal control agency working under contract with the city for the enforcement of animal control ordinances, and who have been designated by the chief of police may enforce the provisions of this article relating to animals and animal noises.

(Ord. No. 2726, § 1, 6-27-00)

Secs. 10-90—10-100. - Reserved.