

ARTICLE II. – NOISE CONTROL

Sec. 6-26. – Purpose.

The provisions hereinafter contained are enacted pursuant to the authority granted to the city under G.S. § 160A-184, for the purpose of preventing noise disturbances or unreasonably loud noise. Noise exceeding certain levels or durations and during specific times of day can be detrimental to the health, safety, and welfare of the citizenry, and may infringe upon an individual's right to peaceful and quiet enjoyment of their activities of daily living. It is the policy of the city to prohibit noise disturbances or unreasonably loud noise from all sound sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Wilmington. Nothing in this article is intended to deter individuals from lawfully exercising the individual right of freedom of speech and commerce, or any other freedom guaranteed under the Constitutions of the United States of America or of the State of North Carolina, and nothing in this article is intended to unreasonably limit or restrain commercial or industrial enterprise.

Sec. 6-27. – Scope.

This article shall apply to all sound, vibration, and other 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 noise. The Wilmington Police Department shall have primary enforcement responsibility for noise and sound level control pursuant to this Article.

Sec. 6-28. – General Prohibition.

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 adjoining or neighboring properties or public areas.

Sec. 6-29. – 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) **“A” weighting scale.** The sound pressure level in decibels as measured on a sound level meter using the A-frequency-weighted network and slow meter response setting. Sound levels are represented herein by the designation dB(A).
- (b) **Adjoining property.** Property which shares a contiguous boundary with another property.
- (c) **Amplified Sound.** Any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.
- (d) **ANSI.** The American National Standards Institute or its successor bodies.

- (e) **Commercial Establishment.** An establishment used for commercial purposes with common business areas.
- (f) **Commercial/Industrial Area.** Any area within the city that is zoned AI, IND, LI, CB, CS, RB, O&I, UMX, MX, or RFMU, or any area presently devoted to a commercial use that is a nonconforming situation as defined by the zoning ordinance.
- (g) **Construction.** On-site erection, fabrication, installation, repair, alteration, demolition, or removal of any right-of-way surfaces, structure, facility, or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting, and landscaping.
- (h) **Decibel [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).
- (i) **Downtown.** Any area within the city that is zoned CBD.
- (j) **Emergency.** Any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action in order to maintain or restore public safety and prevent or alleviate such trauma or property damage.
- (k) **Impulsive Sound.** Sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts and the discharge of firearms.
- (l) **Motorized Vehicles.** Generally—Any motor vehicle as defined in G.S. 20-4.01 and G.S. 105-164.3, 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 G.S. 20-4.01(11).
 - (6) Mopeds as defined in G.S. 105-164.3.
- (m) **Necessary activity.** Any activity analyzed and determined by the city to be an activity that cannot be avoided for the purpose of construction, public safety, constitutionality, or any other activity otherwise prohibited which the city considers acceptable to be permitted for a limited period of time.
- (n) **Necessary business equipment.** A piece(s) of equipment physically affixed, joined, or connected to the outside of a building, and without which a business located inside the building would not be able to operate. Examples include but are not limited to heating and air conditioning units, electrical generators, water pumps, ventilation systems, and air/water chillers.
- (o) **Neighboring property.** Property which does not share a contiguous boundary with another property, but which is close enough in proximity to be affected by sound produced on the other property.

- (p) **Noise disturbance.** Any sound or combination of sounds which, because of its volume or quality or time of day, tends to annoy, disturb, frighten, or otherwise cause an adverse psychological or physiological effect upon reasonable persons of normal sensitivity, or unreasonably prevents such persons from being able to enjoy their activities of daily living.
- (q) **Person.** Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, or any legal successor, representative, agent or agency of the foregoing.
- (r) **Plainly audible.** Any sound or component of sound for which any of the content of that sound is unambiguous, verifiable, and discernible above ambient levels by a person using his or her unaided hearing faculties, including but not limited to comprehensible musical rhythms, understandable speech, or rhythmic bass.
- (s) **Residential areas.** 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, HD, RO, or HDMU.
- (t) **Responsible Person.** An owner, tenant, occupant, employee, agent, or any other person who is or who appears to be responsible for the premises, dwelling, or commercial establishment creating, allowing, or causing to be created a noise disturbance in violation of this Article.
- (u) **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.
- (v) **Sound level.** The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network as specified in ANSI specifications for sound level meters.
- (w) **Sound level meter.** Device used to measure sound pressure levels with a standardized frequency weighting and indicated exponential time weighting for measurements of sound level, or without time weighting for measurement of time-average sound pressure level or sound exposure level.
- (x) **Sound pressure level.** In decibels, twenty (20) times the logarithm to the base ten (10) of the ratio of the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 0.0002 microbars.
- (y) **Sound source.** Any person, animal, device, operation, process, activity, or phenomenon which emits or causes sound.

Sec. 6-30. – Specific Prohibitions.

The following acts are specifically declared to be unreasonably loud, annoying, frightening, or disturbing sounds which constitute a noise disturbance and the emission of which shall therefore constitute a violation of this Article:

- (a) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle for an unnecessary or unreasonable period of time, or for the purpose of harassing another person.
- (b) The use of any siren upon any vehicle other than police, fire, ambulance, or other emergency vehicles.
- (c) Operation of any motor vehicle without a proper muffler system, as defined in G.S. 20-128(a).
- (d) Construction activity in residential or downtown areas between the hours of Midnight and 7:00 a.m., or at any time on the following holidays: New Year's Day, Thanksgiving Day, or Christmas Day, except by permit for necessary activity.
- (e) The intentional projection of sound from any drum, music, loudspeaker, or other instrument or device onto adjoining or neighboring properties for the purpose of attracting attention by creation of noise to any business, location, performance, show, event, sale, or display.
- (f) Keeping any animal or bird which frequently or for long periods of time makes noises that would tend to disturb or annoy a reasonable person of normal sensitivity in the vicinity.
- (g) The collection of garbage, recyclables, or yard waste between the hours of Midnight and 7:00 a.m. in Residential areas.
- (h) The operation of lawn mowers and other domestic power tools outside between the hours of Midnight and 7:00 a.m.

Sec. 6-31. – Exceptions.

To the extent that such uses are for a legitimate purpose, the following are excepted from the application of this Article:

- (a) Sound or noise emanating from regularly scheduled outdoor athletic events held at Legion Stadium, on the campus of the University of North Carolina at Wilmington, at any city park, or at any New Hanover County School within the city limits, and occurring between the hours of 7:00 a.m. and Midnight;
- (b) Sound or noise emanating from concerts and other events held at Greenfield Lake Amphitheater, Legion Stadium, and the Northern Waterfront Park between the hours of 7:00 a.m. and Midnight;
- (c) Construction activity performed by or for 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;
- (d) Sound or noise of safety signals, warning devices, and emergency pressure relief valves;

- (e) Sound from church bells and the bells of the New Hanover County Courthouse, provided that bells may not sound for more than five (5) minutes in any hour and may only mark the hour between the hours of Midnight and 7:00 a.m.;
- (f) Sound or noise emanating from street fairs, festivals, or other public celebrations produced, sponsored, or approved by the City of Wilmington;
- (g) Sound or noise emanating from film and video production activities for which film permits have been issued by the city, provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all standard noise-reducing equipment in proper condition;
- (h) Sound or noise from lawful fireworks;
- (i) Lawnmowers, agricultural equipment, and domestic power tools operated between the hours of 7:00 a.m. and Midnight, provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all standard noise-reducing equipment in proper condition;
- (j) Necessary business equipment, provided that such equipment is operated in accordance with manufacturer's specifications, is in good working order, and is equipped with appropriate noise-reducing equipment and any reasonable screening;
- (j) Music during parades or military ceremonies;
- (k) The collection of garbage, recyclables, or yard waste between the hours of 7:00 a.m. and Midnight;
- (l) Emergency vehicles in the course of performing their official duties; and
- (m) Any other sound authorized by city-issued permit, to the extent allowed by such permit.

Sec. 6-32. – Noise Violation Based on Sound Level Meters.

- (a) Enforcement of this Article does not require the use of a sound level meter to determine compliance. However, when a sound level meter is used to determine sound levels pursuant to this Article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified in this section, and all terminology not defined in this section shall be in conformance with the ANSI.
- (b) Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on slow response.
- (c) 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.
- (d) Sound level measurements shall be made from within the boundary line of an adjoining or complaining property. Whether the sound level violates the prescribed limits in Sec.

6-33 below will be determined by whether the readings taken within the adjoining or complaining property are in excess of the levels allowed for the zoning area of the property that is the source of the sound.

- (e) Except as specified in (g) below, the sound level 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.
- (f) During sound level 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.
- (g) Traffic noise and noise from other sources not connected with the sound being measured shall not be considered in taking sound level measurements.
- (h) In the case of noise that is impulsive or not continuous, the sound level 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.
- (i) If an officer does not have possession of a department-owned and ANSI-approved sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this Article may not be taken using any other device, including but not limited to applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this Article in order to determine whether a noise disturbance is occurring.

Sec. 6-33. – Sound Level Limits by Zoning Area.

MAXIMUM SOUND LEVEL READINGS			
(Downtown)			
7:00 a.m. to Midnight	75 dB(A)	Midnight to 7:00 a.m.	65 dB(A)
(Residential)			
7:00 a.m. to Midnight	65 dB(A)	Midnight to 7:00 a.m.	55 dB(A)
(Commercial/Industrial)			
7:00 a.m. to Midnight	75 dB(A)	Midnight to 7:00 a.m.	70 dB(A)

Sec. 6-34. – Noise Permits.

- (a) A noise permit shall be obtained in advance for any activity where the sound level to be produced exceeds or should be reasonably expected to exceed the sound level limits or time limits set out in this Article on any other property.
- (b) Any application for a permit under this section shall be submitted to the Wilmington Police Department at least five (5) City business days in advance of the planned use, except for a necessary activity. The application shall designate a responsible person who shall be in control of the sound producing or sound amplification equipment or the contact person for the event, and who will ensure that the equipment or event complies with the terms of the permit.
- (c) The Chief of Police or his/her designee shall have the ability to alter the times allowable under the permit and the acceptable sound levels allowed under the permit. Except in the case of necessary activities, the Chief of Police shall not extend the allowable time limit for a prohibited or excepted activity by more than one (1) hour, or increase the allowable sound level for any activity by more than ten (10) decibels over the sound level limits otherwise allowed in this Article.
- (d) In the City Manager's discretion and after consultation with the Chief of Police or his/her designee, the City Manager shall have the ability to alter the allowable time limit for a prohibited or excepted activity by more than one (1) hour, or increase the allowable sound level for any activity by more than ten (10) decibels over the sound level limits otherwise allowed in this Article.
- (e) No more than thirty (30) days of events, consecutive or otherwise, may be applied for using any single permit.
- (f) If multiple events are applied for using the same permit, in no case shall the time allowed between the first event on the permit and the last event on the permit be more than one (1) calendar year.
- (g) The following criteria shall be considered in the determination of whether to grant or deny an application for a noise permit:
 - (1) The use and activities permitted by the zoning regulations in such areas;
 - (2) The intensity of sound levels regularly produced by activities and devices in such areas;
 - (3) The time at which the sound amplification will occur;
 - (4) The duration of the requested amplification;
 - (5) The proximity of the requested activity to commercial buildings and residential dwellings, and the density of the surrounding commercial and residential areas;
 - (6) The history of verified complaints generated by previous activities similar in nature and context;

- (7) The history of noise complaints against the applicant from adjoining or neighboring properties;
 - (8) Whether the sounds produced by such devices and activities are plainly audible, recurrent, intermittent, impulsive, or constant;
 - (9) Failure to complete the application properly; and
 - (10) The necessity of the requested amplification.
- (f) If an applicant is denied a permit under this section, the reasons for denial shall be set forth in writing and furnished to the applicant. If an applicant believes the denial is improper for any reason, the applicant shall promptly submit a copy of the denied permit application, together with a short statement of the reasons he believes he is entitled to a permit, to the City Manager or his/her designee. The City Manager shall have the discretion to review the appeal and grant the permit, upon his determination that the applicant has made a substantial showing of entitlement, with any conditions or amendments to the permit that the City Manager deems to be in the best interest of the public and the City.
- (g) A violation of any section of this Article that results in either a civil fine or a criminal penalty, may also be the basis for revocation of any permit, in the discretion of the police officer responding to the noise complaint, upon consultation with his supervising officer.

Sec. 6-35. – Noise Violations Not Based on Sound Level Meters.

- (a) Any police officer responding to a noise complaint may, in the officer's discretion, issue a civil citation or enforce any other penalties under this Article if the officer determines that a noise disturbance, as defined in Sec. 6-29, does exist.
- (b) An officer does not have to use a sound level meter or actually witness the sound or noise personally in order to take enforcement action under this section. Citations may be issued based upon statements and evidence obtained from complaining witnesses when the officer determines that such evidence is reliable, appropriate, and sufficient.
- (d) It shall be a violation of this Article for any person to communicate a noise complaint to any City staff or official, using the 911 system or otherwise, for the purpose of harassing the subject of the complaint, and knowing or having reason to know that no noise disturbance actually exists or existed.
- (e) Factors to consider in determining whether a noise disturbance exists include, but are not limited to, the following:
 - (1) The volume of the noise;
 - (2) The intensity of the noise;
 - (3) Whether the nature of the noise is usual or unusual;

- (4) Whether the origin of the noise is natural or unnatural;
- (5) The volume and intensity of the background noise, if any;
- (6) The proximity of the noise to residential sleeping facilities;
- (7) The nature and zoning of the area from which the noise emanates;
- (8) The density of the inhabitation of the area from which the noise emanates;
- (9) The time of the day or night the noise occurs;
- (10) The duration of the noise;
- (11) Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses; and,
- (12) Whether the noise is recurrent, impulsive, intermittent, or constant.

Sec. 6-36. – Owner/Occupant Responsibility.

- (a) Penalties for violations of this Article may be assessed against persons responsible for either the premises or the sound source.
- (b) All persons responsible for either the premises or the sound source who are actively or constructively present at the time of the violation shall be listed on the same citation, and shall be jointly and severally responsible for any such violation.
- (c) 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 third or subsequent violations of this Article.
- (d) No absentee owner shall be liable unless such owner has already been 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.
- (e) No absentee owner may be subjected to criminal liability under this section.
- (f) 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.
- (g) Any person responsible for causing a violation of this Article on or at any commercial establishment shall be liable for any civil or criminal remedy which may be imposed by this Article.
- (h) Any person in charge of, and physically present, at any commercial establishment shall also be liable for any civil or criminal remedy which may be imposed by this Article.

- (i) It is no defense to either civil or criminal liability of the person in charge of a commercial establishment that a violation of this Article was caused by a tenant, guest, invitee, permittee, or licensee.

Sec. 6-37. – Noise Violation Appeal Process.

- (a) Any person issued a civil penalty under the provisions of this Article may appeal by filing an appeal in writing to the Chief of Police within ten (10) calendar days after the civil penalty is issued. The written appeal shall state all reasons that the civil penalty was wrongly applied and shall include all supporting documentation that the appellant contends supports the appeal.
- (b) If a person files a written appeal within the time provided in this section, the penalty being appealed shall be stayed pending the decision of the Chief of Police.
- (c) The Chief of Police, or his/her designee at the rank of Bureau Commander or higher, shall issue a written determination, within ten (10) working days of receipt of the written appeal, stating whether the disputed civil penalty will be approved without change or modified or reversed.
- (d) All decisions shall be served on the petitioner.
- (e) The determination of the Chief of Police, or his/her designee at the rank of Bureau Commander or higher, is final, subject to review only in the Superior Court of New Hanover County by proceedings in the nature of certiorari.