

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND
CHAPTER 20 ARTICLE II OF THE CODE OF ORDINANCES- NOISE**

WHEREAS, the City of Hendersonville is desirous of amending and updating provision of the Code of Ordinance regulating noise within the municipal limits of the City, in particular Chapter 20, Article II- Noise; and

WHEREAS, a proposed modifications have been prepared and presented to City Council for consideration; and

WHEREAS, City Council wishes to adopt these modifications as presented.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Chapter 20, Environment, Article II, Noise, of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

CHAPTER 20 - ENVIRONMENT

ARTICLE II. NOISE

Sec. 20-31. Article designated noise control ordinance.

(a) ____ This article shall be known as the "Noise Control Ordinance for the City of Hendersonville."

(b) *Statement of policy. The City of Hendersonville will maintain a peaceful community while recognizing that certain noises are part of acceptable economic and recreational activity in a vibrant community. The goal of the city is to encourage such activity while ensuring that persons in the community are not disturbed by unreasonably loud, raucous or disturbing noise, particularly during time periods when customarily at rest or have a reasonable expectation of peaceful enjoyment of their residences.*

Sec. 20-32. Terminology and methodology.

(a) *Definitions and Terminology. The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context.* All terminology used in this article not defined below shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

- (1) *A-weighted sound level*: The sound pressure level in decibels ~~as is~~ measured on a sound level meter using the ~~A-weighting~~-frequency-weighted network *and slow meter response setting. The level so read is designed* *Sound levels are represented herein by the designation* dB (A).

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

(3) **Nighttime. 10pm – 7am**

(34) *Sound pressure level*: 20 times the logarithm to the base ten of the ratio of the RMS sound of 20 micronewtons per square meter.

(45) *Sound level meter*: An instrument, which includes a microphone, amplifier, RMS detector, integrator, or time-averaged, output meter.

(56) *Sound level*: The weighted sound pressure level ~~obtaining by the use of~~ obtained using a sound level meter and frequency weighted network, such as A, B, or C as specified in American National Standards Institute or the latest approved version thereof) ANSI S1.4-1971, or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(67) *Emergency work*: Any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

(78) *Outdoor amplified sound*: Any sound using amplifying equipment whose sound is outside ~~or whose source is inside, and the sound propagates outside through open doors or windows or other openings in the building.~~

(89) *Sound amplifying equipment*: Any device for the amplification of the human voice, music, or any other sound, including jukeboxes, stereos, and radios.

(10) MSD: A municipal service district established pursuant to North Carolina General Statutes Chapter 160A, Article 23, Municipal Service Districts.

(b) *Methodology- Noise violation based on sound level meters. .It shall be unlawful to create, cause or allow the continuance of any noise that exceeds the decibel limits provided in Section 20-35 below. However, enforcement of this article does not require the use of a sound level meter to determine compliance. When a sound level meter is used to determine sound levels pursuant to this article, the S*standards, instrumentation, personnel, measurement procedures, and reporting procedures ~~to be used in the measurement of sound as provided for in this section shall be those as specified herein:~~ shall be as specified in this section, and all terminology not defined in this section shall be in conformance with the ANSI.

(1) Sound level measurement shall be made with a sound level meter using the “A”-weighting scale, set on “slow” response.

(2) Sound level meters shall be ~~of at least type three meeting American National Standard Institute Incorporated (ANSI) S1.4-1971 requirements. The entire sound measurement system serviced, and~~ calibrated and operated as recommended by the manufacturer. and in accordance with regulations prescribed by the Chief of Police. Persons using the sound level meters ~~s~~ shall be trained in sound level measurement and the operation of sound level measuring equipment.

(3) ~~The chief of police or his designee may adopt standards for sound level measurement and enforcement consistent with this article.~~ Sound level measurements shall be made from within the boundary line of an adjoining or complaining property. Whether the sound level violates the prescribed limits in section 20-35 below will be determined by whether the readings taken within the adjoining or complaining property are in excess of the levels allowed by Section 20-35 below.

(4) Except as specified in subsection (g) below, the sound level measurement shall be averaged over a period of at least one (1) minute for purposes of determining the sound level.

(5) In the case of noise that is impulsive or not continuous, the sound level measurement shall be taken over a period of time of at least one (1) minute. Any such sound or noise that exceeds the prescribed level more than two (2) times in a minute shall be deemed to exceed the prescribed sound levels.

(6) If an officer does not have possession of a department-owned and ANSI-approved sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this article may not be taken using any other device, including but not limited to applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this article in order to determine whether a violation of this ordinance is occurring.

(c) Methodology- In addition to the methodology contained in Section 20-32(b) above, violations of this ordinance (including but not limited to violations of Section 20-33(a) below) may also be determined as follows:

(1) Any police officer responding to a noise complaint may, in the officer's discretion, issue a civil citation or enforce any other penalties under this article if the officer determines that a violation of this ordinance has occurred or is occurring.

(2) An officer does not have to use a sound level meter or actually witness the sound or noise personally in order to take enforcement action under this section. Citations may be issued based upon statements and evidence obtained from complaining witnesses when the officer determines that such evidence is reliable, appropriate, and sufficient. Examples of such evidence may include, but are not limited to, the following: that a person could not hear a person standing next to them speak at a conversational tone or level, or that furniture, windows or floor were rattling or thumping from vibrations created by the noise.

(3) It shall be a violation of this article for any person to communicate a noise complaint to any city staff or official, using the 911 system or otherwise, for the purpose of harassing the subject of the complaint, and knowing or having reason to know that no violation of this ordinance actually exists or existed.

(4) Factors to consider in determining whether a violation of this ordinance has occurred or is occurring include, but are not limited to, the following:

a. The volume of the noise;

b. The intensity of the noise;

c. Whether the nature of the noise is usual or unusual;

d. Whether the origin of the noise is natural or unnatural;

- e. The volume and intensity of the background noise, if any;
- f. The proximity of the noise to residential sleeping facilities;
- g. The density of the inhabitation of the area from which the noise emanates;
- h. The time of the day or night the noise occurs;
- i. The duration of the noise;
- j. Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses; and
- k. Whether the noise is recurrent, impulsive, intermittent, or constant.
- l. Whether the noise exceeds the levels stated in Section 20-35 below.

Sec. 20-33. Noises prohibited, nuisances.

(a) *General prohibitions.* ~~It shall be unlawful to create, cause or allow the continuance of any unreasonably loud, disturbing, or frightening noise, particularly during nighttime which substantially interferes with neighboring residents' reasonable use and enjoyment of their properties.~~ It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continued any loud, raucous and/or disturbing noise, which term shall mean any sound which, because of its volume level duration and/or character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville.

(b) *Specific prohibitions.* In addition the general definition of "loud, raucous and/or disturbing noise" contained in Section 20-33 above, these terms shall be deemed to include the ~~The~~ following acts, which are prohibited and shall be considered nuisance acts:

(1) *Horns and signaling devices.* The intentional sounding of any horn or signaling device of a motor vehicle on any street or public place continuously or intermittently in a manner that would annoy, disturb, or injure the comfort, health or peace of a reasonable person in the vicinity, except as a danger or emergency warning.

~~(2) *Motor vehicles.* Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order to effectively prevent loud or explosive noises therefrom.~~

~~(3)~~ *Exterior loudspeakers.* Operating or permitting the operation of any mechanical device or loudspeaker, ~~without a permit to do so,~~ in a fixed or moveable position exterior to any building or mounted on any aircraft or motor vehicle in such a manner that the sound therefrom is ~~in excess of~~ more than the maximum decibel level as described in section 20-35 of this chapter.

~~(4)~~ *Power equipment.* Operating or permitting the operation of any power saw, sander, drill, grinder, leaf blower, lawn mower, or other garden equipment, or tools of a similar nature, outdoors during nighttime.

~~(5) Explosives. The use or firing of explosives, firearms, fireworks, or similar devices which create impulsive sounds.~~ **(4) Fireworks. Launching or permitting the launching of fireworks during nighttime.**

~~(6) Security alarms.~~ The sounding of a security alarm, for more than 20 minutes after being notified by law enforcement personnel.

~~(7) Dogs and other animals. Allowing one or more dogs or other animals to bark or make disturbing noises continuously or intermittently for more than 30 minutes.~~

~~(8) Motor vehicle speakers or speakers located in or on a motor vehicle.~~ Operating or permitting the operation of any speaker or sound in or on a motor vehicle in such a manner that the sound therefrom is ~~in excess of~~ **more than** the maximum decibel level described in sections 20-35 of this chapter when registered ~~25-10~~ or more feet from the motor vehicle.

(7) Burnouts. Operating or permitting the operation of a motor vehicle or motorcycle in such a manner that the motor vehicle remains stationary and the tires are spun rapidly against a solid surface continuously or intermittently producing loud noise. The friction between the tires and the solid surface typically produces smoke in addition to loud noise.

~~(9) Any business situated within the municipal services district that permits to be played within its building any electronically amplified music or speech, regardless of whether such music is live, shall not permit any door from any street or alley into such building to be or remain open during such amplification except while persons or goods are actively entering or exiting the building through such door, nor shall it permit any window to be or remain open during such amplification.~~

Sec. 20-34. Exceptions.

The following are exempt from the provisions of this article:

- ~~(1) a)~~ Sound emanating from regularly scheduled outdoor athletic events on the campus of local schools.
- ~~(2) b)~~ Construction operations from 7:00 a.m. to 9:10:00 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 due to ownership of the project by an agency of the government; providing all equipment is operated in accord with manufacturer's mufflers and noise-reducing equipment is in use and in proper operating condition.
- ~~(3) c)~~ Noises of safety signals, warning devices, emergency pressure relief valves, and all church bells.
- ~~(4) d)~~ Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- ~~(5)~~ ~~Any other noise resulting from activities of a temporary duration permitted by law, and for which a license or permit therefor has been granted by the city in accordance with section 20-37, below.~~

~~Regulations of noise emitting from operations under a permit shall be according to the conditions and limits stated on the permit and contained above.~~

- ~~(6e)~~ ~~Unamplified and amplified sound at street fairs and parades permitted pursuant to section 46-84 of the Code.~~ **Events which have received a special events permit from City Council.**
- ~~(7f)~~ All noises ~~coming~~ **that come** from the normal operations of properly equipped aircraft (not including scale model aircraft).
- ~~(8g)~~ All noises that come from normal operation of motor vehicles properly equipped with the manufacturer's standard mufflers and in good working order.
- ~~(9h)~~ Noise from lawful fireworks and noisemakers on holidays and at religious ceremonies.
- ~~(10i)~~ Lawn mowers, agricultural equipment, and landscape maintenance equipment **that are** used between the hours of 7:00 a.m. and ~~9~~**10**:00 p.m. when operated with all the manufacturer's standard mufflers and noise-relating equipment in use and **in** proper operating condition.
- ~~(11j)~~ Musical accompaniment or firearm discharge related to military **or law enforcement** ceremonies.
- ~~(12k)~~ ~~Sound amplification equipment used in conjunction with telecommunications systems on business properties to notify employees of that business of incoming phone calls, providing that this system be used only between the hours of 7:00 a.m. and 10:00 p.m. And that any speakers attached to the system be oriented toward the interior of the property.~~ **Fireworks permitted by law, except during nighttime hours.**
- ~~(13l)~~ Emergency work **that is** necessary to restore property to a safe condition following a fire, accident or natural disaster, ~~or~~ to restore public utilities, or to protect persons or property ~~from an~~ **from** imminent danger.
- ~~(14m)~~ Noises resulting from the provision of government services.
- ~~(15n)~~ Noises resulting from the provision of sanitation services between the hours of 7:00 a.m. and ~~9~~**10**:00 p.m.

Sec. 20-35. Maximum permitted sound level.

~~In addition to the requirements of section 20-34, above, and except as otherwise provided herein or in conjunction with special events permits, it shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continue any loud, raucous and disturbing noise, which term shall mean any sound 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 within the limits of the City of Hendersonville. The term loud, raucous, and disturbing noise shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use,~~

~~upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise, or upon the grounds thereof.~~

As provided in Section 20-32(b) above, the sound levels for the source of noise, taken from within the boundary line of an adjoining or complaining property, may not exceed the limits for the category of the complaining property, stated in the table below. As an example, if a house outside of an MSD is located next to a bar (regardless of whether or not the bar is also in the MSD), noise level measurements taken from the house tract for sound generated by the bar cannot exceed the Residential limits stated below.

<u>Maximum Sound Level Readings</u>	
<u>Adjoining or Complaining Property is located Downtown (defined as the Main Street and 7th Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A)</u>	<u>Midnight to 7am: 65 dB(A)</u>
<u>Adjoining or Complaining Property is Residential (including all types or residential properties, but excluding residential properties in the Main Street and 7th Avenue MSDs). Structures or developments containing both residential and nonresidential uses shall be considered residential.</u>	
<u>7am to 10pm: 65 dB(A)</u>	<u>10 pm to 7am: 55 dB(A)</u>
<u>Adjoining or Complaining Property is Nonresidential (including all types of nonresidential properties, but excluding nonresidential properties located in the Main Street and 7th Avenue MSDs)</u>	
<u>7am to midnight: 75 dB(A)</u>	<u>Midnight to 7am: 65 dB(A)</u>

Sec. 20-36. - ~~Motor vehicle noise.~~ Reserved

- ~~(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 or combination of vehicles exceeds 75 db(A) measured at a distance of 25 feet from the nearest lane(s) being monitored and at a height of at least four feet above the immediate surrounding surface.~~
- ~~(b) — 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 article.~~
- ~~(c) — Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements under this section.~~

Sec. 20-37. ~~Permits to exceed limits.~~ Reserved

- ~~(a) — A person or group of persons may produce or cause sound to be produced more than levels authorized in sections 20-35, above, only if a permit to exceed the limit for the time and place of the activity has been obtained.~~
- ~~(b) — Any person or group or persons desiring a permit shall apply as provided herein and shall provide all the information required. All applications shall be submitted to the chief of police or his designer at least 48 hours prior to the scheduled event. Failure to comply with this requirement shall be grounds for denying the permit.~~
- ~~(c) — The chief of police or his designee shall have the authority to take decisive action on all applications for permits specified in this article. In considering and acting on such applications, the chief of police or his 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 nature of the event; other activities in the vicinity of the location proposed; the frequency of the application; the cultural or social benefit of the proposed activity; the effect of the activity on the residential areas of the city; previous violations, if any, of the applicant.~~
- ~~(d) — Permits to exceed limits shall specify the duration for which noncompliance shall be permitted and may prescribe the conditions or requirements necessary to minimize adverse effects upon the community or surrounding neighborhood. The chief of police or his designee may require, but shall not be limited to, the following:~~
- ~~(1) — That no sound speakers shall be set up more than ten feet above the ground.~~
- ~~(2) — That the permit holders change the arrangement of the loudspeakers or the sound instruments to minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically causing the dispersal of sound beyond the property lines.~~
- ~~(e) — Permit holders shall agree to cooperate with the police department in enforcing the noise control article by having signers 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. The failure of the permittee or designees to be present or to assist the police in compliance with this article will result in the revocation of said permit.~~

Sec. 20-38. Violations.

- (a)** Any person who violates any portion of this article shall **be** subject to ~~a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs~~ **the penalties stated in this Section 20-38.** Each failure to obey an order to cease or abate shall constitute a separate violation of this article. **Multiple violations may occur within the same day.** ~~Violation of this section is cause for immediate revocation of a permit to exceed.~~
- (b)** **Repeated violations of this article by the same person, or repeated violations at the same address, within a 12-month rolling period shall be subject to civil penalties as follows:**
- (1)** **First violation: \$250.00**

(2) Second violation: \$500.00

(3) Third violation: \$750.00

(4) Fourth and all subsequent violations: \$1,000.00 per offense

(c) The 12-month rolling period is defined as the 12 months immediately preceding the violation. For example, for a violation of this article occurring on January 7, all violations occurring on or after January 8 of the preceding year shall be included for purposes of calculating civil penalties under this subsection.

(d) Any person who willfully fails to comply with the directive of a law enforcement officer to come into compliance with this article shall be subject to a civil penalty of \$1000.00. Violation of this subsection shall constitute a separate violation of this article.

(e) In addition to the remedies stated herein, the City may enforce the provisions of this article by appropriate equitable remedies as outlined in sections 1-6. Violations of this article shall not constitute a crime.

(f) Violation of the following sections of this Article, including all subsections, sub-subsections, sub-sub-subsections, and all other paragraphs, shall constitute a Class 3 misdemeanor, and shall subject the offender to a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs.

(1) Section 20-32. Terminology and methodology.

(2) Section 20-33. Noises prohibited, nuisances.

(3) Section 20-35. Maximum permitted sound level.

Sec. 20-39. Owner and occupant responsibility.

(a) Penalties for violations of this article may be assessed against any of the following:

(1) Persons who are responsible for or in control of the premises on which the violation occurs, _____ including but not limited to a business owner, an onsite manager or supervisor, or a tenant.

(2) Persons in possession or control of any device producing or causing the violation.

(3) The owner of the premises on which the violations occur.

(b) An owner of any premises, as well as any person responsible for or in control of such premises, shall be responsible for and may be held in violation of this article for, actions of tenants, guests, or other licensees that constitute violations of this article. This subsection shall not be interpreted to relieve any other person from responsibility for violations of this article.

Adopted on the first reading of the City Council of the City of Hendersonville, North Carolina on the 5th day of January, 2023, and adopted on the second reading of the City Council of the City of Hendersonville, North Carolina on the ____ day of _____, 2022.

[Not to be signed until after passing the second reading.]

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Becker, City Attorney