

## **CHAPTER 5. NOISE**

### **Sec. 12-5001. DEFINITIONS.**

In addition to the common meanings of words, the *following* definitions *shall* be used in interpreting §§12-5001 through 12-5011 of this Code.

**City right-of-way.** Land upon which the *City* has the right to construct a street, sidewalk, bicycle path, use for public utilities, landscape with plants or to carry out any other public purpose.

**Construction.** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities, including, but not restricted to, clearing of land, earth moving, blasting and landscaping.

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

**Emergency.** Any occurrence or set of circumstances demanding immediate attention to engage in emergency work.

**Emergency work.** Work made necessary to restore *property* to a safe condition, work required to protect, provide or prevent *persons* or *property* from danger or potential danger; or work by private or public utilities when restoring utility service.

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

**Noise Sensitive Area.** Areas that include, but are not limited to, real property normally used for sleeping or normally used as a school, church, healthcare facility providing treatment requiring patient recovery, or public library.

**Plainly Audible.** Any sound or vibration caused by sound that can be detected by a reasonable person of ordinary sensitivities using their unaided hearing faculties.

**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.

**Public place.** Includes all walks, alleys, *streets*, boulevards, avenues, lanes, roads, highways or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; all grounds and buildings owned or leased by, maintained or operated by public authority.

**Reasonable Person.** A person of normal and ordinary sensitivities who is within the area of the audibility or perceptibility of the noise or vibration that transmits sounds which disrupt the reasonable conduct of basic human activities, such as conversation, sleep, work and other such activities.

**Sound source.** Any *person*, animal, device, operation, process, activity, or phenomenon which emits or causes sound.

**Unreasonable Noise.** The unreasonable making of, or knowingly and unreasonably permitting to be made, any sound that is an unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration due to bass levels or other sources from any dwelling, building, other structure, or privately-owned outdoor property, or upon any public street, park or other place or building. Any sound that is ordinary and normal to the operation of these places when conducted in accordance with the usual standards of practice and in a manner that will not unreasonably interfere with the peace and comfort of neighbors or their guest, or operators or customers in places of business, or detrimentally or adversely affect such residences or places of business, shall not be enforced as an unreasonable noise.

### **Sec. 12-5002. SCOPE**

This Chapter applies to the enforcement and control of all sound originating within the jurisdictional limits of the City. It is of paramount importance that the enforcement of this Chapter be content-neutral to protect the freedom of expression guaranteed by sections 12, 13, and 14 of the North Carolina Constitution and the First Amendment to the United States Constitution, such that this Chapter enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

### **Sec. 12-5003. GENERAL PROHIBITIONS.**

- (a) No person shall make or continue to make:
  - (1) Any plainly audible unreasonably loud or raucous noise;
  - (2) Any plainly audible noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of normal and ordinary sensitivities;
  - (3) Any plainly audible noise that is so harsh, prolonged, unnatural or unusual in time or place as to occasion unreasonable discomfort to any reasonable persons within the vicinity of the location from which that noise emanates, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
  
- (b) Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:
  - (1) The proximity of the sound to sleeping facilities, whether residential or commercial;

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- (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received;
  - (3) The time of day or night the sounds occurs;
  - (4) The duration of the sound; and
  - (5) Whether the sound is recurrent, intermittent, or constant.

(c) Violation of this section is a misdemeanor and may also be enforced pursuant to § 12-5011 or a combination of remedies.

**Sec. 12-5004. EXCEPTION TO LIMITATION STANDARDS.**

The general prohibitions as defined in §12-5003 *shall* not apply to the *following* sources:

- (a) Emergency warning devices or safety signals;
- (b) Lawn care equipment and agricultural field equipment used during the *daytime hours*;
- (c) Equipment being *used for construction*, provided that all equipment is operated with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition during *daytime hours*;
- (d) Fairs, circuses, other similar public entertainment events, sanctioned sporting events, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above;
- (e) Bells, chimes and similar devices which operate during *daytime hours* for a duration of no longer than five (5) minutes in any given period;
- (f) *Emergency work*;
- (g) Sixty-cycle electric transformers;
- (h) Motor vehicles on traffic ways of the City;
- (i) Excavation and loading of spoil and excavation materials from sites located within the boundaries of the secondary fire district as described in §5-2034;
- (j) Excavation and loading of spoil and excavation materials from sites located on *City* owned landfill sites, and activity associated with the drop off of recycling, trash and hazardous waste at City facilities, including transfer stations and convenience centers;
- (k) Properly installed and operating residential heating, ventilating, and air conditioning systems;
- (l) Repairs or excavations of bridges, streets or highways by or on behalf of the City, the County, the State or the federal government, during *nighttime hours* when the public welfare and convenience renders it impractical to perform the work during *daytime hours*;

- (m) Stadiums, arenas, and outdoor sports or entertainment facilities as defined under the Unified Development Ordinance;
- (n) Shopping centers containing more than one hundred thousand (100,000) square feet of retail space so long as no such event continues more than seven (7) consecutive days and so long as the total number of days devoted to such events in a calendar year does not exceed twenty (20) days or four (4) weekends;
- (o) Parades permitted under City Code § 12-1052 and spectators and participants in those parades,
- (p) Outdoor events, races, festivals, or concerts on public property or public vehicular areas that are permitted by the City, except that the following is a violation of this Chapter:
  - (1) any *unreasonable noise* as defined by § 12-5001, during *nighttime hours* that is plainly audible at a distance of one hundred and fifty (150) feet from the property line of the sound source, and;
  - (2) any *unreasonable noise* as defined by § 12-5001 during *daytime hours*, that is plainly audible at a distance of three hundred (300) feet from the property line of the sound source;
- (q) Sound associated with the delivery of public services by the City, County, State and the federal government; and,
- (r) Outdoor school and playground activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school athletic and school entertainment events during *daytime hours*.
- (s) This section establishes exceptions only to § 12-5003. The exceptions set out herein do not apply to City Code § 12-5007 and do not authorize any Prohibited Noises regulated by § 12-5007.

**Sec. 12-5005. RESERVED.**

**Sec. 12-5006. RESERVED.**

**Sec. 12-5007. PROHIBITED NOISES.**

Except when specifically allowed as a part of a permitted event, in addition to any other violations of this Code, the *following* acts are specifically declared to be plainly audible

*unreasonable noise*, the emission of which *shall* be unlawful. Such enumeration *shall* not be deemed to be exclusive:

- (a) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
- (b) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles.
- (c) The playing of any radio, phonograph, amplifier, television, stereo, tape deck, tape recorder, musical instrument, or similar device in such a manner or with such volume during the *nighttime hours* as to annoy or disturb the quiet, comfort or repose of any *reasonable person* in any dwelling, hotel, motel or other type of *residence*.
- (d) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded, so modified, or driven in such a manner as to be plainly audible at a distance of fifty (50) feet from any *reasonable person* so as to create unreasonably loud, grating, grinding, rattling or other noise.
- (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as warning of danger.
- (f) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent unreasonably loud or explosive noises therefrom.
- (g) The erection (including excavating), demolition, alteration or repair of any building or other structure in a residential or business district other than between the hours of 7:00 a.m. and 8:30 p.m., except by permit from the building inspector when, in their opinion, such work will not create plainly audible *unreasonable noise*. Upon complaint *in writing* by the occupant of *property* near the location of the work, the building inspector *shall* immediately revoke the permit and the work *shall* be immediately discontinued if the work is found to be unreasonable. The building inspector *may* permit *emergency work* in the preservation of public health or safety at any time.
- (h) The creation of any plainly audible *unreasonable noise* within one hundred and fifty (150) feet of a *noise sensitive area*. This section is only to be applied when an institution or sleeping area in a *noise sensitive area* is in session or in active use.
- (i) The creation of plainly audible *unreasonable noise* in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates and containers.
- (j) The creation of plainly audible *unreasonable noise* in connection with the shouting and crying of peddlers, barkers, hawkers or vendors which disturbs the quiet and peace of the neighborhood. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication, but due to the volume, location, timing, or other factors not based on content.

- (k) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of plainly audible *unreasonable noise* to any performance, show or sale or display of merchandise.
- (l) The conducting, operating or maintaining of any garage or filling station, or the repair, rebuilding or testing of any motor vehicle in any residential district, so as to cause plainly audible *unreasonable noise* to be emitted therefrom during the *nighttime hours*.
- (m) The firing or discharging of firearms in the *streets* or elsewhere for the purpose of making noise or disturbance.
- (n) The creation of plainly audible *unreasonable noise* by the operation of an airplane over the *City* by stunting, diving or otherwise operating an airplane for the purpose of advertising or otherwise.
- (o) No *person shall* keep or maintain, or permit the keeping of, on any premise, owned, leased; occupied or controlled by such *person*, any animal or fowl otherwise permitted to be kept which, by habitual or frequent sound, cry, howling, barking, squawking, meowing or other plainly audible *unreasonable noise*, shall disturb the quiet, comfort or repose of any *reasonable person*.
- (p) The unreasonably loud and raucous use or operation on public places, City rights-of-way, or on public vehicular areas of any sound amplifier, bullhorn, loudspeaker, public address system, or other similar device, when operated in such a manner as to be plainly audible during *nighttime hours* at a distance of fifty (50) feet from any *reasonable person*, and during *daytime hours*, at a distance of three hundred (300) feet from any *reasonable person*, other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs a *reasonable person* is prohibited and is a violation of this section.
- (q) *Unreasonable noise* from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, during *nighttime hours* that is plainly audible at a distance of one hundred and fifty (150) feet from the property line of the sound source, and during *daytime hours*, that is plainly audible at a distance of three hundred (300) feet from the property line of the sound source is prohibited and is a violation of this section.

The provisions of this section *shall* apply neither in the secondary fire district as described in §5-2034 of this Code nor on publicly owned sanitary landfill property.

Violation of this subsection is a misdemeanor. Any subsection *may* also be enforced pursuant to §12-5011 or a combination of remedies.

**Sec. 12-5008. RESERVED.**

**Sec. 12-5009. RESERVED.**

**Sec. 12-5010. RESERVED.**

## **Sec. 12-5011. PENALTIES FOR VIOLATION OF NOISE RESTRICTIONS.**

### **(a) Civil Penalties:**

- (1) Any *person* violating any of the provisions of §§12-5001 through 12-5009 *shall* be subject to a civil penalty of one hundred dollars (\$100.00). Each calendar day on which a continuing violation occurs *shall* constitute a separate violation under this subsection. For each subsequent violation occurring within twelve (12) months of any other violation, the violator *shall* be subject to a civil penalty of three hundred dollars (\$300.00) per violation. If a *person* fails to pay any civil penalty within thirty (30) days after it is assessed, the *City may* recover the penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt. The Police Department is authorized to issue civil penalty citations to enforce this section.
- (2) Appeal of civil penalties: Any *person* issued a civil penalty under the provisions of this section *may* appeal by filing an appeal in writing with the Police Department 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. 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 or arbitrator. Unless the Chief of Police, or the delegate of the Chief of Police, decides to allow the requested relief based on the appeal request, the Chief of Police *shall* send each appeal request to arbitration. The Chief of Police *shall* select an arbitrator other than an employee of the *City* of Raleigh. The arbitration *shall* be conducted, to the extent practicable, in accordance with the Supreme Court Rules for Court-Ordered Arbitration in North Carolina. The arbitrator *shall* be paid a fee equal to the maximum fee specified in such Rules. The arbitrator *shall* issue a *written* determination, within a reasonable time, stating whether the disputed civil penalty will be approved without change or modified or reversed.

All decisions of the Chief of Police and arbitrator *shall* be served on the petitioner.

### **(b) Injunctive and Equitable Relief:**

As an additional remedy, this chapter *may* be enforced, either before or after the institution of any other action or proceeding authorized by this subsection, by an action for injunctive relief to restrain the violation. The action *shall* be brought in the appropriate division of the General Court of Justice. The institution of an action for injunctive relief *shall* not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this chapter. This chapter *may* also be enforced through any appropriate equitable remedy.

### **(c) Criminal Penalties:**

Any *person* who violates any provision of this chapter *shall* be deemed guilty of a misdemeanor punishable by imprisonment not to exceed thirty (30) days or by fine not to exceed five hundred dollars (\$500.00). Each day of a continuing violation *shall* constitute a separate violation under this subsection.

### **(d) Enforcement:**

In addition to other remedies, this chapter *may* be enforced by any one, all, or a combination of the remedies set out herein.

**Sec. 9-7026. - SOUND AMPLIFICATION OR MUSICAL INSTRUMENTS.**

It shall be unlawful for any person or organization to use any electronic sound amplification or engage in the playing of any electronically amplified musical instrument upon the pedestrian malls in violation of § 12-5001 through § 12-5011 of the Code. This section shall not apply to emergency or other service vehicles or equipment operated under emergency conditions. Violation of this section is a misdemeanor and may also be enforced through issuance of a civil penalty pursuant to §14-1005, through injunctive or other equitable relief, or a combination of remedies.