

DIVISION 2. NOISE*

*State law reference--Authority to regulate noise, G.S. § 160A-184.

Sec. 22-102. Statement of purpose and intent; loud, disturbing noises prohibited, generally.

The provisions hereinafter contained are enacted for the purpose of preventing noise disturbances or unreasonably loud noise and are enacted pursuant to the authority granted in G.S. § 160A-184. Above certain levels or durations and during specific times of day, unreasonably loud noise or noise disturbance is detrimental to health, safety and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment. It is the policy of the town to prohibit noise disturbances or unreasonably loud noise from all sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Cary. Nothing in this Article IV, Division 2 is intended to deter individuals from lawfully exercising the individual right of freedom of speech and commerce, or any other freedom guaranteed under the Constitutions of the United States of America or of the State of North Carolina, and nothing in this Article IV, Division 2 is intended to unreasonably limit or restrain commercial or industrial enterprise.

Subject to the provisions of sections 22-104 through 22-112, it shall be unlawful for any person to create or assist in creating any unreasonably loud, disturbing noise in the town which does frighten, annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of citizens within the Town of Cary or causes damage to property or business within the Town of Cary. Such sounds do not include the ordinary and usual sounds, noises, commotion or vibration incidental to residential living or operation of business or commercial establishments when conducted in accordance with 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.

(Code 1982, § 13-10; Ord. No. 93-29, 5-13-1993; Ord. No. 98-008, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-103. Definitions.

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

Construction shall mean on-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting, landscaping, mixing or pouring concrete, and the operation of vehicles or equipment in connection with such activities.

Disturbing noise shall mean noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of an area.

Emergency work shall mean any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

Motor vehicle or vehicle shall mean any vehicle propelled on land by a motor, including, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, automobiles, motorcycles or buses. It shall exclude trains and emergency response vehicles such as police, fire and rescue vehicles.

Noise control officer shall mean any police officer or other person so designated by the town manager.

Occupied residential structure shall mean any structure that is occupied for residential use or that reasonably appears to be occupied for residential use; it is not necessary that a person be inside the structure at the time an unreasonably loud or disturbing noise is caused or created.

Person shall mean any individual, association, partnership or corporation, including any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.

Unreasonably loud noise shall mean noise which is substantially incompatible with the time and location where created or heard to the extent that it brings about an actual or imminent interference with peace, rest, or good order.

Technical terms:

(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) *Decibel (dB)*: A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

(3) *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.

(4) *Sound pressure level*: 20 times the logarithms to the base 10 of the ratio of the root mean squared (RMS) sound pressure to the reference pressure of 20 micronewtons per square meter.

(5) *Sound-level meter*: An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter and weighting network used to measure sound pressure levels.

(6) *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 apply.

(7) *Slow response*: A measuring technique to obtain an average value when measuring a noise level that fluctuates over a range of four dB or more. By way of illustration only, a sound level meter set on "slow response" would record a sound level between two and six decibels less than the reading for a steadying signal of the same frequency and amplitude when a tone of 1,000 Hz and for a duration of 0.5 seconds is applied.

(8) *Amplified sound*: Any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside or to other dwellings or interior locations under separate ownership or occupancy.

(Code 1982, § 13-11; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-104. Noise measurement.

For the purpose of determining dB(A)'s as referred to in this article, sound levels shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI) or its successor body.

All measurements shall be taken at or within the nearest residential property line occupied by the complainant, unless otherwise stated. For multifamily structures, including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined or do not exist, measurements shall be taken:

(1) from any point abutting the exterior of the complainant's residential unit; or

(2) from any point on the interior of the complainant's residential unit if taking an exterior measurement is impractical or if the noise complained of is emanating from an adjoining unit.

The sound measurement shall be averaged over a period of one minute for purposes of determining the sound level (the "measurement period"). **It shall be a violation of this ordinance for the averaged sound measurement to exceed the prescribed dB(A), or for any sound or noise to exceed the prescribed dB(A) level by three or more decibels at any time during the measurement period.**

(Code 1982, § 13-12; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-105. Exceptions.

The following acts and activities are exempt from the provisions of this article unless such acts produce a risk of serious and unnecessary bodily harm:

(1) *Emergency Work*. Emergency work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril. This emergency exception includes maintenance, backup or upkeep ("maintenance") strictly necessary to keep emergency equipment, such as generators, in operating order as prescribed by the manufacturer, provided such maintenance is done only on weekdays between the hours of 9:00 a.m. and 4:00 p.m., sounds created do not exceed 80 dB(A), the equipment is maintained as far from the property line as reasonably possible to serve its purpose, **and the equipment has all the manufacturer's standard mufflers and noise-reducing equipment intact.**

(2) *Athletic Events*. Sound emanating from outdoor athletic events scheduled by the Town; educational, religious, or other institutions; or organized sports leagues.

(3) *Safety Signals*. Noise of safety signals, warning devices, and emergency pressure relief valves, provided such signals are used in a manner consistent with promoting public health and safety.

(4) *Religious Bells*. Noise resulting from the operation of religious bells or chimes.

(5) *Emergency Vehicles*. Noise resulting from any authorized emergency vehicle.

(6) *Public Demonstrations*. **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 town, provided such activity is of a temporary duration lasting no longer than two hours during any 24-hour period. Regulation of noise emanating from activities under permit shall be according to the conditions and limits stated in this Article IV, Division 2 and according to any additional conditions stated on the permit.**

(7) *Town Sanctioned or Sponsored Events.* Unamplified and amplified sound at street fairs community concerts, other celebrations and events, provided that such event is sponsored or sanctioned by the town.

(8) *Noisemakers and Pyrotechnics.* Noise from noisemakers on holidays and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to G.S. ch. 14, art. 54 (G.S. 14-410 et seq.).

(9) *Aircraft.* All noises coming from the normal operations of properly equipped aircraft, but not including scale model aircraft.

(10) *Lawn Mowers and Landscaping Equipment.* Lawn mowers, landscaping equipment, and agricultural equipment used between the hours of 7:00 a.m. and 9:00 p.m. on Monday through Friday and between the hours of 9:00 a.m. and 9:00 p.m. on Saturdays and Sundays when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work to ready a golf course for play beginning at 6:00 a.m. during the months of April through September and at 7:00 a.m. during the months of October through March. Typical and routine work includes the mowing, blowing and raking of all of the course's playing surfaces, using equipment operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work does not include the use of chainsaws, chippers, shredders or equipment that is used on a sporadic, irregular basis.

(11) *Marching Bands.* Practice sessions or performances by marching bands.

(12) *Railroads.* Noise from trains and associated railroad rolling stock when kept in proper repair and operated in a proper manner.

(13) *Operations of Local Government Employees.* Noise created by the normal operations of the town government, including the work of its contractors.

(14) *Unamplified Recreational Noise.* Unamplified sound originating from recreational activities at public or private recreational, civic or community clubs, and religious institutions, when such noise is created by patrons and/or guests during the legitimate operation of the establishment between the hours of 7:00 a.m. through 9:00 p.m.

(15) *Refuse Collection.* Operating a front-end loader or other truck for refuse collection Monday through Saturday between the hours of 7:00 a.m. and 8:00 p.m.

(16) *Construction Work.* Performing construction work or operating construction machinery Monday through Friday between the hours of 7:00 a.m. and 6:00 p.m. or between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays and holidays which are observed by the state.

(17) *Garages.* Noises created by the ordinary business activities of garages or service stations between the hours of 7:00 a.m. and 9:00 p.m.

(Code 1982, § 13-18; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 2, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-004, 3-10-2005; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-106. Prohibited sounds.

The following actions are hereby declared to be unreasonably loud and disturbing noise in violation of section 22-102, except as provided in section 22-105. This enumeration shall not be construed to be an exclusive list of actions which violate section 22-102, nor shall satisfying any requirements of this section render a sound in itself reasonable:

(1) *Horns or signal device.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other motor vehicle, except as a warning or danger signal; the creation of any unreasonably loud or harsh sound by means of any such horn or signal device, whether or not such device is on any vehicle, and the sounding of any such device for an unnecessary and unreasonable period of time.

(2) *Gongs, bells, and sirens.* The use of any gong, bell or siren upon any motor vehicle.

(3) *Steam whistle.* 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 a warning of danger.

(4) *Exhaust discharge.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat engine, except through a muffler or other device which effectively prevents unreasonably loud and disturbing or explosive sounds therefrom.

(5) *Compressed air devices.* The use of any mechanical device operated by compressed air unless the sounds created are effectively muffled and reduced.

(6) *Chimes, bells, gongs, attached to buildings.* The sounding of any chime, bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity thereof.

(7) *Vendors.* The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of a residential neighborhood.

(8) *Pyrotechnics.* The firing, discharge or ignition of squibs, firecrackers, gunpowder or other pyrotechnics, except with a permit as set forth in section 22-110.

(Code 1982, § 13-13; Ord. No. 93-29, 5-13-1993; Ord. No. 06-020, 12-14-2006; Ord. No. 2013-Code-05,

10-10-2013)

Sec. 22-107. Sounds impacting residential life.

Except as provided in sections 22-105 (exceptions) or 22-109 (relating to amplified noise), it shall be unlawful for anyone to create or cause a sound that exceeds 60 dB(A) affecting any occupied residential structure or unit other than the unit occupied by the person creating the sound.

(Code 1982, § 13-14; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 1, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-011, 8-11-2005; Ord. No. 2012-Code-03, 4-19-2012; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-108. Motor vehicles.

It shall be unlawful to operate or allow the operation of any motor vehicle in the town:

- (1) By engaging in operations which create unreasonably loud and disturbing noises, or
- (2) By playing any radio, tape player, compact disc player or other sound-making device or instrument from within the motor vehicle so that the sound is plainly audible 30 feet away from the vehicle. This subsection shall not apply to motor vehicles used for business or political purposes which, in the normal course of conducting business, use sound-making devices or sound-amplification equipment, so long as such devices or equipment do not register more than 60 dB(A) at or on the edge of the pavement.

(Code 1982, § 13-17; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-109. Amplified sound.

Except in accordance with a permit obtained from the town, or as provided in section 22-110, the following shall be unlawful:

- (1) *Places of public entertainment.* As to places of public entertainment, including, but not limited to, restaurants, taverns and bars, coffeehouses and private clubs, to operate or allow the operation of any sound amplification equipment so as to create sounds registering more than 65 dB(A) affecting occupied residential structures or units between 9:00 a.m. and 9:00 p.m., or 55 dB(A) between 9:00 p.m. and 2:00 a.m., or 40 dB(A) between 2:00 a.m. and 9:00 a.m.
 - (2) *Advertising.* Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which register more than 60 dB(A) at or on the boundary of the edge of pavement of any public right-of-way.
 - (3) *Public right of ways.* Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in the public parks so as to produce sounds registering more than 60 dB(A) at any point 50 feet or more from any electromechanical speaker emitting sound between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) 50 feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.
 - (4) *Other Amplified Sounds.* As to sounds other than those listed in subsections (1)-(3) of this section, to operate or allow the operation of any sound amplification equipment so as to create sounds registering 60 dB(A) or greater affecting occupied residential structures or units between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) or greater between 9:00 p.m. and 9:00 a.m.
- (Code 1982, § 13-15; Ord. No. 93-29, 5-13-1993; Ord. No. 98-009, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-110. Permits.

(a) *Application.* Application for a permit under section 22-106(8) or for additional amplification under section 22-109 shall be submitted in writing to the police department at least 15 working days in advance of the planned use. The application shall designate an individual person or persons who shall be:

- (1) in control of the amplification in the case of a permit for section 22-109;
- (2) in control of the firing or discharge of a gun or pyrotechnics in the case of a permit under section 22-106(8); and
- (3) responsible for seeing that the activity complies with the terms of the permit.

(b) *Notice of tentative approval.* In the case of permits for additional sound amplification pursuant to section 22-109, if the permit is tentatively approved, the applicant shall be responsible for mailing or otherwise delivering to the occupants of each property within a 1,000-foot radius of the property or facility for which the permit has been granted, as shown on the county tax maps, a notice on a form provided by the noise control officer showing the date and hours of the event. The notice shall be delivered at least 72 hours in advance of the event. The permit will not be approved and issued by the town until the applicant submits an affidavit to the noise control officer confirming that such notices have actually been mailed or otherwise delivered.

(c) *Number of hours.* In the case of excess amplification under section 22-109, no permits shall be

issued which shall have the effect of allowing more than 20 hours of excess amplification per year at any place of public entertainment or ten hours of excess amplification at any other location. Permits shall be tentatively approved and subsequently granted by the noise control officer in the order of receipt unless permits for 20 or more hours have previously been issued for the same or other locations within a 1,000-foot radius of the facility in the same calendar year, in which event the applicant shall elect whether to limit his request so as to keep the year's accumulated hours of excess amplification in that location between 20 hours or select another location.

(d) *Not permitted in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 dB(A) at any point on or within the boundary line of the nearest residentially occupied property. For multifamily structures, including apartments, condominiums, or other residential arrangements, and for structures where boundary lines cannot readily be determined or do not exist, measurements shall be taken from any point abutting the exterior of the residential unit.

(e) *Denial; exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, the applicant shall promptly submit a copy of the denied permit application together with a short statement of the reasons the applicant believes he is entitled to a permit to the town manager. The town manager shall have the discretion to grant an exceptional permit waiving locational, time, and/or dB(A) requirements, upon the determination by the town manager that the applicant has made a substantial showing of legal entitlement. Any such exception permit shall be promptly reported to the town council.

(Code 1982, § 13-16; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-111. Responsible party.

(a) Persons responsible for remedying any violation under this Article IV, Division 2 or to be held liable for any civil or criminal penalties under section 22-112 shall be any person who creates or assists in creating the unreasonably loud, disturbing noise or other violation. A person shall be deemed to create or assist in creating the unreasonably loud, disturbing noise or other violation if that person owns, manages, or operates any residence, business, or location at which the noise is generated.

(b) When the noise which violates this Article IV, Division 2 is emanating from a motor vehicle, the violator is the operator of the motor vehicle, and/or the employer of the operator if the motor vehicle is being used for commercial purposes, and/or the person which possesses or controls the motor vehicle used by the operator if the motor vehicle is being used for commercial purposes.

(c) When the noise which violates this Article IV, Division 2 is emanating from construction activities, the violator is the individual doing the activity and/or their employer, the general contractor for the site, or the owner of the property.

(Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-112. Enforcement and penalties.

(a) *Civil penalty.* Violation of this Article IV, Division 2 shall subject the offender(s) to a civil penalty in the amount of \$100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: \$250.00

Third offense within one year: \$500.00

Fourth offense within one year: \$750.00

Fifth and any subsequent offense within one year: \$1,000.00

(1) Once the one year 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 one year period.

(2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer, animal control officer enforcing subject matter jurisdiction, or other employee duly authorized to enforce the noise control ordinances may issue a citation for violations of this article.

(3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:

(a) the gravity of the violation;

(b) any action taken by the violator to correct the violation;

(c) the cost of the action to correct the violation; and

(d) any previous violations committed by the violator, on the same or different site.

(b) *Remedies.* This article may also be enforced through equitable remedies issued by a court of

competent jurisdiction.

(c) *Criminal penalty.* In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.

(Code 1982, § 13-19; Ord. No. 93-29, 5-13-1993; Ord. No. 98-010, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

State law reference--Civil penalties, G.S. 160A-175(c).