

**AN ORDINANCE TO AMEND ARTICLE III. NOISE OF CHAPTER 26 “ENVIRONMENT” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN**

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect certain revisions to Article III. Noise of Chapter 26 “Environment” of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN

SECTION 1. That Article III. Noise of Chapter 26 “Environment” of the Code of Ordinances of the City of New Bern be and the same is hereby amended by deleting Article III. Noise of Chapter 26 in its entirety and inserting in its stead the following:

**“ARTICLE III. NOISE**

**Sec. 26-66. Statement of purpose and intent.<sup>1</sup>**

(a) It is recognized that above certain levels or durations and during specific times of day, unreasonably loud and disturbing noise is detrimental to health, safety and welfare of the citizenry and the individual’s right to peaceful and quiet enjoyment. It is further recognized that a substantial body of science and technology exists by which unreasonably loud and disturbing noise may be measured and substantially abated.

(b) 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. It is the policy of the city 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 the City of New Bern.

(c) Nothing in this Article 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.

**Sec. 26-67. Definitions.**

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this chapter shall have the meaning indicated below:

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<sup>1</sup> State Law reference – Authority to adopt ordinances and regulations to promote and protect the health, welfare and safety of its citizens, G S 160A-174, Authority to regulate, restrict or prohibit the production or emission of noises or amplified speech, G S 160A-184

*Amplified sound.* Any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power

*A-weighted sound level.* The sound pressure level in decibels as measured on a sound level meter using the A-weighted network; sound levels are represented herein by the designation, “dB(A)”

*Commercial zone.* Any area within the city that is zoned C-1, C-2, C-3, C-3H, C-4, C-5, C-5A and C-6

*Construction.* Erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

*Daytime hours* 7 00 a.m to 10:00 p.m., local time.

*Decibel (also dB)* 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 (20 micronewtons per square meter).

*Industrial zone.* Any area within the city that is zoned I-1 and I-2.

*Motorized vehicles* Generally—Any vehicle as defined in G S 20-4 01(49) including but not limited to

- a. Excursion passenger vehicles as defined in G S 20-4 01(27)a.
- b. Common carriers of passengers as defined in G S 20-4 01(27)c.
- c. Motorcycles and mopeds as defined in G S 20-4 01(27)d. and d.1
- d. Truck tractors as defined in G S 20-4 01(48).
- e. Farm tractors as defined G S 20-4 01(11)

*Music.* The science or art of ordering tones or sounds in succession, in combination, and in temporal relationships to produce a composition having unity and continuity For purposes of this definition, the term includes music produced by any means whether recorded or live, or amplified or not.

*Nighttime hours* 10:00 p.m. to 7 00 a.m., local time.

*Noise.* Any sound or combination of sounds which, because of its volume or quality, tends to disturb reasonable persons of normal sensitivity or to interfere with normal human activity

*Person.* Any individual, association, firm, partnership or corporation.

*Person responsible* An owner, occupant, employee, agent, or any other person who is or who appears to be responsible for a premises, dwelling, or business, or a noise-producing machine or device.

*Residential zone.* Any area within the city that is zoned A-5, A-5F, R-20, R-15, R-10, R-10Z, R-8 and R-6

*Sound.* Any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by persons of normal sensitivity

*Sound level.* The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, as specified by the American National Standards Institute (ANSI) standards for sound level meters. If the frequency weighting employed is not specified, the A-weighting shall apply

*Sound level meter* An instrument for measuring the intensity of noise, music, and other sounds. Such instrument shall be certified to meet or exceed the current standards of the American National Standards Institute.

#### **Sec. 26-68. Sound level allowances.**

(a) Except as set forth in this article, it shall be unlawful during the hours identified for any person to cause or allow the emission of amplified sound or music from any source or sources which, when measured pursuant to the procedure outlined by this section, to exceed the maximum decibel limits as follows.

<u>Zone</u>	<u>Time (Weekdays*)</u>	<u>dB(A) Limit</u>	<u>Time (Weekends**)</u>	<u>dB(A) Limit</u>
Residential	7:00 a.m. to 10:00 p.m.	60	7:00 a.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	55	10:00 p.m. to 7:00 a.m.	55
Commercial	7:00 a.m. to 10:00 p.m.	70	7:00 a.m. to 11:00 p.m.	70
	10:00 p.m. to 7:00 a.m.	55	11:00 p.m. to 7:00 a.m.	55
Industrial	7:00 a.m. to 10:00 p.m.	70	7:00 a.m. to 10:00 p.m.	70
	10:00 p.m. to 7:00 a.m.	65	10:00 p.m. to 7:00 a.m.	65

\* Weekdays (Sunday through Thursday)

\*\* Weekends (Friday and Saturday)

(b) Notwithstanding the location of multi-family structures, such structures shall have dB(A) limits between units that are 10 dB(A) lower than those located in residential zones.

(c) Amplified sound and music that does not exceed the allowable sound levels set forth in section 26-68 shall not constitute loud and disturbing noises in violation of section 26-70

#### **Sec. 26-69. Sound measurement standards and procedures.**

(a) In determining sound levels pursuant to this article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified herein. All terminology not specifically defined in this article shall be in conformance with the American National Standards Institute (ANSI).

(1) *Sound level meter.* Sound level measurement shall be made with at least a Type II sound level meter meeting ANSI standards using the A-weighted scale, set on “slow” response.

(2) *Calibration.* All sound level measuring devices must be calibrated consistent with the standards set by the manufacturer. The sound level meter shall be calibrated before obtaining a sound measurement, and after obtaining the three (3) sound readings required in subsection (7).

(3) *Persons using sound level meters.* Persons using sound level meters shall be trained in sound level measurement and the operation of the specific sound level measurement equipment being utilized.

(4) *Measurement location.* Measurement of sounds shall be made at or beyond the property line of the property from which the sound originates. For purposes of outdoor sound 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. Sound measurements shall be made at a height of at least four (4) feet above the ground and at approximately ten (10) feet away from any walls, barriers, and obstructions such as trees and shrubs. For noises generated within multi-family or multi-tenanted structures, sound level measurements shall be measured from inside the complainant’s unit. The sound level measurement shall be taken at the location closest to the center of the room where the noise is heard, and shall be made at least four (4) feet from the floor. In all cases, the sound level meter shall be held at arm’s length straight in front of the operator’s body with the microphone pointed to measure the sound from the source as recommended by the manufacturer.

(5) *Background noise.* Traffic sound, sound from other sources, and sustained background sound shall be taken into consideration when taking a sound measurement. Should background noise interfere with a sound reading during the measurement period established in subsection 7, the operator shall note the background noise interference in the data documentation and commence a new sound measurement. This process may be repeated until the operator is satisfied that background noise is not interfering with the sound measurement from the sound source.

(6) *Separation from other individuals.* No individuals other than the operator shall be within ten (10) feet of the sound level meter during the measurement period.

(7) *Measurement period.* The operator shall capture a minimum of three (3) sound readings for a duration of fifteen (15) seconds per reading within a three-minute period. The highest sound level captured during any fifteen (15) second sound reading within a three-minute period shall be considered the sound level for purposes of determining compliance with this article.

(b) The chief of police shall have the authority to issue additional measurement procedures necessary to carry out the sound measurement procedures consistent with this article.

(c) *Data documentation.* A record of all sound level measurements shall be completed by the person making the measurements regardless of whether a civil penalty is imposed. The record shall include:

- (i) Date
- (ii) Time of measurement
- (iii) Location (Street address if possible of noise source and point of measurement)
- (iv) Noise source
- (v) Name, model and serial number of sound level meter, and date of calibration
- (vi) Field results
- (vii) Name of complainant (if available)
- (viii) Background noise interference that causes a repeated sound reading

(d) It shall be unlawful for any person to interfere, through the use of sound or otherwise, with the taking of sound level measurements.

#### **Sec. 26-70. Loud, disturbing noises prohibited.**

(a) It shall be unlawful for any person to create or assist in creating any unreasonably loud, disturbing noise in the city which does frighten, annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of citizens within the city, causes damage to property or business within the city, or disturbs a reasonable person of normal sensitivity. 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. To determine whether a noise or sound constitutes a violation of this subsection, the following factors incident to such noise are to be considered.

- (1) The volume and intensity of the noise;
- (2) Whether the nature of the noise is usual or unusual,
- (3) Whether the origin of the noise is natural or man-made;
- (4) The volume and intensity of the background noise, if any;
- (5) Whether the noise occurs during daytime or nighttime hours,
- (6) Proximity to residential areas,
- (7) Whether the noise is recurrent, intermittent or constant;
- (8) Whether the noise has been enhanced in volume or range by any type of mechanical means, and
- (9) The nature and zoning of the area.

(b) The following acts are specifically declared to be unreasonably loud, annoying, frightening, loud and disturbing noises, the emission of which shall be unlawful. The following 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 use of any automobile, motorcycle or other motorized vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.

(4) The blowing of any steam whistle attached to any stationary boiler

(5) 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.

(6) The creation of any excessive noise on any street adjacent to any school, church, 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.

(7) 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.

(8) The shouting and crying of peddlers, barkers, hawkers or vendors, which disturbs the quiet and peace of the neighborhood.

(9) 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.

(10) 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 between the hours of 11:00 p.m. and 7:00 a.m.

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

(12) Yelling, shouting, hooting, whistling, or singing on the public streets, or congregating or participating in any party or gathering of people particularly during nighttime hours or at any time or place where such noise 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.

(c) Amplified sound and music that does not exceed the allowable sound levels set forth in section 26-68 shall not constitute loud and disturbing noises in violation of section 26-70

#### **Sec. 26-71. Exceptions.**

The following acts or activities are exempt from the provisions of this article:

(1) The use of a permanently installed loudspeaker or public address system at railroad and bus stations to announce the arrival and departure of trains and buses.

(2) The use of a permanently installed loudspeaker or public address system at athletic stadiums to announce athletic events.

(3) Musical chimes or the sounding of bells emanating from public or religious institutions or facilities.

(4) Sounds emanating from any authorized emergency vehicle responding to an emergency or acting at the time of an emergency

(5) Noise sources associated with or created by construction, repair, remodeling, demolition, grading, or maintenance of any real property, provided such activities do not take place between the hours of 9:00 p.m. and 7:00 a.m. on weekdays or weekends. Such activities associated with a municipal construction project may take place between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and Saturday, or at any time on Sunday, if such work is required to protect the public's health and safety, or if the board of aldermen determines that performing such activities during the restricted hours is in the public interest.

(6) Noise emanating from any burglar alarm or security device on any building, dwelling or vehicle, provided such noise terminates within 30 minutes of being activated.

(7) Parades and public assemblies permitted pursuant to section 66-86, properly permitted or sanctioned public entertainment or sporting events, sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above.

(8) All noises coming from the normal operations of properly equipped aircraft (not including scale model aircraft)

(9) All noises coming from normal operation of motorized vehicles properly equipped with the manufacturer's standard mufflers and noise-reducing equipment.

(10) Warning devices required by OSHA or any local, county, state or federal safety regulations.

(11) Noise from properly permitted fireworks.

(12) Noise resulting from the provision of street cleaning, sanitation and recycling services.

(13) Musical accompaniment or firearm discharge related to military ceremonies.

(14) Emergency work necessary to maintain public safety, or to restore property to a safe condition following an accident or natural disaster, or to restore public utilities and infrastructure following an accident or natural disaster, or to protect persons or property from an imminent danger

(15) Noise resulting from the provision of government services necessary to operate and maintain the public infrastructure.

(16) Noise resulting from local government generators provided such generators are properly equipped with the manufacturer's standard mufflers and noise-reducing equipment.

(17) Noise resulting from generators operating during periods of electric power outages provided such generators are properly equipped with the manufacturer's standard mufflers and noise-reducing equipment.

(18) Free live performances by musicians on public property, with or without amplified sound, within the C-1 and C-2 zoning districts between noon and 9:00 p.m. provided that the sound measurement taken at least twenty-five (25) feet from the source of the noise does not exceed 70 dB(A), and between of 9:00 p.m. and noon provided that the sound measurement taken at least twenty-five (25) feet from the source of the noise does not exceed 55 dB(A)

(19) Any activity to the extent regulation thereof has been preempted by state or federal law

#### **Sec. 26-72. Responsible Party.**

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

(c) When the noise which violates this article is emanating from a motorized vehicle, the violator is the operator of the motorized vehicle, and/or the employer of the operator if the motorized vehicle is being used for commercial purposes, and/or the person which possesses or controls the motorized vehicle used by the operator if the motorized vehicle is being used for commercial purposes.



(d) When the noise which violates this article 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

#### **Sec. 26-75. Enforcement and penalties.**

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

(b) Violation of this article shall subject the offender(s) to a civil penalty in the amount of \$250.00. 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: \$500.00

Third offense within one year: \$750.00

Fourth offense within one year: \$1,000.00

Fifth and any subsequent offense within one year: \$1,250.00

(c) 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.

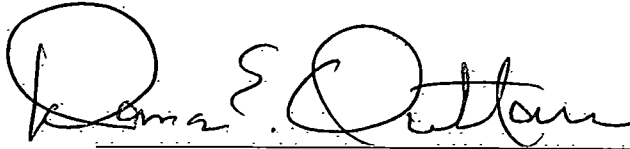
(d) Violators shall pay any issued penalty within ten (10) days of the issue date as directed on the written citation. The city attorney, or designee, is authorized to file suit on behalf of the city to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the city in such suits. A police officer, or other employee duly authorized to enforce the noise control ordinances may issue a citation for violations of this article.

(e) Any person issued a civil penalty under the provisions of this section may appeal by filing an appeal in writing with the police department within ten (10) calendar days after the civil penalty citation is issued. The written appeal shall state all reasons that the civil penalty was wrongly applied and shall include all supporting documentation that the appellant contends supports the appeal. If a person files a written appeal within the time provided in this section, the penalty being appealed shall be stayed pending the decision of the chief or arbitrator. Unless the chief of police decides to allow the requested relief based on the appeal request, the chief of police shall send each appeal request to arbitration. The chief of police shall select an arbitrator other than an employee of the city. The arbitration shall be conducted, to the extent practicable, in accordance with the Supreme Court Rules for Court-Ordered Arbitration in North Carolina. The arbitrator shall be paid a fee equal to the maximum fee specified in such rules with such fee paid equally by the parties as provided therein. The arbitrator shall issue a written determination, within a reasonable time, stating whether the disputed civil penalty will be approved without change or modified or reversed. All decisions of the chief of police and arbitrator shall be served on the petitioner.

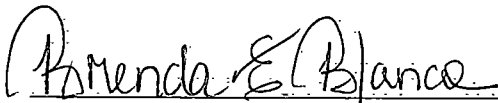
(f) This chapter may also be enforced through equitable remedies including but not limited to nuisance abatement procedures as issued by a court of competent jurisdiction.

This ordinance shall be effective from and after the date of its adoption.

ADOPTED this 11<sup>th</sup> day of August, 2020

A handwritten signature in black ink, appearing to read "Dana E. Outlaw", written over a horizontal line.

DANA E. OUTLAW, MAYOR

A handwritten signature in black ink, appearing to read "Brenda E. Blanco", written over a horizontal line.

BRENDA E. BLANCO, CITY CLERK