

GREENVILLE CITY CODE

CHAPTER 5. NOISE CONTROL

**(Editor's Note --** This section was rewritten in its entirety and approved by City Council via Ord. No. 05-108, dated September 8, 2005.)

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**Sec. 12-5-1. Purpose.**

(a) It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.

(b) It is further recognized that a substantial body of science and technology exists by which excessive sound may be measured and substantially abated. Because excessive and unnecessary noise may jeopardize human health or welfare or substantially degrade the quality of life, it is the purpose of this chapter to prevent, prohibit, and provide for the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life.

**Sec. 12-5-2. Definitions.**

For the purpose of this chapter, the following words and phrases are defined and shall be construed as defined below unless it shall be apparent from the context that a different meaning is intended:

- (1) *A-weighted sound level*: The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).
- (2) *Classification of use occupancies*: Use occupancies shall be as follows:
  - a. "Residential Use": All premises containing habitually occupied sleeping quarters. However, premises containing transient commercial sleeping quarters are considered commercial uses. Hospitals, nursing homes, schools, libraries, fraternity and sorority houses, and churches are considered residential uses.
  - b. "Public space": Any area owned, utilized or occupied by a municipal, county, state or federal agency, including, but not limited to, park or recreation areas, streets and sidewalks, and the campus of East Carolina University.
  - c. "Commercial or business": All premises where sales, professional or other commercial activities are legally permitted, except that residences with lawful home occupations are considered residential.
  - d. "Manufacturing or industrial": All premises where goods or wares are made, warehoused or stored or where manufacturing is legally permitted.
  - e. "Agricultural": All premises which are bona fide farms or which are characterized by farming activities as the primary use of the premises.
  - f. In classifying uses under this section, the zoning classification of an area may be considered, however, the actual use of premises shall control when the use and the zoning classification conflict. Any area not otherwise classified under this section shall be considered commercial.
  - g. In case of multiple use the more restrictive use category shall prevail.

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- (3) *Decibel (dB)*: A unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micronewtons per square meter.
- (4) *Emergency work*: Any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.
- (5) *Fraternity house/sorority house*: A building occupied by and maintained exclusively for college or university students who are affiliated with a social, honorary or professional organization which is chartered by a national fraternity or sorority order and which is recognized by the administration of East Carolina University or by any other institution of higher education located in Pitt County.
- (6) *Holiday*: For the purposes of this chapter, the following days will be recognized as holidays for the purpose of granting permits to exceed maximum sound level: St. Patrick's Day, Memorial Day, Independence Day, Labor Day, Halloween and December thirty-first.
- (7) *Muffler*: An apparatus consisting of a series of chambers or baffle plates designed for the purpose of transmitting gases while reducing sound emanating from such apparatus.
- (8) *Night-time*: Shall be that time commencing at 11:00 p.m. on one day and ending at 7:00 a.m. the next day or if using the 24-hour clock from 2300 – 0700.
- (9) *Noise*: Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.
- (10) *Outdoor amplified sound*: Any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open doors or windows or other openings in the building.
- (11) *Owner of real property*: The owner, or listing owner, of real property as defined in North Carolina General Statutes §105-302.
- (12) *Person*: Any individual, association, partnership, or corporation and includes any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.
- (13) *Plainly audible*: Any sound that can be clearly heard at a distance of seventy-five (75) feet or more. Measurement standards shall be the auditory senses, based upon the direct line of sight. Words or phrases need not be discernible and bass reverberations are included.
- (14) *Slow response*: A measuring technique to obtain an average value when measuring a noise level that fluctuates over a range of four (4) dB or more. By way of illustration only, a sound level meter set on "slow response" would record a sound level between two (2) and six (6) decibels less than the reading for a steady signal of the same frequency and amplitude when a tone of one thousand (1,000) Hz and for a duration of 0.5 seconds is applied.
- (15) *Sound*: An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression, and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- (16) *Sound amplification system*: Any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound.
- (17) *Sound level*: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.41971 or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall also apply.

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- (18) *Sound level meter*: An instrument which includes a microphone, amplifier, RSM detector, integrator or time averager, output meter and weighting network used to measure sound pressure levels.
- (19) *Sound pressure level*: Twenty (20) times the logarithms to the base 10 of the ratio of the root mean squared (RMS) sound pressure to the reference pressure of twenty (20) microneutons per square meter.
- (20) *Sound source*: Any person, animal, device, operation, process, activity, or phenomenon, which emits or causes sound.
- (21) *Tenant*: One who resides on or has the temporary use or occupation of real property owned by another person. In the case of residential property, “tenant” shall be construed to mean any individual actually residing at the residential location, whether such person is listed on a lease or not.
- (22) *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 any reasonable person of ordinary sensibilities or causes damage to property.

### **Sec. 12-5-3. Standards.**

- (a) Standards, instrumentation, personnel, measurement procedures, and reporting procedures to be used in the measurement of sound shall be as specified in this section, and in administrative directives issued by the city manager.
- (b) Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on “slow” response.
- (c) Sound level meters shall be at least Type II meeting American National Standard Institute (ANSI) S1.4-1971 requirements. Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measurement equipment.
- (d) The city manager shall issue an administrative directive adopting standards and procedures for sound level measurement and enforcement consistent with this chapter.

### **Sec. 12-5-4. Maximum permitted sound levels by use occupancy.**

- (a) The use of sound amplifying equipment is limited to the conditions specified in this section.
- (b) Outdoor amplified sound, including a live musical group or individual using sound amplifying equipment, may be produced only if an authorized agent of the sponsoring business, organization or group has been granted an “outdoor amplified sound permit.” This permit must be signed by a representative of the business, organization or group holding or sponsoring the event at which the outdoor amplified sound will be produced, as well as the applicant if different from the business, organization or group holding or sponsoring the event. Such person, group, organization or business shall be responsible for costs associated with providing security and clean up costs as identified on the permit application.
- (c) Except as allowed in subsection (d) below, no person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which at its peak exceeds the limits set forth for the use occupancy categories in Table 1 when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line. In all cases the maximum sound level permitted by use occupancy shall be determined on the basis of the use occupancy of the property from which the sound originates and not by the use occupancy of any surrounding property. Sound which originates from a dwelling unit in a duplex or other multifamily housing unit shall be measured from any point which is at least twenty-five (25) lineal feet, whether inside or outside a building, from the nearest point of the enclosed or habitable space of the dwelling unit from which the sound originates.

Table 1  
*Sound Levels by Use Occupancy*

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Use Occupancy Category	Time	Sound Level Limit (dB(A))
Residential	7:00 a.m.--11:00 p.m.	60
	11:00 p.m.--7:00 a.m.	55
Public space, commercial or business	7:00 a.m.--11:00 p.m.	65
	11:00 p.m.--7:00 a.m.	60
Manufacturing, industrial or agricultural	At all times	75

(d) Sound levels in excess of the limits established in Table 1 will be permitted in public space, commercial or business space, manufacturing, industrial or agricultural space, but not on residential space, as follows:

Table 2

	Without Permit (dB(A))	With Permit to Exceed (dB(A))
Weekends (Friday 5:00 p.m.--11:00 p.m. Sunday)	70	80
Holidays (as defined in section 12-5-2)(Noon—11:00 p.m.)	70	80

(e) Fraternity houses and sorority houses shall be classified as “residential” use and shall conform to the regulations in Table 1 of subsection (c) above except as provided in this subsection. Each fraternity and each sorority at East Carolina University and Pitt Community College may be granted one (1) “permit to exceed” during the fall and spring academic semesters as defined by the respective catalogs for East Carolina University and Pitt Community College. For the purposes of this subsection, the fall academic semester shall be deemed to begin seven (7) days before the first day of scheduled classes, and shall end seven (7) days after the last scheduled day of exams, and the spring academic semester shall be deemed to begin seven (7) days before the first day of scheduled class and end one (1) day after the scheduled day of commencement as identified in the respective academic calendars or catalog of East Carolina University or Pitt Community College. Permits to exceed allowed under this subsection shall not be transferable from one (1) organization to another, or from one (1) location to another. Applications for permits under this subsection shall be considered under the same criteria as any other application, except that no permit may be issued under this subsection to any fraternity or sorority which had a permit revoked during the immediately preceding semester.

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**Sec. 12-5-5. Nuisance noise.**

(a) In addition to any other violation of this chapter, it shall be unlawful to emit any unreasonably loud, annoying, frightening, loud and disturbing or unnecessary noise. Specifically, it shall be unlawful to emit noise of such character, intensity or duration as to be detrimental to the life or health of any reasonable person of ordinary sensibilities.

(b) In addition to any other violation of this chapter, the following acts are specifically declared to be 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:

- (1) 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.
- (2) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles.
- (3) The playing of any radio, phonograph, CD player, computer generated and/or amplified sound, amplifier, television, tape deck, tape recorder, musical instrument or any other electronically created or amplified sound equipment 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 in any dwelling, hotel, motel or other type of residence.
- (4) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.
- (5) The blowing of any steam whistle attached to any stationary boiler.
- (6) 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 loud or explosive noises therefrom.
- (7) The creation of any excessive noise 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.
- (8) The creation of loud and excessive noise in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates and containers.
- (9) The shouting and crying of peddlers, barkers, hawkers or vendors, which disturbs the quiet and peace of the neighborhood.
- (10) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise.
- (11) The repair, rebuilding or testing of any motor vehicle in any residential district, so as to cause loud or offensive noises to be emitted therefrom during the nighttime hours.
- (12) The creation of excessive 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.
- (13) The keeping or maintaining or permitting 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

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frequent sound, cry, howling, barking, squawking, meowing or other noise, that disturbs the quiet, comfort or repose of any person.

- (14) The operation on public property or on public vehicular areas of any sound amplifier 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 at a distance of thirty (30) feet from the building, structure, or vehicle in which it is located or operated and which because of its volume, level, duration and character annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.
- (15) Yelling or shouting in residential areas during the night-time hours where such yelling or shouting is of such volume, level, and duration as to interfere with the quiet enjoyment of reasonable persons of ordinary sensibilities or annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.

### **Sec. 12-5-6. Exceptions.**

The following are exempt from the provisions of Table 1 and Table 2 of section 12-5-4 and section 12-5-5:

- (1) Sound emanating from scheduled outdoor athletic events.
- (2) Construction operations from 7:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends for which building permits have been issued or construction operations not requiring permits; providing all equipment is operated in accord with the manufacturer's specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition.
- (3) Noise of safety signals, warning devices, emergency pressure relief valves, and all church bells.
- (4) Noise resulting from any authorized emergency vehicle.
- (5) Noise resulting from parades, lawful picketing or other public demonstrations protected by the U.S. Constitution or federal law, or for which a local permit has been granted by the city, provided such activity is of a temporary duration lasting no longer than two (2) hours during any twenty-four-hour period. Regulation of noise emanating from activities under permit shall be according to the conditions and limits stated in this chapter and according to any additional conditions stated on the permit.
- (6) Unamplified and amplified sound at street fairs conducted, sponsored or sanctioned by the city.
- (7) All noises coming from the normal operations of properly equipped aircraft (not including scale model aircraft).
- (8) Noise from noisemakers on holidays and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to Article 54, Chapter 14 of the General Statutes of North Carolina.
- (9) Lawn mowers and agricultural equipment used between 7:00 a.m. and 9:00 p.m. when operated with all of the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition.
- (10) Unamplified and amplified sound at community concerts conducted, sponsored or sanctioned by the city.
- (11) Practice sessions or performances by marching bands.
- (12) Noise from trains and associated railroad rolling stock when operated in proper repair and manner.
- (13) Emergency work, as defined in section 12-5-2.
- (14) Live performances by solo musicians, or solo musicians and one (1) vocalist, with or without amplified sound, in commercial or business uses in the area from Reade Street west to Washington Street and Reade

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Circle north to Second Street, provided that no noise measurement taken at the property line shall exceed ninety (90) (dB(A)).

- (15) Athletic or concert events sponsored by East Carolina University, City of Greenville, or Pitt County Schools.

### **Sec. 12-5-7. Determinations.**

In determining whether a noise is unreasonably loud, disturbing and unnecessary, the following factors incident to such noise are to be considered:

- (1) The time of day.
- (2) The proximity to residential structures, whether the noise is recurrent, intermittent or constant.
- (3) The volume and intensity.
- (4) Whether the noise has been enhanced in volume or range by any type of electronic or mechanical means.
- (5) The character and zoning of the area.
- (6) Whether the noise is related to the normal operation of a business or other labor activity.
- (7) Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

### **Sec. 12-5-8. Permits.**

(a) *Who may apply.* A person or group of persons may produce or cause to be produced sound in excess of the limits set in Section 12-5-4, Table 1 only if a “permit to exceed” has been obtained. With a permit granted pursuant to this section, maximum sound levels shall be as set out in Section 12-5-4, Table 2.

(b) *Application for permit.* Any person or group of persons desiring an “outdoor amplified sound permit” or a “permit to exceed” shall apply as provided in this section, and shall provide all information required. All applications for a “permit to exceed” shall be submitted to the chief of police or his designee at least seventy-two (72) hours prior to the scheduled event; failure to comply with this requirement shall be grounds for denying the permit.

(c) *Action by chief of police.* The chief of police or designee shall act upon all requests for permits. In considering and acting on all requests for permits pursuant to this chapter, the chief of police or designee shall consider, but shall not be limited to, the following in issuing or denying such permit: The timeliness of the application; the nature of the requested activity; previous experience with the applicant; the time of the event; other activities in the vicinity of the location proposed; the frequency of the application; the cultural or social benefits of the proposed activity; the effect of the activity on any residential area of the city and, previous violations, if any, of the applicant. In assessing “other activities in the vicinity” and the frequency of applications in the vicinity, the chief of police or designee shall not issue more than two (2) permits per month within a one thousand-foot radius of each other, or issue permits for events on consecutive weekends (Friday and Saturday) within a one-thousand-foot radius of each other. In considering or acting upon a request for a “permit to exceed” requested by a group other than a fraternity or sorority, the chief of police or designee shall limit permits granted at any specific location to no more than two (2) “permits to exceed” per year.

(d) *Fee for permit.* Every application for a permit or permits shall require a fee, and such fee shall be set out in the Manual of Fees for the City of Greenville.

(e) *Conditions on permits.* “Permits to exceed” and “outdoor amplified sound permits” shall specify the duration for which noncompliance shall be permitted and shall prescribe the conditions or requirements necessary to minimize adverse effects upon the community or surrounding neighborhood. The chief of police or designee may require, but shall not be limited to, the following:

- (1) That no sound speakers may be set up more than ten (10) feet off the ground.

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- (2) That permit holder(s) change the arrangement of amplifying equipment or sound instruments upon the request of any Greenville police officer so as to minimize the disturbance to others resulting from the position or orientation of the amplifying equipment or from atmospherically or geographically caused dispersal of sound beyond the property lines.
- (3) That adjoining property owners surrounding the location proposed as the site of the permitted event be notified by the applicant at least seventy-two (72) hours prior to the scheduled event, and also advised of the time by which cleanup of the area will be accomplished. Notice to the adjoining property owners shall include a statement indicating that comments or concerns regarding the issuance of a permit at the proposed location may be made to the chief of police prior to the event. These conditions are mandatory on all "permit to exceed" applicants, except that neither this subsection nor subsection (6) below shall apply to university-sponsored events approved by the chancellor on university-owned property. For the purposes of the provision of notice to adjoining property owners as required by this subsection, when the location proposed as the site of the permitted event is at or within an apartment complex or other multi-family dwelling development, adjoining property shall include all units within the development which are wholly or partially within one hundred feet of the site of the permitted event and all properties which either abut directly on the external boundary of the development or are only separated from the external boundary of the development by a street or the right-of-way of a street, railroad, or other public service corporation.
- (4) That no permitted event may last more than four (4) hours in duration.
- (5) That no event may extend beyond 11:00 p.m.
- (6) That permit holders hire off-duty Greenville police officers, equipped with noise meters, to monitor compliance of the applicant with the conditions on the permit. The applicant will be required to employ the following number of off-duty Greenville police officers based on the estimated number of persons attending the event:
  - 1--50: one (1) off-duty officer
  - 51--100: two (2) off-duty officers
  - 101 or more: four (4) or more off-duty officers as determined at the sole discretion of the chief of police.

It is the responsibility of the permit holder to ensure that the number of persons actually attending the event do not exceed the estimated numbers specified in the application for determining the number of off-duty officers required at the event.

- (7) That the site of the event, and the area surrounding the site of the event, will be cleaned, by the applicant, of all the trash, litter and debris by 10:00 a.m. the following day, or by sunset of the day of the event if the event ends at least four (4) hours before sunset.
- (8) That misrepresentations, false, misleading or inaccurate information provided in the application for an outdoor amplified sound permit will result in the immediate revocation of the permit and may result in the denial of future permits.
- (9) That applicants and others that may be responsible, according to the terms of the permit application, are responsible for all costs, salaries, and expenses incurred by the city for violations of the permit to exceed the outdoor amplified sound permit.

(f) *Cooperation with police.* Permit holder(s) shall agree to cooperate with the police department in enforcing the noise control ordinance by having the signer(s) of the permit available at the site of the event during the entire time for which a permit has been issued and capable of assisting the police in enforcing the noise control ordinance. Failure of such signer(s) of a permit to be present or to assist the police in complying with the terms of the permit will be cause for immediate revocation of said permit.

(g) *Additional Expenses.* The applicant is responsible for the conduct of those in attendance. If as a result of conduct of those in attendance additional resources from the Greenville Police Department are required, resources from



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the Fire/Rescue Department and/or Public Works Department to address the problems caused or created by those in attendance, the applicant and/or sponsoring organization shall reimburse the city for the additional expenses incurred including but not limited to salary, overtime, fuel, travel and other expenses directly related to the event.

**Sec. 12-5-9. Motor vehicle noise.**

(a) It shall be unlawful for any person to drive, operate, move, or permit to be driven, operated, or moved, a motor vehicle or combination of vehicles at any time in such a manner that the sound level of the vehicle exceeds the levels set forth for that category of vehicles as shown below:

Table 3

*Maximum Motor Vehicle Sound Level in dB(A)*

	Speed Limit 35 mph or Less	Speed Limit 35 mph or More	Vehicle Stationary
Motor vehicle with a gross vehicle weight rating (GVWR) of less than 10,000 pounds	81	85	83
Motorcycle	81	85	83
Motor vehicle with a GVWR of more than 10,000 pounds	89	94	91
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	80	78

(b) Sound levels are to be measured at a distance of twenty-five (25) feet from the nearest lane(s) being monitored and at a height of at least four (4) feet above the immediate surrounding surface.

(c) This section shall apply to the total noise from a vehicle and shall not be construed as limiting or precluding the enforcement of any other provisions of this chapter relating to motor vehicle mufflers or noise control.

(d) Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements under this section.

**Sec. 12-5-10. Mufflers.**

(a) It shall be unlawful for any person to operate or cause to be operated a motor vehicle unless the exhaust system is free from defects, which affect sound reduction.

(b) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repair or replacement, any muffler or sound dissipative device on a motor vehicle.

(c) It shall be unlawful for any person to modify the exhaust system of a motor vehicle by the installation of a muffler cut-out or bypass, and no person shall operate a motor vehicle which has been so modified.

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### **Sec. 12-5-11. Off-road vehicles.**

(a) It shall be unlawful for any person to operate or cause to be operated a recreational off-road motor vehicle individually, in a group, or in an organized racing event, on public or private property in such a manner that the sound level exceeds the maximum permissible levels set forth in section 12-5-9, Table 3, for motorcycles, adjusted to a distance of twenty-five (25) feet from the path of the vehicle when operated on public space, or the boundary private property when operated on private property.

(b) This section shall apply to all recreational vehicles, whether or not duly licensed or registered including, but not limited to, commercial or noncommercial racing vehicles, motorcycles, go-carts, amphibious craft and dune buggies.

(c) Use of such vehicles off-road except for emergency purposes and except to attain access from private property to public rights-of-way, shall be completely prohibited between the hours of 10:00 p.m. and 7:00 a.m.

### **Sec. 12-5-12. Owner responsibility for noise violations.**

(a) No property owner shall allow a noise-related nuisance or health or safety hazard to be created or maintained by or on account of tenants of the property owner. For purposes of this section, a noise-related nuisance or health or safety hazard shall be deemed to exist when a tenant or group of tenants at a specific location receives a third citation for a noise ordinance violation pursuant to this chapter. A property owner may be held liable for the costs of abating the nuisance or remedying the health or safety hazard only if the property owner has been notified in writing of the first two (2) ordinance violations. A property owner shall be liable for the costs of abating the nuisance or remedying the health or safety hazard upon the third and any subsequent action by the same tenant at a specific location, provided the third violation occurs at least fifteen (15) days from the date of actual receipt of notice of the second violation. It shall be a complete defense to a citation under this subsection if the owner of the real property involved can prove that the property owner is actively pursuing an eviction process according to law, and that the eviction process was begun prior to the date of the third or any subsequent violation by the same tenant at a specific location.

(b) Owners, property managers, agents, management companies, employees of the owner, property manager, agent or management companies, and their family members shall be responsible and liable for any violations of this chapter by tenants, guests, or licensees on the premises if the owners, property managers, agents, management companies, employees of the owner, property manager, agent or management companies, or their family members are present at the time of the violation.

(c) Notice of any previous violations pursuant to this section shall be affected by registered or certified mail and by regular mail sent concurrently. Alternately, notice may be affected by personal hand delivery and acknowledgement of receipt by the owner or agent of the owner. If the certified or registered notification is returned, but the regular mail notification is not returned, it will be presumed the addressee received the notification. The burden shall be on the addressee to establish that such notification was not received.

### **Sec. 12-5-13 Violations.**

(a) When it is reasonable and practical to do so, a person believed to be violating any portion of this chapter may be given an oral order to cease or abate the noise immediately, or as soon as is reasonable or practical, prior to being charged with a violation.

(b) If the order to cease or abate the noise is not complied with, the person or persons responsible for the violation may be charged with a violation of this chapter.

### **Sec. 12-5-14. Penalties and Enforcement.**

(a) *Civil penalty.* Any violation of the provisions of this chapter shall subject the offender to a civil penalty in the amount of one hundred dollars (\$100.00). In the event there is more than one (1) violation within any thirty-day period, then the civil penalty shall be increased for each additional violation over one (1) during such period, as follows. The date of the first violation shall establish the beginning date for the initial thirty-day period. The next violation within that thirty-day period shall be considered the second violation. Any violations that follow within that thirty-day period shall be numbered sequentially. The penalty shall be:

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Second offense within same thirty-day period . . . . . \$ 250.00  
Third and subsequent offenses within same thirty-day period . . \$ 500.00

Once the thirty-day period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new thirty-day period. Each subsequent violation that follows more than thirty (30) days from the previous first violation shall be a new first violation for the purpose of establishing a new thirty-day period. Violators shall be issued a written citation which must be paid within seventy-two (72) hours of the issue date and time, which penalty may provide for an additional fifty dollars (\$50.00) delinquency charge for each 72-hour period thereafter upon nonpayment until paid in full. The city attorney, or his designee, is authorized to file suit on behalf of the city to collect any unpaid citations and any delinquency charge, and the police chief, or his designee, is authorized to verify and sign complaints on behalf of the city in such suits. A police officer or other employee authorized by the city manager to enforce the noise control ordinances may issue a citation for violations of this chapter. If litigation is required to recover the penalties and delinquency charges, the city attorney or his designee in addition to the penalties and delinquency charges may recover reasonable attorneys fees and other costs incurred in bringing the action and collecting the judgment.

(b) *Remedies.* This chapter may also be enforced through equitable remedies including but not limited to nuisance abatement procedures as issued by a court of competent jurisdiction.