

## MEMORANDUM

**To:** Dorothy V. Kibler, Interim City Attorney

**From:** Alice Tejada, Senior Associate City Attorney

**CC:** Marchell Adams-David, City Manager  
Evan Raleigh, Assistant City Manager  
Estella Patterson, Chief of Police  
Whitney Schoenfeld, Interim Head of Office of Special Events  
Herbert Griffin, Fire Chief  
Patrick Young, Planning and Development Department Director

**Date:** June 14, 2023

**Re:** Proposed Changes to Noise Ordinance; Repeal of Amplified Entertainment Permit Ordinance, and Enactment of Nightclub Permit Ordinance



---

### **Background**

After receiving complaints that current regulations for outdoor music were confusing, complicated, and hurt small businesses, on November 2, 2021, City Council directed that the City Attorney and staff review and propose revisions to the outdoor amplified entertainment ordinance. Council requested that staff simplify and streamline the process.

Subsequently, the Council received complaints concerning noise that the City's current noise ordinances did not adequately address. Recognizing that the City's noise ordinances did not align with best practices elsewhere and were very difficult to enforce, the Council asked the City Attorney's Office to include an update to the City's noise ordinances as a part of its work.

***Current Amplified Entertainment Regulations (AEP and HDEP).*** Currently, Raleigh City Code ("RCC") § 12-2119 requires a permit for a business to play amplified entertainment indoors. This permit, called an Amplified Entertainment Permit ("AEP"), is issued if the applicant meets the requirements set forth in the Code. RCC § 12-2120(a)(3), requires businesses seeking to play outdoor amplified entertainment to apply for a special use permit. Council then sets a quasi-judicial hearing to determine issuance of the permit. Council must consider several factors relating to the effects that outdoor amplification might have when acting on a permit request.<sup>1</sup>

---

<sup>1</sup> Section 12-2120(3) lists those factors:

- (a) The establishment's proximity to residential areas, schools, churches, and health care facilities.
- (b) The establishment's history of compliance with noise and nuisance laws.
- (c) Access with respect to pedestrian and automotive safety, traffic flow, emergency service.
- (d) Intensity including such considerations as size, location, hours and/or conditions of operation, and number of participants.

The City has established a hospitality district in Glenwood South as allowed by RCC § 12-2126. Businesses that provide amplified entertainment in a hospitality district must also obtain a permit, called a Hospitality District Entertainment Permit (“HDEP”), to play amplified entertainment indoors, but allows open windows and speakers on patios under certain conditions. RCC §§ 12-2127, 12-2129. Establishments in the hospitality district that wish to play amplified entertainment outdoors must obtain a separate occasional outdoor entertainment permit that allows a one-time event every calendar year.

Sound intensity (also referred to as sound power or sound pressure) is measured in units called decibels. Both an AEP and HDEP are subject to limits on the loudness of their amplified entertainment based on decibel (dB) limitations. *See* RCC §§ 12-2119(b) (incorporating noise ordinance dB standards), 12-2129(b) – (d) (setting dB limitations). Both permits are also subject to specific, measurable bass noise limitations. *See* RCC §§ 12-2119(c), 12-2129(d).

***Current Noise Ordinances.*** The City’s existing noise ordinances impose three types of noise limitations. First, RCC § 12-5003 sets decibel limitations that apply Citywide, subject to certain exceptions set out in RCC § 12-5004. Second, the existing ordinances contain a list of noises that are prohibited throughout the City. RCC § 12-5007. Finally, the existing ordinances prohibit “unreasonably loud, annoying, frightening, loud and disturbing or unnecessary noise.” RCC § 12-5006.<sup>2</sup>

***Proposed Revisions for the Council’s Consideration.*** As part of its review, the City Attorney’s Office (“CAO”) consulted with a sound expert, researched applicable ordinances of comparable jurisdictions, assessed a national model noise ordinance, conducted legal research, and held several meetings with staff from the City Manager’s Office, the Office of Special Events, and the Fire, Police, and Planning and Development Departments. This review indicated that enforcement of sound originating from outdoor entertainment was complicated by the current decibel sound measurement standard, which is found in RCC § 12-5001 *et seq.*, the noise ordinance.

Based on this comprehensive review and with guidance from City Manager’s Office, the Office of Special Events, and the Fire, Police, and Planning and Development Departments, the CAO has prepared two ordinances for the Council’s consideration. These ordinances:

- repeal the AEP ordinances in their entirety, to include the repeal of the HDEP,

---

(e) Landscaping, screening, fencing with respect to protecting affected properties from anticipated noise, loss of privacy, and glare; preserving of important natural features; or harmonizing the request with affected properties.

(f) Control or elimination of noise, dust, vibration, and lighting.

(g) The proposed use will not adversely impact public services and facilities such as parking, traffic, police, etc., and that the secondary effects of such uses will not adversely impact on adjacent properties. The secondary effects would include but not be limited to noise, light, stormwater runoff, parking, pedestrian circulation and safety.

<sup>2</sup> Noise ordinances also contain a limitation on sound magnification, RCC § 12-5008, that case law placed in question. As a result, § 12-5008 is not enforced and sound magnification is governed by the remaining provisions of the noise ordinances.

- adopt a Nightclub ordinance to ensure that nightclubs continue to comply with building code, fire code, and security requirements, and
- revise the City’s noise ordinances to regulate all sound, to include both indoor and outdoor amplified entertainment, by imposing a “reasonable person” standard. The new noise ordinance contains a general prohibition of unreasonable noise, subject to specified exceptions, and continues to prohibit specific unreasonable noises. Decibel limits that appear in the current City Code are eliminated.

The draft ordinances are attached to this memorandum as Exhibit A (Nightclub ordinances) and Exhibit B (Noise ordinances).

### **Reasons for Proposed Revisions**

#### **Cities May Regulate Sound Subject to the First and Fourteenth Amendments of the United States Constitution.**

It is well-established that amplified entertainment, including music, is protected by the First Amendment as a form of expression and communication. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989). Such a right, though, is not unlimited, as municipalities have the right to pass regulations that aim to “limit and control noise” subject to First Amendment requirements that the regulation is 1.) content neutral, 2.) narrowly tailored to serve a significant government interest, and 3.) leaves open ample alternative channels of communication. *Id.* at 790-91. “[G]overnment ‘ha[s] a substantial interest in protecting its citizens from unwelcome noise.’” *Id.* at 796, quoting, *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806 (1984).

This interest is greatest when enacting regulations to protect the home, but municipalities also have the right to protect against excessive noise in traditional public fora such as city streets and parks. *Ward*, 491 U.S. at 796. There is no right to interfere with the privacy of others by imposing on them “objectionably amplified sound on the streets”. *Kovacs v. Cooper*, 336 U.S. 77, 87-89 (1949).

Additionally, any noise regulations must be clearly defined to avoid a challenge for vagueness. A person of ordinary intelligence must easily understand the prohibited conduct in a noise ordinance. Also, the regulations must not be applied in an arbitrary or discriminatory manner. *See Grayned v. City of Rockford*, 408 U.S. 104 (1972).

Even if a regulation is clear, it must also be narrowly drawn to avoid a challenge of overbreadth. “The nature of a place, ‘the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.’” *Id.*, 408 U.S. at 116-17.

The City has the power and authority to regulate noise pursuant to N.C.G.S. § 160A-184. Statutory authority also grants the City the ability to regulate, restrict or prohibit places of amusement or entertainment, including the operation of pool and billiard halls, dance halls, cocktail lounges, night clubs, beer halls, and similar establishments, consistent with any permits or licenses issued by the North Carolina Alcoholic Beverage Control Commission. N.C.G.S. § 160A-181.

## **The Reasonable Person Standard Protects Raleigh’s Citizens Against Excessive Noise, Simplifies Enforcement of Excessive Noise Standards, and Addresses Small Business Concerns Regarding Noise Regulations.**

Governments faced with enacting legislation to minimize excessive noise for the health, safety, and welfare of their citizens can choose regulations based on the reasonable person standard or the maximum decibel reading standard. Both have been subject to constitutional challenges, and both have been upheld when they are drafted to be content neutral, narrowly drawn, leave other ample alternative channels of communication, and are clearly drafted to give citizens notice and fair warning of the violation.

A reasonable person is “a person of normal and ordinary sensitivities who is within the area of audibility or perceptibility of the noise or vibration that transmits sounds which disrupt the reasonable conduct of basic human activities such as conversation, sleep, and work.” The sound heard is plainly audible to a reasonable person. Plainly audible is typically defined as “any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.”

Using a reasonable person standard to regulate noise provides less roadblocks to enforcement, takes fewer resources and less equipment to enforce, does not require specialized training, and can be enforced via credible citizen complaints. A citizen witness can easily explain to a trier of fact the various factors that make the noise excessive and unreasonable, e.g., it was 2 a.m., they can identify the song playing, they live 150 feet from the location where the sound was playing, they could not have a conversation in their own home, the windows were rattling from the noise vibrations, etc. See *State v. Garren*, 117 N.C. App. 393, 398-99, 451 S.E.2d 315, 319 (1994), citing, *State v. Dorsett*, 2 N.C. App. 331, 164 S.E.2d 607 (1968) (giving examples of testimony that shows that ordinance prohibiting loud, raucous and disturbing noise meets an objective standard to overcome a vagueness challenge). See also *Asquith v. City of Beaufort*, 139 F.3d 408, 412 (4th Cir. 1998) (complaints by citizens of unreasonably loud noise was upheld); and, *Jim Crockett Promotions, Inc. v. City of Charlotte*, 706 F.2d 485 (4th Cir. 1983) (Unreasonably loud, disturbing noise citation upheld as enforceable).

Recently, in *O’Connell v. City of New Bern*, 447 F. Supp. 3d 466, 480-1 (E.D.N.C. 2020), the federal District Court upheld a noise ordinance that placed a noise limitation measured by distance on amplified sound. The Court reasoned that the plaintiff had ample alternative channels of communication to spread his message because he was still allowed to use amplified sound at a lower volume, and he was allowed to preach without amplification. Courts have also upheld enforcement of the reasonable person standard in the ordinances of Miami Beach, Harwich, MA, and Cleveland. Locally, Winston-Salem, Concord, and Durham County enforce their noise ordinances under the reasonable person standard.

Local jurisdictions, including Wake County, Durham, Charlotte, and Greensboro, use a decibel standard to enforce at least some activities that generate noise. However, it requires specialized training and law enforcement personnel citywide who have the technical skills to operate the

equipment and interpret sound meter readings. Readings can be subject to variables such as changes in air temperature, foliage, and audience size.<sup>3</sup>

The amendments to the noise ordinance eliminate decibel standards and create a reasonable person standard to apply to all sound regulation enforcement. The examples below illustrate the differences and the impact of the proposed changes on different types of sound.

### Examples of Changes to the Noise Ordinance

	<i>Enforcement Currently Used</i>	<i>Proposed Changes</i>
<b>Loud nightclubs late at night</b>	Subject to AEP or HDEP decibel reading measurement standard.	General reasonable person standard applies.  Unreasonable noise indoors or outdoors from a commercial establishment <ul style="list-style-type: none"> <li>– during <i>nighttime hours</i> at 150 feet from the property line of the sound source, and</li> <li>– during <i>daytime hours</i>, at a distance of 300 feet from the property line of the sound source</li> </ul> is also a prohibited noise.
<b>Early morning construction noise</b>	Decibel limits do not apply if using noise reduction equipment.	In addition to current requirements, prohibited between 11 p.m. and 7 a.m.
<b>Use of speakers or bullhorn in public spaces</b>	General decibel limits apply.	General reasonable person standard applies.  Unreasonably loud and raucous use of any sound amplifier, loudspeaker, public address system, or other similar device during

<sup>3</sup> RPD reached out to several jurisdictions for benchmarking research. Atlanta was the only jurisdiction that responded to RPD’s request for information. Atlanta changed its ordinance from the decibel reading standard to the reasonable person standard after experiencing difficulty enforcing the decibel reading standard in its hospitality district.

	<i>Enforcement Currently Used</i>	<i>Proposed Changes</i>
		<ul style="list-style-type: none"> <li>– nighttime hours at a distance of 50 feet from any reasonable person, and</li> <li>– during daytime hours, at a distance of 300 feet, other than from the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound</li> </ul> <p>is also a prohibited noise.</p>
<b>Noise in noise-sensitive areas</b>	Excessive noise on streets adjacent to schools or court while in session, or within 150 feet of hospital that interferes with school/court or disturbs or annoys patients, is a prohibited noise.	<p>General reasonable person standard applies.</p> <p>Unreasonable noise that is plainly audible within 150 feet of a noise sensitive area, (includes, during business hour, schools, health care facilities providing patient recovery, or public libraries) is a prohibited noise.</p>
<b>Sound associated with the delivery of public services by the City, County, State, or federal government.</b>	Not addressed.	Exempted from general reasonable person standard.
<b>Outdoor school and playground activities.</b>	Not addressed.	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 are exempted

**A Nightclub Permit ensures that Such Businesses Operate in a Safe Manner and Discourages Criminal Activities.**

The proposed changes eliminate the AEP/HDEP ordinance found at Part 12, Chapter 2, Division 2 of Raleigh City Code, and adopt a Nightclub permit in their place that regulates nightclubs to ensure that they operate in a safe manner and to regulate from criminal activity in those establishments. The Nightclub permit ordinances do not impose any restriction on noise. Noise from nightclub operations will be governed by the new noise ordinance.

Because the current AEP and HDEP permits impose provisions that provide public safety protections, the proposed new ordinances keep those requirements by enacting an ordinance for the issuance of permits to nightclubs. The proposed ordinance uses the same definition of a nightclub that is used in the Fire Code. A nightclub is defined as an establishment of assembly intended for food and/or drink consumption where each of the following are met:

1. The aggregate floor area of the concentrated use and standing space that it used for dancing or viewing of performers exceeds 10 percent of the establishment’s fire area, excluding adjacent lobby areas
2. Live or recorded entertainments by a performing artist are provided; and,
3. Alcoholic beverage consumption is allowed.

Thus, instead of applying to all businesses offering amplified entertainment as current ordinances do, the proposed new ordinances apply only to nightclubs.

As an additional safety measure, City staff also recommends that a shunt trip breaker be required in all nightclubs. This breaker would eliminate the sound to all sound producing devices and any special lights associated with the sound by mechanically tripping the circuit breaker with an emergency stop button.

### **Amplified Entertainment Related Changes**

	<i>AEP/HDEP (Current)</i>	<i>Nightclub Permit (Proposed)</i>
<b>Permit Required</b>	All businesses that offer amplified entertainment must get a permit (AEP or HDEP).	Businesses that meet the Fire Code definition of a nightclub must get a permit.
<b>Noise from businesses offering amplified entertainment</b>	Contains special regulations concerning sound, especially bass.	Noise ordinance controls sound level.
<b>Outdoor amplified entertainment</b>	AEP: Permitted in limited areas with a special use permit.	Outdoor amplified entertainment is allowed throughout the City; no permit required.

	<i>AEP/HDEP (Current)</i>	<i>Nightclub Permit (Proposed)</i>
	HDEP: Once-per-year outdoor event allowed with administrative permit.	Noise ordinance controls sound level.
<b>Emergency Stop (shunt breaker)</b>	Not required.	Required.
<b>Enforcement</b>	Escalating civil penalties (\$500, \$1,000, \$5,000) for multiple violations in any 12-month period; fourth violation in any 12-month period results in one year suspension.	Harsher enforcement imposed. For first offense, \$5,000 civil penalty and permit suspension until compliance obtained. For second offense in any 12-month period, one year permit revocation.
<b>Appeal Provisions</b>	Appeal allowed to the City Manager, City Council.	None required, none included.

These proposals are intended to balance the City’s support of its nightlife and entertainment scene with the public’s safety and welfare by minimizing the secondary effects of such entertainment establishments to protect the comfortable enjoyment of the life and property of the City’s residents and businesses.



## ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO REPEAL THE CITY OF RALEIGH AMPLIFIED ENTERTAINMENT ORDINANCE AND TO ENACT A NIGHTCLUB PERMIT ORDINANCE.**

WHEREAS, N.C. Gen. Stat. § 160A-174 grants the City the authority to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances consistent with the Constitution and laws of North Carolina and of the United States; and

WHEREAS, N.C. Gen. Stat. § 160A-181 grants the City the authority to regulate, restrict or prohibit places of amusement or entertainment, including the operation of pool and billiard halls, dance halls, cocktail lounges, night clubs, beer halls, and similar establishments, consistent with any permits or licenses issued by the North Carolina Alcoholic Beverage Control Commission; and

WHEREAS, N.C. Gen. Stat. § 160A-184 grants the City the authority to regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the City Council recognizes that the City of Raleigh's nightlife and entertainment scene, which includes restaurants, bars, nightclubs, music venues, and other performance spaces, is an integral part of the City's culture, and that it is authorized to enact an ordinance that will balance the City's support of its nightlife and entertainment scene with the public's safety and welfare by minimizing the secondary effects of such entertainment establishments to protect the comfortable enjoyment of the life and property of the City's residents and businesses.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:**

**Section 1.** Section 12-2117 of the Raleigh City Code is repealed.

**Section 2.** The title of Part 12, Chapter 2, Article D, Division 2 of the Raleigh City Code is amended by removing the phrase "AMPLIFIED ENTERTAINMENT" and inserting in its place the word "NIGHTCLUB."

**Section 3.** The definitions stricken through below in Section 12-2118 of the Raleigh City Code are repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2118. New definitions shall be inserted in the appropriate alphabetical order:

**Sec. 12-2118. DEFINITIONS.**

~~*Amplified entertainment shall mean any type of music or other entertainment delivered through and by an electronic system. Televisions operating with no amplification other than their internal speakers and background music systems operated at a low volume and not intended for entertainment shall not be deemed amplified entertainment.*~~

~~*Background music or sound shall mean amplified music or amplified sound that cannot be heard or felt outside the structure in which it is played except for brief periods when customers enter or exit the establishment and that is played within the structure at low volume.*~~

~~*Hospitality district shall mean a district established by the City Council by ordinance that contains a concentration of establishments offering amplified entertainment that are located in close proximity to residential dwellings.*~~

~~*HDEP shall mean a hospitality district entertainment permit.*~~

~~*Low volume shall mean sound played at a level such that a person speaking in a normal tone of voice can be heard clearly over this sound by another person standing thirty six inches (36") away.*~~

~~*Non-resident neighbor shall mean any person who owns, occupies, or leases property within one quarter (1/4) mile of the hospitality district.*~~

~~*Resident shall mean any person who owns, occupies, or leases property within the hospitality district.*~~

*Nightclub shall mean an establishment of assembly intended for food and/or drink consumption where all of the following are met:*

1. The aggregate floor area of the concentrated use and standing space that is used for dancing or viewing of performers exceeds 10 percent of the establishment's fire area, excluding adjacent lobby areas;
2. Live or recorded entertainments by a performing artist is provided; and,
3. Alcoholic beverage consumption is allowed.

This definition shall apply to any establishments, including, but not limited to, restaurants and bars that meet the definition of a nightclub, except that it shall not apply to stadiums, arenas, or theaters.

~~*Permittee shall mean any person possessing a nightclub n amplified entertainment permit or a hospitality district entertainment permit.*~~

*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.*

Shunt Trip Breaker. A device that eliminates the sound to all sound producing devices and any special lights associated with the sound by mechanically tripping the circuit breaker with an emergency stop button. Sound producing devices include, but are not limited to televisions, monitors with sound emitting devices, karaoke equipment, live bands, DJ booths, juke boxes, and microphones.

**Section 4.** The language stricken through below in Section 12-2119 of the Raleigh City Code is hereby repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2119:

**Sec. 12-2119. REQUIREMENTS FOR AMPLIFIED NIGHTCLUB ENTERTAINMENT PERMIT.**

- (a) All nightclubs shall require a nightclub permit. Nightclub permittees shall provide to the City the name, telephone numbers, and e-mail addresses of the persons responsible for operation of the establishment, including the manager. The City shall publish the manager's name, numbers, and addresses in a manner in which they are available to the public. Nightclub permit holders shall provide updated information so that the manager is accessible to the public at all times when the establishment is open, occupied, or when employees are on site.~~Reserved.~~
- (b) ~~Establishments holding an amplified entertainment permit shall not generate any sound from their structure or parking area that exceeds the decibel limits set out in §12-5003 of this Code when measured at or beyond any property line of the premises covered by the permit. In addition to the decibel limits set out above, no establishment shall be in violation of any of the noise restrictions found in §12-5006 and §12-5007(a), (b), and (d) through (p) of this Code. A violation of this subsection occurs when, under Part 12, Chapter 5 of this Code, any of the following occur: a civil citation is issued and not appealed or upheld on appeal by an arbitrator; a criminal conviction occurs, regardless of a later appeal; or a finding of responsibility for an infraction occurs, regardless of a later appeal.~~
- (c) ~~Bass noise provisions. In addition to the limits set out in §12-5003 of this Code, the holder of an amplified entertainment permit shall be subject to regulation of certain low frequency emissions from the premises. The following table sets out the greatest allowable amount of low frequency steady state sound which may be transmitted across an adjoining property line.~~

~~MAXIMUM SOUND LIMITATIONS - LOW FREQUENCY STEADY STATE SOUNDS, dB  
(Commercial, Industrial, Business, Office Zones  
To Residential)~~

<del>One Third Octave Band Center Frequency, Hz</del>	<del>Daytime</del>	<del>One Third Octave Band SPL, dB Nighttime</del>
<del>16</del>	<del>84</del>	<del>79</del>
<del>20</del>	<del>76</del>	<del>71</del>

25	68	63
31.5	60	55
40	59	54
50	57	52
63	56	51
80	55	50
100	54	49
125	53	48
160	52	47
200	51	46
250	50	45
315	49	44

The terms daytime and nighttime shall have the same meaning as those terms are defined in §12-5003. The term steady-state sound is a sound source that is detectable at least fifty (50) percent of the time in a three (3) minute period. Measurements shall be made according to the measurement standards and policies adopted by the Raleigh Police Department for the measurement of low frequency noise. Low frequency noise is those sound sources that exhibit acoustic energy in one-third (1/3) octave bands at or below three hundred fifty-five (355) Hertz.

(bd) If requested within ninety (90) days after the effective date of this ordinance, a nightclub that held an amplified entertainment permit or a hospitality district entertainment permit on the effective date of this ordinance shall be issued a nightclub permit without cost after providing proof that the nightclub has installed the required shunt breaker and confirming the name, telephone numbers, and e-mail addresses of the persons responsible for operation of the establishment, including the manager in a manner determined by the City.

(c) Every holder of an amplified entertainment permit shall provide the required number of off-street parking spaces required in Part 10 of this Code or the UDO, whichever is applicable, for the zoning district in which the establishment is located. All amplified entertainment nightclub permit off-street parking areas and all amplified nightclub entertainment permit establishment property abutting and the public right-of-way abutting the establishment property shall be cleaned of all litter by 7:30 a.m. each morning. All off-street parking areas shall be lighted. Such illumination shall be a minimum average of two (2) maintained foot-candles.

(ed) The holder of a nightclub amplified entertainment permit shall provide at least one (1) uniformed sworn law enforcement officer or at least one (1) uniformed security guard furnished by a company licensed to provide security by the State of North Carolina continuously present in the parking area between 109:00 p.m. and until one (1) hour after closing to provide security and supervision of the parking area. Any establishment that has maintained a nine (9) month history of safe and effective operation shall be exempt from the security requirement. Safe and effective operation means that the establishment nightclub, either inside, or in its parking area or lot, or on the nightclub property abutting a public-right-of way has had:

- (1) less than two (2) custodial arrests for felony drug offenses;
- (2) less than seven (7) custodial arrests or criminal citations for misdemeanor drug offenses;
- (3) less than two (2) custodial arrests or criminal citations for acts of violence; or,
- (4) no custodial arrests for acts of violence involving a deadly weapon.

The persons arrested must be patrons of the establishment or on their way into or out of the establishment before the arrest limits will apply. For purposes of this ordinance a custodial arrest means a physical arrest that results in a finding of probable cause by a magistrate or judge. ~~The City Manager will implement a system within the City administration to monitor such arrests and probable cause determinations. The safe and efficient requirement shall be retroactive to January 1, 2005. Any establishment that becomes subject to the security requirement can become exempt again if it operates in a safe and efficient manner for nine (9) months from the time it is placed into the program~~ the permit is issued. No security will be required on days when the establishment is not providing nightclub entertainment ~~amplified entertainment~~. Any establishment receiving a nightclub n-amplified entertainment permit after the effective date of this ordinance will be presumed to be a safe and efficient operator and will not be required to implement the security requirement until it fails to meet the safety requirements of this section.

- (e) The security requirement will be waived if the establishment presents satisfactory evidence to the City showing that the parking area is leased from a third party who maintains personnel at the lot or deck or garage at all times during the establishment's hours of operation and that the personnel on duty have a wireless phone, radio, land line phone or other communications device capable of calling the 911 emergency number.
- (f) All businesses required to hold a nightclub permit shall have an operational shunt trip breaker installed to eliminate the power to all sound producing devices and any special lights associated with the sound. Sound producing devices include, but are not limited to televisions, monitors with sound emitting devices, karaoke equipment, live bands, DJ booths, juke boxes, and microphones.

(e) [Reserved.]

**Section 5.** The language stricken through below in Section 12-2120 of the Raleigh City Code is hereby repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2120:

**Sec. 12-2120. ~~OUTDOOR AMPLIFIED ENTERTAINMENT. RESERVED.~~**

(a) — Except as otherwise permitted in this division, all amplified sound must originate within the structure housing a business which holds an *amplified entertainment* permit or an *HDEP* and shall not be conveyed outside the structure by any means, including but not limited to exterior loudspeakers, open windows, open doors except entrance doors when opened as needed for ingress and egress, or any other means which conveys or facilitates amplified music being conveyed from inside the confines of the building to the outside of the building. Notwithstanding any other provisions in this Code, the holder of an *amplified entertainment* permit may allow *amplified entertainment* to be created or conveyed outside the confines of its building under a special use permit or when within the exemptions as set out below. In addition, the holder of an *HDEP* may allow *amplified entertainment* for special events on the establishment's premises not otherwise permitted in a *hospitality district* only if granted a permit by the *City Manager* or when within the exemptions as set out below:

(1) Occasional Outdoor Event Permit in Hospitality District.

The *City Manager* or designee may grant a permit allowing outdoor *amplified entertainment* at an establishment located within a *hospitality district* when all of the following conditions are met:

- (a) — The event begins no earlier than 11:00 a.m. and ends no later than 10:00 p.m.;
- (b) — No more than one (1) event may be held at the same establishment in any calendar year;
- (c) — The event does not generate noise of such character, intensity or duration as to be detrimental to the life or health of reasonable *persons* of ordinary sensibilities;
- (d) — Speakers and any other noise generating equipment are oriented away from residential dwellings;
- (e) — The proposed event does not conflict with other events previously scheduled in the vicinity;
- (f) — The proposed event does not create an undue burden on nearby residents or other business operators because of the nature of the event or the frequency of activity in the same neighborhood previously authorized under the Special Events and Road Race Policy;
- (g) — The business requesting the event has, within the last 24 months, complied with all conditions imposed on it applicable to a permit previously issued under this subsection; and

(h) — The applicant establishes that holding the event will not adversely impact public health, safety and welfare through the overcrowding of public facilities, imposing undue traffic burdens, or blocking access to other facilities.

The *City Manager* or the *City Manager's* designee *may* include conditions and safeguards in the permit that will lessen negative impacts likely to occur from the outdoor *amplified entertainment* at the event.

**(2) Thoroughfare corridor.**

Outdoor music *may* also be allowed outside a *hospitality district* if amplified from a point within a corridor extending three hundred (300) feet on either side of the right-of-way line of any major/minor thoroughfare, interstate, or Federal aid primary highway.

**(3) Special use permit required.**

Outdoor music in the area described in subsection (2) above *shall* be allowed only after the issuance of a special use permit allowing the use by the Raleigh *City Council*. Notice of any hearing pursuant to this subsection *shall* be accomplished by publishing a notice of the hearing in a newspaper qualified to convey legal advertising. The newspaper notice *shall* be augmented by a placard measuring no less than twenty-four (24) inches by eighteen (18) inches setting out the place and time of the hearing. The newspaper advertisement *shall* be published and the placard displayed at least ten (10) days prior to the hearing date. The placard *shall* remain on display from its first posting until the date of the hearing. The *City Council* *shall* consider the following factors when acting on a request for a special use permit to allow outdoor music:

- (a) — The establishment's proximity to residential areas, schools, churches, and health care facilities.
- (b) — The establishment's history of compliance with noise and nuisance laws.
- (c) — Access with respect to pedestrian and automotive safety, traffic flow, emergency service.
- (d) — Intensity including such considerations as size, location, hours and/or conditions of operation, and number of participants.
- (e) — Landscaping, screening, fencing with respect to protecting affected properties from anticipated noise, loss of privacy, and glare; preserving of important natural features; or harmonizing the request with affected *properties*.
- (f) — Control or elimination of noise, dust, vibration, and lighting.
- (g) — The proposed use will not adversely impact public services and facilities such as parking, traffic, police, etc., and that the secondary effects of such uses will not adversely impact on adjacent *properties*. The secondary effects would include but not be limited to noise, light, stormwater runoff, parking, pedestrian circulation and safety.

**(4) Duration of permit.**

Any special use permit issued by the *City Council* *may* be limited in its duration and *may* contain other conditions and limitations including, but not limited to, hours of

operation. An *Occasional Outdoor Event Permit* issued to the holder of an *HDEP* shall expire at the conclusion of the authorized special event. For holders of an *amplified entertainment* permit, the special use permit shall remain in full force and effect so long as the establishment maintains a valid *amplified entertainment* permit unless the conditions of approval of the special use permit set out a different term of validity.

**(5) Exemptions.**

The following activities are exempted from the regulations controlling outdoor amplified sound:

- (a) Stadiums and arenas holding existing special use permits for their operation.
- (b) 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.
- (c) Parades and spectators and participants in parades.
- (d) Outdoor events, races, festivals or concerts on public property or public vehicular areas that are sponsored, cosponsored, or permitted by the City.

**Section 6.** The language stricken through below in Section 12-2122 of the Raleigh City Code is hereby repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2122:

**Sec. 12-2122. ISSUANCE OF NIGHTCLUB PERMIT.**

- (a) The *amplified nightclub entertainment permit* shall be issued by the Chief Financial Officer Office of Special Events or theirhis designee upon verification by the Inspections Department Planning and Development Department and the Fire Department that all relevant code and safety to life requirements have been met. The permit shall be applied for on a form supplied by the Chief Financial Officer Office of Special Events or his designee. The application shall contain the name of the owner, their authorized agent, Manager, the name of the registered agent for service of process and such other information as the Chief Financial Officer Office of Special Events or his designee may deem relevant and appropriate. Upon receipt of the application, the Chief Financial Officer Office of Special Events or his designee shall forward a copy of the same to the Inspection Department Planning and Development Department and Fire Department for verification of the fire, zoning, and building codes requirements necessary for the issuance of a license permit. The Office of Special Events shall forward a copy of the same to the Police Department for verification of a history of compliance with State law and City ordinances for the issuance of a permit.

The Chief Financial Officer or his designee is directed to require the name of the business owner shall be included as a part of on the application and on the for an Amplified Nightclub Entertainment Permit. Any change in the ownership of a business after the issuance of the permit shall cause the permit to be immediately invalidate the permit and cause require the new owner to reapply for at the permit. A change in ownership shall mean acquisition of



more than ten percent of the stock in a publicly traded corporation, any change in the ownership of shares in a privately held corporation, sale of all or part of a sole proprietorship, or any change in the membership of any form of limited liability organization.

- (b) ~~The amplified-nightclubentertainment permit shall be required to be renewed annually to maintain validity. The fees for the initial amplified-nightclubentertainment permit and any subsequent renewal shall be as set forth in the City of Raleigh Fee Schedule.~~
- (c) The Office of Special Events may deny a permit or the renewal of a permit for the following reasons:
  - (1) incomplete or incorrect information provided on the application, or the failure to establish compliance with this section;
  - (2) A fine or violation in the past year in the operation of a business in violation of City ordinances, the Building and Fire Prevention Codes, or North Carolina General Statutes related to health and safety; or,
  - (3) Revocation of a previously issued permit within one (1) year of application for a permit by the same owner or entity.

~~(d) Anyone denied a license-permit pursuant to subparagraphs (a), (b), or (c) may appeal, within thirty (30) days of denial, to the Raleigh City Council City Manager's Office. In reviewing an appeal of a denial, the Council-City Manager or designee shall determine whether the permit was properly denied under the standards listed in subsection (c). consider the following criteria:~~

- ~~(1) The accuracy of the Chief Financial Officer or his designee's factual determination;~~
- ~~(2) The number and type of police calls within a three-block area within the past six (6) months and the relationship of the calls to the establishment holding the permit;~~
- ~~(3) The zoning classification of surrounding properties;~~
- ~~(4) The status of any previously issued permits.~~

If, after a review of the foregoing factors, any adverse conditions exist on any one (1) of the factors, the denial will be affirmed~~appeal will not be allowed.~~

**Section 7.** The language stricken through below in Section 12-2123 of the Raleigh City Code is hereby repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2123:

**Sec. 12-2123. ADDITIONAL PROHIBITIONS.**

The following are prohibited on the premises or in parking areas provided by the permittee for patrons of the nightclub;

- (a) use or possession of illegal controlled substances; alcohol or
- (b) Violation of ABC laws or any other alcohol-related violations/offenses; and,

~~(c) acts of violence on the premises or in parking areas provided by the *permittee* for patrons of its establishment are prohibited.~~

Violation of any of these conditions is punishable according to the schedule of fines, penalties and suspensions set out in §12-2124.

(Ord. No. 1999-539, §1, 4-6-99; Ord. No. 2006-24, §1, 5-16-06; Ord. No. 2014-349, §7, 10-7-14, eff. 10-12-14 )

**Section 8.** The language stricken through below in Section 12-2124 of the Raleigh City Code is hereby repealed and deleted and the underlined language shown below is adopted as a part of Section 12-2124:

**Sec. 12-2124. PENALTIES FOR VIOLATION OF THE NIGHTCLUB PERMIT REQUIREMENTS.**

(a) Violations of any of the provisions of ~~this division~~ this Division as applied to the nightclub permit requirements will result in the *following* civil penalties:

(1) First offense in any twelve-month period: \$5,000.00 and suspension of the Permit until the City determines that the Permittee has come into compliance.

(2) Second offense in any twelve-month period: \$1,000.00~~Revocation of the Permit for one (1) year.~~

~~(3) Third offense in any twelve-month period: \$5,000.00.~~

~~(4) Fourth offense in any twelve-month period: One year suspension.~~

Any Police Officer *may* issue a notice of violation assessing civil penalties under this section for a violation of any of the provisions of this division. ~~The City Manager or his designee shall issue a notice of hearing to suspend or revoke a permit. The citation shall be issued to the nightclub's owner, authorized agent, manager, or registered agent in person, by U.S. Mail, or via email.~~

(b) A violation that occurs or continues three (3) or more hours after an earlier violation *shall* constitute a new violation punishable as a separate offense.

~~(c) Upon the issuance of a written notice of a first, second, or third violation, the holder of the amplified entertainment permit shall have fifteen (15) calendar days to provide a written appeal of the notice and to provide additional written or electronic materials in support of the appeal to the City Manager or his designee. The *permittee may* review the evidence that is the basis of the violation during the City's normal business hours. The City Manager or his designee shall review any additional information provided and shall issue a written decision determining whether a violation has occurred.~~

~~(d) A hearing shall be held at the office of the City Manager or his designee prior to the suspension or revocation of an *HDEP*, *amplified entertainment* permit, or permit allowing outdoor *amplified* entertainment. The *permittee shall* have the opportunity to question witnesses, present evidence, and *may* be represented by an attorney. Upon termination of the hearing, an Order shall be issued by the City Manager or his designee, which shall include Findings of Fact and Conclusions of Law.~~

- ~~(e) An appeal *may* be made to the *City Council* within twenty one (21) calendar days after the City Manager's decision (or the decision of his designee) was mailed to the *permittee*. The scope of the *City Council's* review *shall* be limited to verifying the facts supporting a written decision or Findings of Fact made on a suspension. If the *City Council* finds that the facts as found are correct, the civil penalty or suspension *shall* not be disturbed.~~
- (cf) If a *person* fails to pay any civil penalty within thirty (30) days after the decision becomes final, 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.
- (gd) In addition to civil penalties and permit suspension or suspension revocation, a violation of this division *may* also be enforced through injunctive or other equitable relief, or a combination of remedies as allowed by N.C. Gen. Stat. § 160A-175.

**Section 9.** Sections 12-2126 through 12-2130 of the Raleigh City Code are hereby repealed.

**Section 10.** All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

**Section 11.** If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

**Section 12.** The provisions of this ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to the effective date of this ordinance.

**Section 13.** This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code.

**Section 14.** This ordinance shall become effective sixty days from the date of its adoption.

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE CITY OF RALEIGH NOISE REGULATIONS.**

WHEREAS, N.C. Gen. Stat. § 160A-174 grants the City the authority to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances consistent with the Constitution and laws of North Carolina and of the United States; and

WHEREAS, N.C. Gen. Stat. § 160A-184 grants the City the authority to regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the City Council finds that loud and raucous noise is harmful to the health, safety and welfare of its residents and visitors, interferes with the comfortable enjoyment of life and property, interferes with the wellbeing, tranquility and privacy of the home, and causes and aggravates certain health problems; and

WHEREAS, the City Council finds that both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City’s residents and visitors, and to the conduct of the normal pursuits of life, including recreation, work and communication; and

WHEREAS, the City Council finds that the use of amplification equipment may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace and freedom of the City’s residents and visitors; and

WHEREAS, the City Council finds that short-term easing of noise reductions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City; and

WHEREAS, the obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance 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 ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights; and

WHEREAS, the City Council endeavors to find a balance between the activity that has become an integral part of the City’s culture with the comfortable enjoyment of life and property:

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:**

**Section 1.** Section 12-5001 of the Raleigh City Code is hereby amended by deleting the definitions stricken through below and adding the underlined language below with new definitions in the appropriate alphabetical order:

~~*"A"-weighting scale.* The sound pressure level, in decibels, as measured with the sound level meter using the "A"-weighted network (scale). The standard unit notation is dB(A).~~

~~*Ambient base noise level.* The average sound pressure level in dB(A) during a reasonable period of time, as determined by employing a sound level meter as described in §12-5002 and excluding impulsive sounds.~~

~~*ANSI.* American National Standards Institute or its successor bodies.~~

*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.

~~*dB(A).* Sound level in decibels, determined by the "A"-weighting scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication ANSI, S 1.4-1971, for a Type 2 instrument.~~

~~*Decibel (dB).* A unit of measure, on a logarithmic scale, of the ratio of the magnitude of a particular sound pressure to a standard reference pressure, which for purposes of §§12-5001 through 12-5011 shall be 0.0002 microbars.~~

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

*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.

~~*Sound level.* In decibels, a weighted sound pressure level determined by the use of a sound level meter whose characteristics and frequency weightings are specified in ANSI standards.~~

~~*Sound level meter.* Any instrument certified to meet or exceed ANSI standards which includes an omnidirectional microphone, an amplifier, an output meter and frequency weighting network(s) for the measurement of sound level.~~

~~*Sound magnifying device.* Any device or machine for the magnification of a human voice, music or any other sound. "Sound magnifying device" shall not include emergency warning devices on police, fire, ambulance or other emergency vehicles, nor shall it include horns or steam whistles which are used for purposes authorized by §12-5007.~~

Sound pressure level. In decibels, twenty (20) times the logarithm to the base 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.

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.

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.

Unnecessary noise. Any excessive or unusually loud sound or any sound which disturbs the peace and quiet of any neighborhood or which does annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of reasonable persons of ordinary sensibilities or causes damage to property or business.

**Section 2.** Section 12-5002 of the Raleigh City Code is hereby amended by deleting the language as stricken through and adding the underlined language where noted below:

**Sec. 12-5002. ~~MEASUREMENT TECHNIQUES.~~ 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.

(a) ~~Noise measurements shall be made at the property line of the property where the noise to be measured is being generated. If measurement on private property is not possible or practical, noise measurements may be made at the boundary of the public right-of-way which adjoins the complaining property. Such noise measurements shall be made at a height of at least four (4) feet above the ground and at a point approximately ten (10) feet away from walls, barriers, obstructions (trees, bushes, etc.) on a sound level meter operated~~

on the "A" weighting network (scale). In the case of noises within multi-family or multi-tenanted structures, noise measurements shall be made in the complaining unit at a height of at least four (4) feet above the floor and at a point approximately equi-distant from all walls on a sound level meter operated on the "A" weighting network (scale).

- (b) ~~No individual other than the operators shall be within ten (10) feet of the sound level meter during the sample period.~~
- (c) ~~Sound measurements shall be conducted at that time of day or night when the suspect noise source is emitting sound.~~
- (d) ~~The sound level measurement shall be determined as follows:~~
  - (1) ~~Calibrate the sound level meter within one (1) hour before use.~~
  - (2) ~~Set the sound level meter on the "A" weighted network at slow response.~~
  - (3) ~~Set the omnidirectional microphone in an approximately seventy-degree position in a location which complies with subsections (a) and (b) above. The operator of the sound level meter shall face the noise source and record the meter's instantaneous response (reading) observed at consecutive ten-second intervals until one hundred (100) readings are obtained.~~
  - (4) ~~Recalibrate the sound level meter after use.~~
- (e) ~~It shall be unlawful for any person to interfere, through the use of sound or otherwise, with the taking of sound level measurements. Violation of this section is a misdemeanor and may also be enforced pursuant to §12-5011 or a combination of remedies.~~

**Section 3.** Section 12-5003 of the Raleigh City Code is hereby amended by deleting the language as stricken through and adding the underlined language where noted below:

**Sec. 12-5003. ~~SOUND EMISSION STANDARDS AND LIMITATIONS.~~ GENERAL PROHIBITIONS.**

- (a) ~~Unless otherwise specifically indicated, it shall be unlawful for anyone to cause or allow the emission of sound from any source or sources which when measured pursuant to §12-5002 exceed the maximum decibel limits specified in Table 1. Ten (10) readings above the allowed decibel limits attributed to the sound source or sources shall constitute prima facie evidence of a violation of this ordinance. The sound meter operator may cease taking readings as soon as the readings already taken show a violation of this ordinance. It shall not be necessary to complete all one hundred (100) readings if a fewer number have already indicated a violation of the ordinance.~~

Table 1. Maximum Noise Limitations  
dB(A)

Zoning districts	Daytime (7:00 a.m. to 11:00 p.m.)	Nighttime (11:00 p.m. to 7:00 a.m.)
Residential	55	45

Residential Business Office and Institution, Buffer Commercial, Shopping Center and Neighborhood Business	60	55
Thoroughfare, Industrial	70	65

- ~~(b) When a noise source can be identified and its sound is measured in more than one district, the average of the noise limitations of the two (2) districts shall apply.~~
- ~~(c) Notwithstanding the location of hospitals, rest homes, family care homes, group care facilities, public or private or parochial school or day care facilities, it shall be unlawful for any person to cause or allow the emission of sound onto the structures of such uses which exceeds the maximum noise limitations for residential zoning districts.~~
- ~~(d) For activities which are necessary for railroad operations it shall be unlawful for any person to cause or allow the emission of sound from the boundaries of railroad rights of way which exceeds eighty (80) dB(A) for daytime and seventy five (75) dB(A) for nighttime, without regard for the zoning district of the abutting property.~~
- ~~(e) Violation of this section is a misdemeanor and may also be enforced pursuant to §12-5011 or a combination of remedies.~~

(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;

(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.

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

**Section 4.** Section 12-5004 of the Raleigh City Code is hereby amended by deleting the language as stricken through and adding the underlined language where noted below:

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

The ~~maximum noise limitation standards~~ 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) ~~Parades, 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; ~~or~~
- (h) ~~Emission of sound from any source or sources on public rights-of-way.~~ 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 sanitary-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;
- (pq) Sound associated with the delivery of public services by the City, County, State and the federal government; and,
- (qr) 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*.
- (rs) 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.

**Section 5.** Sections 12- 5005 and 12-5006 of the Raleigh City Code are hereby amended by deleting the language in contained in those sections in their entirety and reserving the section as by inserting the word “**RESERVED.**”

**Section 6.** Section 12-5007 of the Raleigh City Code is hereby amended by deleting the language as stricken through and adding the underlined language where noted below:

**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 ~~unreasonably loud, annoying, frightening, loud and disturbing or unnecessary 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, ~~or 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 ~~person or persons~~ 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 such a manner as to be plainly audible at a distance of fifty (50) feet from any reasonable person ~~in such~~ manner as to create unreasonably loud, ~~or unnecessary~~ 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 ~~his~~ their opinion, such work will not create plainly audible objectionable noise ~~unreasonable noise~~; Upon complaint *in writing* ~~by~~ of 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 excessive-unreasonable noise within one hundred and fifty (150) feet of on any street adjacent to any school, institution of learning or court, while the same are in session, or within one hundred fifty (150) feet of any hospital, which unreasonably interferes with the work of such institution or which disturbs or unduly annoys patients in the hospital 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 ~~loud and excessive~~ *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 ~~loud or offensive noises~~ *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, ~~except by permit from the Police Department.~~
- (n) The creation of plainly audible ~~excessive~~ *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, property or on public vehicular areas of any sound amplifier, bullhorn, loudspeaker, public address system, or other similar device, ~~which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, 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 ~~the building, structure, or vehicle in which it is located~~ 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 subsection (a), (b), (c), (e), or (p) this subsection is a misdemeanor. ~~Violation of any other subsection is an infraction.~~ Any subsection *may* also be enforced pursuant to §12-5011 or a combination of remedies.

**Section 7.** Sections 12-5008, 12-5009, and 12-5010 of the Raleigh City Code are hereby amended by deleting the language in contained in those sections in their entirety and reserving the section as by inserting the word “**RESERVED.**”

**Section 8.** Section 9-7026 of the Raleigh City Code is hereby amended by deleting the language as stricken through and adding the underlined language where noted below:

**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 ~~unless specifically authorized under the special events provisions of this chapter~~ 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.

**Section 9.** All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

**Section 10.** If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

**Section 11.** The provisions of this ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to the effective date of this ordinance.

**Section 12.** This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty-dollar limit in G.S. 14-4(a) or similar limitations.

**Section 13.** This ordinance shall become effective immediately upon its adoption.

**ADOPTED:**

**EFFECTIVE:**

**DISTRIBUTION:**