

ARTICLE II. - NOISE CONTROL

Sec. 6-26. - Scope.

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

(Ord. of 2-21-89, § 3)

Sec. 6-27. - 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:

- (a) *Downtown*: Any area within the city that is zoned CBD or any area presently devoted to an industrial use that is nonconforming under the zoning ordinance.
- (b) *Commercial/industrial area*: Any area within the city that is zoned AI, HM, LM, CB, CS, RB or O&I.
- (c) *Residential area*: Any area within the city that is zoned R-15, R-10, R-7, R-5, R-3, MHP, MF-L, MF-M, MF-H, HD-R or HD.
- (d) *Motorized vehicles*:
 - (1) 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)d. and d.1.
 - d. Truck tractors as defined in G.S. 20-4.01(48).
 - e. Farm tractors as defined G.S. 20-4.01(11).
 - (2) Motorboat—Any vessel which operates on water and which is propelled by a motor including but not limited to boats, barges, amphibious craft, waterski towing devices, and Hovercraft.
- (e) *Sound*: Any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by persons of normal sensitivity.
- (f) *Noise*: 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.
- (g) *Noise disturbance*: 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.
- (h) *Amplified sound*: Any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.
- (i) *Construction*: Erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.
- (j) *Person*: Any individual, association, firm, partnership or corporation.
- (k) *Mobile sound vehicle*: Any motorized vehicle fitted with external loudspeakers or so designed or modified as to project electronically amplified sound outside of the passenger area of the vehicle.
- (l)

Decibel also dB: Unit for describing the amplitude of 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 (20 micronewtons per square meter).

- (m) *A-weighted sound level:* The sound pressure level in decibels as measured on a sound level meter using the A-weighted network; sound levels are represented herein by the designation, "dB(A)."
- (n) *Sound level:* The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, as specified by the American National Standards Institute (ANSI) standards for sound level meters. If the frequency weighting employed is not specified, the A-weighting shall apply.
- (o) *Sound level meter also decibel meter:* An instrument that includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and averaging network used to measure sound level. Such instrument shall be certified to meet or exceed the current standards of the American National Standards Institute.
- (p) *Person responsible:* An owner, occupant, employee, agent, or any other person who is or who appears to be responsible for a premises, dwelling, or business, or a noise-producing machine or device.
- (q) *Outdoor entertainment:* Any activity offered to, provided for, or attended by one (1) or more spectators, not conducted within a wholly enclosed structure.

(Ord. of 2-21-89, § 3; Ord. of 10-19-93, § 2.a.1—5)

Sec. 6-28. - General prohibitions.

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. Without limiting the generality of the foregoing, a sound or noise shall be deemed a noise disturbance if, when measured as prescribed herein, it exceeds the levels set forth below:

- (a) *Residential area:* 65 dB(A) (daytime level) between the hours of 7:00 a.m. and 11:00 p.m., or 55 dB(A) (nighttime level) between the hours of 11:00 p.m. and 7:00 a.m. On Friday and Saturday, the daytime level shall remain in effect until 12:00 midnight.
- (b) *Commercial/industrial area:* 75 dB(A) (daytime level) between the hours of 7:00 a.m. and 11:00 p.m., or 70 dB(A) (nighttime level) between the hours of 11:00 p.m. and 7:00 a.m. On Friday and Saturday, the daytime level shall remain in effect until 12:00 midnight.
- (c) *Downtown area:* 75 dB(A) (daytime level) between the hours of 7:00 a.m. and 11:00 p.m., or 65 dB(A) between the hours of 11:00 p.m. and 7:00 a.m. On Friday and Saturday, the daytime level shall remain in effect until 12:00 midnight. Between the hours of 12:00 midnight and 2:00 a.m. Saturday and Sunday, the nighttime level shall be 70 dB(A).

(Ord. of 2-21-89, § 3; Ord. of 10-19-93, § 2.b)

Sec. 6-28.1. - Measurement of sound level.

In determining sound levels pursuant to this article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified herein; and all terminology not defined herein or in section 6-27 shall be in conformance with the American National Standards Institute (ANSI).

- (a) Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on slow response.
- (b) Sound level meters shall be serviced, calibrated and operated as recommended by the manufacturer and in accordance with regulations prescribed by the police department. Persons using the sound level meter shall be trained in sound level measurement and the operation of sound level measuring equipment.
- (c)

Except as otherwise specified, sound level measurements shall be made from within the boundary line of any improved and occupied property; where this is impracticable, the measurement shall be taken at the exterior wall of the principal structure on such property. In the case of an elevated or directional sound, compliance with the prescribed limits shall be required at any elevation on the property.

- (d) Except as specified in (g) below, the sound measurement shall be averaged over a period of at least one (1) minute for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than three (3) decibels at any time during the measurement period.
- (e) During measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen shall be used when appropriate.
- (f) Traffic noise and noise from other sources not connected with the sound being measured shall not be considered in taking measurements.
- (g) In the case of noise that is impulsive or is not continuous, the measurement shall be taken over a period of time of at least one (1) minute. Any such sound or noise that exceeds the prescribed level more than two (2) times in a minute shall be deemed to exceed the prescribed sound levels.
- (h) In the case of outdoor entertainment, including live or recorded speech, music, or other sound, whether or not a permit is required for the activity under section 6-30(b)(1), sound level measurements shall be made as prescribed in this section. In no case, however, shall the decibel level of such activity exceed the levels allowed pursuant to this article when measured at a point one hundred (100) feet away from the source of the sound and beyond the boundary line of the premises from which the noise emanates.

(Ord. of 10-19-93, § 2.c)

Sec. 6-29. - Specific prohibitions.

In addition to the general prohibitions set forth above, the following activities are recognized as tending to produce unreasonably loud and raucous noises and as tending to constitute a noise disturbance, regardless of whether the sound level exceeds the limits set forth in section 6-28. No person shall engage in any of the enumerated activities so as to cause a noise disturbance on neighboring premises.

- (a) Operation of radios, televisions, or sound reproduction devices;
- (b) Playing of any amplified or nonamplified musical instrument;
- (c) Keeping of any animal or bird that frequently or for long periods of time makes noises that tend to annoy or disturb others;
- (d) Construction, construction preparation, building, and operation of construction or building equipment;
- (e) Operation of domestic power tools;
- (f) Repair or testing of any motor vehicle, however fueled or powered;
- (g) Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);
- (h) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily;
- (i) 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;
- (j) Street vending or peddling; or
- (k) Sounding of any automobile horn except as a warning or danger signal.

It is further recognized that certain uses, including churches, synagogues and other places of worship, hospitals, convalescent and nursing 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. of 2-21-89, § 3; Ord. of 10-19-93, § 2.d, e)

Sec. 6-29.1. - Same—Commercial entertainment.

- (a) Without limiting the applicability of any other provision of this article, no commercial establishment shall play, operate, or cause to be played or operated, any amplified or nonamplified musical instrument or sound reproduction device in a manner that causes a noise disturbance on any neighboring premises or public area. For the purposes of this section, a noise disturbance shall be presumed to exist where the sound or noise caused by any activity described herein is plainly audible within any occupied structure not the source of the sound or noise or within any public area more than sixty-six (66) feet from the property line of the commercial establishment during the days and times set forth below:
- (1) For structures located in residential zoning districts, this presumption shall be effective at all hours.
 - (2) For structures and public areas located in nonresidential zoning districts, this presumption shall be effective from 11:00 p.m. until 7:00 a.m. (except that the beginning time for the presumption shall be 1:00 a.m. on Saturday and Sunday).
- (b) This section shall not apply to activities for which permits have been issued pursuant to section 6-30 below. (Ord. of 1-24-95, § 1; Ord. of 10-17-00, § 2)

Sec. 6-30. - Permits required for certain activities.

- (a) Permits are required for any activity that exceeds the sound levels set out in section 6-28. Application for a permit shall be made to the city manager or designee not less than one (1) nor more than thirty (30) days prior to the commencement of the activity. No permit may be issued if the effect of the permit would be to allow for the creation of a noise disturbance as part of the regular or usual activity on any premises.
- (b) Without limiting the generality of the foregoing, permits are required for the following activities, in addition to any other permits required by law:
- (1) *Outdoor entertainment, outdoor parties, special events*: For events not exempted by section 6-31, where equipment for amplifying live or prerecorded speech, music or other sound is to be used. This section is intended to apply to temporary events of an infrequent or nonrecurring nature; it is not intended to apply to regular activities conducted at a fixed location.
 - (2) *Mobile sound vehicles*: Permits may not be obtained for vehicles using equipment designed or intended for personal entertainment.
 - (3) *Street vending and concessions*: For activities requiring permits pursuant to sections 4-101, 4-107, 4-108, and 6-13 of the City Code.
- (c) Permits may not be denied or revoked except where the activity constitutes a bona fide threat to the health, safety or welfare to [of] any person, or a bona fide threat of physical damage to real or personal property, except as specified below.
- (d) Each applicant for a permit shall be a "person responsible" for purposes of this article, and shall provide the name of at least one (1) other person who may be contacted in the event of problems arising from the noise associated with the activity for which the permit is requested. Each applicant shall affirmatively indicate that he is familiar with the requirements of this article within the previous twelve-month period. Failure to complete the application properly or a record of previous violations by the applicant within the preceding twelve (12) months may be a basis for denial of the permit.
- (e) Applicants for permits for activities in residential areas shall affirmatively indicate that the owners or occupants of all adjacent premises (including premises directly across streets or other public ways) have received a copy of the completed application. Applicants for permits for activities on multifamily premises shall also affirmatively indicate that the owner or manager of the premises has received a copy of the application.
- (f) If a permit is denied, the reasons for denial shall be set forth in writing and furnished to the applicant. If an applicant who has been denied a permit under this section believes that the denial is in violation of applicable state or federal law, he may submit a statement of the reasons he believes he is entitled to the permit to the

city manager. If the city manager determines that the applicant has made a substantial showing of legal entitlement, an exceptional permit may be granted waiving requirements as to time, location and sound levels. The issuance of any such exceptional permit shall be reported promptly to the city council.

- (g) A violation of any of the provisions of this article shall be cause for the immediate revocation of any previously issued noise permit.

(Ord. of 2-21-89, § 3; Ord. of 10-19-93, § 2.f; Ord. of 1-24-95, § 1)

Sec. 6-31. - Exceptions.

The following are excepted from the application of this article:

- (a) Sound or noise emanating from regularly scheduled outdoor athletic events on the campus of the University of North Carolina at Wilmington;
- (b) 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;
- (c) Sound or noise of safety signals, warning devices, emergency pressure relief valves, church bells, and the bells of the New Hanover County Courthouse, provided that church or courthouse bells may not sound for more than five (5) minutes in any hour and may only mark the hour during nighttime hours as set forth in section 6-28.
- (d) Sound or noise emanating from street fairs, festivals, or celebrations conducted by or with the City of Wilmington;
- (e) 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;
- (f) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
- (g) Sound or noise from lawful fireworks;
- (h) Lawnmowers and agricultural equipment operated between the hours of 7:00 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;
- (i) Musical accompaniment to parades or military ceremonies;
- (j) Sound emanating from regularly scheduled athletic events at city parks and school athletic facilities;
- (k) Emergency vehicles in the course of performing their official duties;
- (l) Boats, ships, barges and other vessels engaged in interstate commerce;
- (m) Railroad operations;
- (n) Noncommercial speeches made from a fixed location; and
- (o) Construction, construction preparation, and building activity between the hours of 7:00 a.m. and 9:00 p.m., and any such work certified by the building inspector or city manager to be necessary to address an emergency situation.

(Ord. of 2-21-89, § 3; Ord. of 10-19-93, § 2.g.1—4)

Sec. 6-32. - Owner and occupant responsibility.

Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.

- (b) 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 twelve-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 section 6-1. This section shall in no way relieve any other person from responsibility for violations of this article.

(c) 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. of 2-21-89, § 3; Ord. of 10-19-93, § 2.h)