

ARTICLE V. - NOISE^[6]

Footnotes:

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Editor's note—Ord. No. 06-15, § 1, Feb. 9, 2006, amended art. V in its entirety to read as herein set out. Formerly, said article pertained to similar subject matter as enacted by Code 1987, §§ 9-11, 9-11.1; as amended. See the Code Comparative Table for a detailed analysis of inclusion.

Sec. 30-201. - Scope.

This article applies to the control of all sounds originating within the jurisdictional limits of the City of Concord.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-202. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Noise means any sound or combination of sounds which, because of its volume, duration or intensity, tends to annoy, disturb, or frighten persons of ordinary sensibilities.

Noise sensitive area includes, but is not limited to, a posted area where a school, hospital, nursing home, church, court, public library or similar institution is located.

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

Sound means any disturbance of the air that is detectable by the unaided human ear or which produces vibrations detectable by persons of normal perceptions.

Sound amplification device means any device or instrument for amplifying the human voice, music or other sound, including but not limited to loudspeakers, stereos, phonographs, radios or tape players, portable or otherwise.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-203. - General prohibition.

(a) No person shall make, continue, or cause to be made or continued:

- (1) Any unreasonably loud and raucous noise; or
- (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensibilities, within the jurisdictional limits of the City of Concord; or
- (3) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, 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 and raucous include, but are not limited to, the following:

- (1) The proximity of the sound to sleeping facilities, whether residential or commercial;
- (2) The proximity of the sound to the noise sensitive areas;

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

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-204. - Noises prohibited.

The following acts are declared to be per se violations of this article.

- (1) *Unreasonable noises*: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with usual activities or the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.
- (2) *Vehicle horns, signaling devices, and similar devices*: The sounding of any horn signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City of Concord, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt for this prohibition.
- (3) *Non-emergency signaling devices*: Sounding or permitting the sounding of any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors, or by governments for traffic control purposes are exempt from the operation of this provision.
- (4) *Emergency signaling devices*: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided by subsections a. and b. below.
 - a. Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
 - b. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this article.
- (5) *Radios, televisions, boom-boxes, phonographs, stereos, musical instruments and similar devices*: The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and

comfort of neighbors in residential or noise sensitive areas, including multifamily or single-family dwellings, or is plainly audible at a distance of 30 feet from any person in a residential or noise sensitive area, including any residence.

- (6) *Loudspeakers, amplifiers, public address systems, and similar devices:* The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound in the following areas:
 - a. Within or adjacent to residential or noise-sensitive areas;
 - b. Within public space(s) if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.
- (7) *Yelling, shouting, and similar activities:* Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.
- (8) *Animals and birds:* Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird. Sounds made by animals or birds in animal shelters, kennels, veterinary hospitals, pet shops or pet kennels, licensed under and in compliance with licensing and permitting provisions set forth in this Code, are exempt from this subsection.
- (9) *Loading or unloading merchandise, materials, equipment:* The creation of unreasonably loud and raucous noise in connection with the loading or unloading of any vehicle at a place of business or residence.
- (10) *Construction or repair of buildings, excavation of streets and highways:* Unreasonably loud and raucous noise emitted from the construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 7:00 p.m., on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, a code enforcement officer may issue a permit, upon application, if the code enforcement officer determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the building inspector further determines that loss or inconvenience would result to a party in interest.
- (11) *Noise sensitive areas—Schools, courts, churches, hospitals, and similar institutions:* The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which unreasonably disturbs the persons in these institutions, provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the areas surrounding the noise sensitive area.
- (12) *Blowers, and similar devices:* In residential or noise sensitive areas, between the hours of 7:00 p.m. and 7:00 a.m. the operation of any noise-creating device that is powered by an internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, and that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.
- (13) *Commercial establishments adjacent to residential property:* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of 30 feet or less from any residential property.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-205. - Exemptions.

Sounds caused by the following are exempt from the prohibitions set out in sections 30-203 and 30-204 and are in addition to the exemptions specifically set forth in section 30-204:

- (1) Motor vehicles on traffic ways of the City of Concord, except that the prohibition of subsection 30-204(b) continues to apply.
- (2) Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.
- (3) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, except that the prohibitions contained in subsection 30-204(d) continue to apply.
- (4) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- (5) Repairs or excavations of bridges, streets or highways by or on behalf of the City of Concord, the state, or the federal government, between the hours of 7:00 p.m. and 7:00 a.m. when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- (6) Governmental non-emergency signaling devices.
- (7) Outdoor school and playground activities. Normal 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.
- (8) Other outdoor events. Outdoor gatherings, public dances, shows, sporting and athletic events, parades, festivals or similar scheduled events which are conducted, sponsored or approved by the city.
- (9) Noise or sound emitted from properly equipped aircraft operated in accordance with applicable federal rules and regulations.
- (10) Noise or sound from railroad operations.
- (11) Noise emitted from Motor Sports Athletic Events during the following dates and times: Monday through Thursday (7:30 a.m. to 10:30 p.m.), Friday and Saturday (7:30 a.m. to midnight), Sunday (11:00 a.m. to 10:30 p.m.). Noise emitted from Motor Sports Athletic Events outside of these set times due to unavoidable circumstances with the express written permission of the chief of police in the interest of public safety and after due consideration of the factors listed in section 30-206(b). The chief of police shall follow the provisions of section 30-206 in its entirety in giving permission to extending the noise exemption outside of the hours stated above, unless otherwise regulated by another ordinance or permit, and then the stricter ordinance and/or permit shall apply.

(Ord. No. 06-15, § 1, 2-9-2006; Ord. No. 10-59, § 1, 6-10-2010)

Sec. 30-206. - Noise permit.

- (a) It shall be unlawful for any person to use or cause to be used any sound amplifying device, musical or other instrument for entertainment, advertising or other purposes, or to otherwise engage in any activity creating noise which exceeds the standards set forth in sections 30-203 and 30-204, without obtaining a noise permit in advance of these activities.
- (b) All applications for noise permits shall be promptly considered and acted upon by the chief of police or his designee. In considering and acting on all applications for permits, the chief of police shall consider, but shall not be limited to, the following factors:
 - (1) Taking into consideration the factors listed in subsection (b), the nature and duration of the proposed activity;
 - (2) Other uses in the vicinity or location proposed for the activity;
 - (3) Effect of the activity on nearby residential areas;
 - (4) Cultural, social, recreational and/or educational benefits of the proposed activity;

- (5) Previous experience with the applicant; and
 - (6) Previous violations of this noise article, if any, by the applicant.
- (c) Taking into consideration the factors listed in subsection (b) above, the chief of police or his designee shall issue a noise permit upon finding that, under all of the circumstances, the noise-generating activity will not unduly annoy, disturb, injure, or endanger the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities.
- (d) The chief of police or his designee may impose such reasonable and appropriate conditions upon the permit as he deems necessary to assure that the proposed noise-generating activity will be consistent with the intent of this section.
- (e) The permit holder(s) shall agree to cooperate with the police department in enforcing the noise control ordinance by being available at the site of the event during the entire time for which a permit has been issued and in assisting the police in enforcing the noise control ordinance. Failure of the permit holder(s) to be present or to assist the police in complying with this article will be cause for revocation of said permit.
- (f) A permit may be denied or revoked in the following cases:
- (1) The activity constitutes a threat to the health, safety or welfare of others, or the chief of police or his designee is unable to make the requisite finding under subsection (3) of this section;
 - (2) The applicant has violated any provisions of this article within 12 months preceding the date of the application;
 - (3) The applicant violates any of the permit conditions during the time allowed for the permitted activity; or
 - (4) The activity interferes with another previously permitted activity.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-207. - Appeal procedure.

- (a) If an application for a noise permit is denied, is approved with conditions unacceptable to the applicant, or if a permit is revoked, the applicant or permit holder shall be entitled to appeal the chief of police's action to the city manager after submission of a written request to do so within ten business days after notice of the denial has been received by the applicant. Within five business days (or such longer period of time agreed to by the applicant) after the city has received the written appeal, the appeals official shall hold a quasi-judicial hearing on whether to issue the permit or uphold the denial. The applicant shall have the right to present evidence at this hearing. The decision to issue the permit or uphold the denial shall be based solely on the approval criteria set forth in section 30-206, and the burden of proof to uphold the denial shall be on the chief of police by a preponderance of the evidence. The appeals official shall render a written decision on the appeal within five business days after the date of the hearing.
- (b) The decision of the appeals official is subject to review in the Superior Court of Cabarrus County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after the applicant has received notice of the decision of the appeals official. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the reviewing court that allows for a longer time period, the city shall serve its brief upon the petitioner within 15 days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three days to this time limit, in accordance with North Carolina General Statute 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for serving any brief, then the shorter time period shall control.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-208. - Noise complaint procedure.

In the event any person has reasonable grounds for believing that any provision of the city's noise ordinance is being violated, (s)he may make a report thereof to the Concord Police Department which shall investigate the alleged violation. If such investigation reveals probable cause for a violation, the investigating officer shall cause a written complaint to be made, and may issue a criminal or civil citation for the violation thereof.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-209. - Enforcement.

- (a) The city manager, chief of police or their designee(s) shall have primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this article shall prevent the city manager or chief of police or their designee(s) from obtaining voluntary compliance by way of warning, notice or education.
- (b) If a person's conduct violates this article, the person must be ordered to cease and desist and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-210. - Penalties for violation.

The first violation of this section shall be a misdemeanor punishable by a \$10.00 fine as provided in section 1-6 of this Code and G.S. 160A-175 and 14-4. The second and all subsequent violations of this section shall be a misdemeanor punishable by up to a \$500.00 fine as provided in section 1-6 of this Code. Violators may also be subject to a civil penalty of \$500.00 to be recovered in the nature of a debt as allowed in section 1-6 of this Code.

(Ord. No. 06-15, § 1, 2-9-2006)

Sec. 30-211. - Severability clause.

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this article shall not affect the validity of the remaining parts to this article.

(Ord. No. 06-15, § 1, 2-9-2006)