

ORDINANCE NO. 4663

AMENDING CHAPTER 15

**AN ORDINANCE AMENDING CHAPTER 15 OF THE CHARLOTTE CITY CODE
ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS"**

WHEREAS, the City Council has not conducted a review of the City's Noise Ordinance in over 25 years; and

WHEREAS, several issues related to noise and the Noise Ordinance have been identified by the Charlotte Mecklenburg Police Department and in the community; and

WHEREAS, the Council referred the Noise Ordinance to the Community Safety Committee which, over a period of approximately sixteen months, reviewed the current ordinance, considered issues and problems with the current ordinance, received and reviewed two draft proposed amended ordinances, heard public comment and received emails and other communications from citizens, and ultimately recommended this Ordinance to the full Council; and

WHEREAS, the Council finds that the staff-prepared "City of Charlotte Noise Ordinance Report" accurately describes identified issues, research from other cities, the Committee's process, and the proposed amendments to the Noise Ordinance; and

WHEREAS, the Council finds that some individuals and groups produce amplified sound in the public rights-of-way late at night and that such sound has unreasonably disturbed guests in hotels and citizens in their homes, that some individuals and groups amplifying sound in the public rights-of-way elevate their speakers in a manner that makes it difficult to measure the sound at the specified ten feet, and that some individuals who request amplified noise permits do not actually attend the event for which the permit was requested thereby making it difficult to enforce the ordinance against the permit holder; and

WHEREAS, the Council finds that in some locations of the city the legitimate desire for vibrant nightlife and entertainment options conflicts with the quiet enjoyment of residential life, that some businesses have offered outdoor amplified and live music at times and at a noise level that is other than neighborly, that due to ambient noise and other factors it is often difficult to enforce the current ordinance in a manner that strikes an appropriate balance, and that establishments that refuse to cooperate or demonstrate that they cannot or will not operate in a manner that is respectful of their neighbors should be subject to heightened enforcement including potentially a prohibition on outdoor music and amplified noise; and

WHEREAS, the Council finds that the current regulations do not appropriately regulate large outdoor music facilities which are located, designed, and operated such that tailored regulations that take into account the unique aspects of the facility and surrounding community are warranted; and

WHEREAS, the Council finds that "one size fits all" rules do not always work for unanticipated and unique commercial and industrial noise-producing activities and, therefore, a process for developing a tailored mitigation plan allows for flexibility and creativity in striking an appropriate balance between the legitimate needs of the noise producing business and the surrounding community.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Article II of Chapter 15 of the Charlotte City Code is amended as follows:

"Sec. 15-61. - Loud, disturbing noises prohibited generally.

It shall be unlawful for any person to create or assist in creating any unreasonably loud and disturbing noise in the city.

Sec. 15-62. - Measurement.

For the purpose of determining db(A)s as referred to in this article, the noise 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.

Sec. 15-63. - Sounds impacting residential life.

(a) It shall be unlawful to carry on the following activities in any residentially zoned area of the city or within 300 feet of any residentially occupied structure in any zone of the city:

- (1) The operation of a front-end loader for refuse collection between the hours of 9:00 p.m. and 7:00 a.m.
- (2) The operation of construction machinery between the hours of 9:00 p.m. and 7:00 a.m.
- (3) The operation of garage machinery between the hours of 9:00 p.m. and 7:00 a.m.
- (4) The operation of lawn mowers and other domestic tools out-of-doors between the hours of 9:00 p.m. and 7:00 a.m.

(b) Any mechanical noise other than that regulated in subsection (a) which registers more than ~~60~~ 70 db(A) at the nearest complainant's property line ~~will be probable cause for~~ is a violation.

(c) This section shall not apply to ~~operations which are carried on in such a manner or in such a location as not to create sounds exceeding 60 db(A) and shall not apply to:~~

- (1) emergency operations designed to protect the public health and safety; or
- (2) work by City crews or City contractors in a right-of-way or utility easement when the department responsible for the work has determined that it is necessary to undertake the work between the hours of 9:00 p.m. and 7:00 a.m.:
 - (A) in order to avoid unreasonably impacting the flow of traffic (this determination shall be made in consultation with the Charlotte Department of Transportation);
 - (B) in order to avoid unreasonably disrupting the provision of a utility service;
or
 - (C) because of a North Carolina Department of Transportation requirement.

Sec. 15-64. - Amplified sound.

- (a) It shall be unlawful to:
 - (1) Operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 db(A) ~~between 9:00 a.m. and 9:00 p.m.~~ 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday or 50 db(A) ~~between 9:00 p.m. and 9:00 a.m. at any other time~~, as measured anywhere within the boundary line of the nearest residentially occupied property, ~~except in accordance with a permit obtained from the Charlotte-Mecklenburg Police Department.~~
 - (2) As to multifamily structures including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined, operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 db(A) ~~between 9:00 a.m. and 9:00 p.m.~~ 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday or 50 db(A) ~~between 9:00 p.m. and 9:00 a.m. at any other time~~, as measured from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property, ~~except in accordance with a permit obtained from the Charlotte-Mecklenburg Police Department.~~

- (3) ~~As to places of public entertainment having a capacity of 1,000 or more persons, operate or allow the operation of any sound amplification equipment so as to create sounds registering more than 65 db(A) between 9:00 a.m. and 9:00 p.m. or 50 db(A) between 9:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the Charlotte-Mecklenburg Police Department.~~
- (4) ~~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 nearest public right-of-way or park.~~
- (5) ~~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) 50 feet or more from any electromechanical speaker 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.~~
- (6)(3) Operate or allow the operation for personal use of any sound amplification equipment in the public right-of-way, including streets or sidewalks, or in the public City controlled parks: (i) without having actual on-site possession of a permit issued by the Charlotte-Mecklenburg Police Department; or (ii) so as to produce sounds registering more than 75 db(A) ten feet or more from any electromechanical speaker between the hours of 9:00 a.m. and 9:00 p.m. 8:00 a.m. and 9:00 p.m. Sunday through Thursday or between 8:00 a.m. and 11:00 p.m. on Friday or Saturday or 65 db(A) ten feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.; or (iii) at times other than those specified in (ii). Sound amplification equipment operated pursuant to this subsection may not be located more than ten feet off the ground. In addition to the person operating or allowing the operation of sound amplification equipment in violation of this subsection, the person to whom the permit was issued must be present at the location and during the times permitted and shall be liable for any and all violations.

An application for a permit pursuant to this subsection shall: (i) be submitted to the Charlotte-Mecklenburg Police Department at least 24 ~~hours one full business day~~ but no more than seven calendar days before the permit time requested; and (ii) specify the proposed location of the sound amplification equipment and the date and time that the sound amplification will begin and end. Permits shall be issued on a first come, first served basis. A permit shall not be issued for a location that is within 100 feet of another location for which a permit has been

issued for the same time or in or within 100 feet of the area permitted for a public assembly pursuant to Article XI of this Chapter unless issued to the holder of the public assembly permit.

The use of mobile sound amplification equipment (e.g., a car radio, unless the vehicle is parked) shall be exempt from the permitting requirement of this subsection and the prohibition of (iii) in the first paragraph of this subpart, however sounds produced during the times otherwise prohibited in (iii) in the first paragraph of this subpart may not register more than 60 db(A) ten feet or more from the equipment. Sound amplification produced in conjunction with a city festival or parade public assembly permit shall be exempt from this entire subsection.

(b) The limitations on the operation of sound amplification equipment in subsection (a) of this section shall not apply to the operation of horns, sirens, or other emergency warning devices actually being used in emergency circumstances, or to the operation of sound amplification equipment regulated pursuant to Sec. 15-65.1 or in accordance with a permit issued pursuant to Sec. 15-65 or Sec. 15-65.2.

Sec. 15-65. - Permits for additional amplification.

(a) *Application.* ~~The An~~ application for a permit for additional amplification on private property under this section 15-64 shall be submitted to the Charlotte-Mecklenburg Police Department at least ~~15 working~~ 10 business days in advance of the planned use ~~except in an emergency.~~ The application shall designate and provide contact information for an individual person who shall be in control of the sound amplification equipment and ensure that its use complies with the terms of the permit. Activities regulated under Sec. 15-64(a)(3) and Sec. 15-65.1 shall not be eligible for an additional amplification permit under this section.

(b) *Notice of tentative approval.* Upon tentative approval, the applicant for a permit shall be responsible for ~~mailing or otherwise delivering to~~ giving written notice of the name, nature, date, and time period of the event, and the name of and contact information for the permit holder to the occupants of each property within a ~~1,000-foot radius~~ 1,000 feet of the facility property for which the permit has been granted, ~~as shown on the tax maps of the county, a notice stating the date and hours of the event.~~ The notice shall be hand delivered to each occupant or, if the occupant is unavailable, affixed to the front door of the building or business or residential unit at least 72 hours in advance of the event. The permit shall not be actually granted and issued until the applicant submits an affidavit to the Charlotte-Mecklenburg Police Department that such notices have actually been ~~mailed or otherwise~~ so delivered.

(c) *Limits on hours.* ~~No permit 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 having a capacity of 1,000 or more persons or ten hours of excess amplification at any other location. Permits shall be tentatively approved and subsequently granted by the Charlotte-Mecklenburg~~

~~Police Department 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 below 20 hours or select another location. Permits for additional amplification at a property, or adjacent properties under common ownership, shall be limited to 15 hours in a calendar year. Permits issued pursuant to this section may allow additional amplification only between 8:00 a.m. and 9:00 p.m. Sunday through Thursday and between 8:00 a.m. and 11:00 p.m. on Friday or Saturday.~~

(d) ~~*Prohibited in residentially occupied boundaries*~~*Sound limits.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 db(A) anywhere within the boundary line of the nearest residentially occupied property.

(e) ~~*Denial; issuance of 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, he shall promptly submit a copy of the denied permit application together with a short statement of the reasons he believes he is entitled to a permit to the city manager or his designee. The city manager or his designee shall have the discretion to grant an exceptional permit waiving locational, time, and/or db(A) requirements, upon his determination that the applicant has made a substantial showing of legal entitlement. Any such exceptional permit shall be promptly reported to the city council.

(f) It shall be unlawful to violate the restrictions or requirements of this section or the terms of a permit issued pursuant to this section.

Sec. 15-65.1 – Outdoor Amplification and Music at Commercial Establishments.

(a) Except in accordance with a permit issued pursuant to Sec. 15-65.2, it shall be unlawful for any commercial establishment (including but not limited to a restaurant, bar, or nightclub) to operate or allow the operation of sound amplification equipment out of doors or directed out of doors or to allow live acoustic music out of doors or directed out of doors other than during the times listed below or so as to create sounds registering in excess of:

- (a) 85 db(A) Sunday through Thursday between 8:00 a.m. and 9:00 p.m.;
- (b) 60 db(A) Sunday through Thursday between 9:00 p.m. and 2:00 a.m. the following day;
- (c) 85 db(A) Friday or Saturday between 8:00 a.m. and 11:00 p.m.; or
- (d) 60 db(A) between 11:00 p.m. and 2:00 a.m. the following day.

An establishment may be cited for violating this section only if the enforcing authority determines that the sound being produced is, using a reasonable person standard and taking into consideration the day of week and time of day, unreasonably loud and disturbing to the quiet enjoyment and use of residentially occupied property. For purposes of this section, hotels, motels, other short-term accommodations shall be considered residentially occupied property.

(b) The decibel limits prescribed in this section shall be measured at the property line of the commercial property at which the sound is being generated.

(c) An establishment that has been determined to be Non-Cooperative pursuant to Sec. 15-65.3(e) shall be subject to enhanced civil penalties pursuant to Sec. 15-68(5) and, after two violations of this Section within one year after having been determined to be Non-Cooperative shall not operate or allow the operation of sound amplification equipment out of doors or directed out of doors or allow live acoustic music out of doors or directed out of doors for a period of eighteen months after the second violation. The eighteen month prohibition shall apply to the establishment and the property on which the establishment is located.

Sec. 15-65.2. – Permits for Large Outdoor Music Facilities.

(a) For purposes of this section, a “Large Outdoor Music Facility” means a facility with a capacity of 1,000 or more persons and that offers musical entertainment at least five times a year.

(b) A Large Outdoor Music Facility may, but is not required to, submit an application for a Large Outdoor Music Facility permit to Neighborhood & Business Services (N&BS). After consulting with the applicant and investigating the design and layout of the facility, its proximity to residentially zoned property, and the nature of any intervening property, N&BS shall issue a permit that contains restrictions and requirements designed to strike an appropriate balance between the legitimate use and operation of the facility and the noise impacts on residential life. These restrictions and requirements may include, but are not limited to, restrictions on days of week or hours of operation, number of events, operational rules and restrictions, self monitoring and reporting requirements, and design or structural requirements. Permits issued pursuant to this section shall be for a term of not more than one year and shall expire on December 31. In the event that Neighborhood & Business Services (N&BS) determines that the facility’s approved zoning plan adequately regulates the use and operation of the facility in terms of its potential noise impact on residential life, N&BS may incorporate the zoning plan into a permit.

(c) A facility that has been issued a permit pursuant to this section shall not be subject to the provisions of Sec. 15-65.1.

(d) It shall be unlawful for a Large Outdoor Music Facility to violate the terms of a permit issued pursuant to this section.

Sec. 15-65.3. – Chronic Commercial and Industrial Noise.

(a) The purpose of this section is to establish a collaborative process through which the City and a business that has been identified as a chronic source of objectionable noise (i.e., “Chronic Noise Producer”) will develop and implement a noise mitigation plan intended to bring the noise to acceptable levels. A Chronic Noise Producer is an establishment that, because of the sound generated by or at the business, is an annoyance to adjacent or nearby residences, lodgings, schools, businesses, or other places where people may congregate with a reasonable expectation of undisturbed activity. A business may be a Chronic Noise Producer without having violated this Article.

(b) The Chief of Police (or designee) may designate a commercial or industrial business as a “Chronic Noise Producer”. In making such a designation, the Chief of Police shall take into consideration the following factors:

- i. the number and frequency of valid noise complaints;
- ii. the proximity and physical relationship between the business and complaining locations;
- iii. the severity of sound events, both observed or measured;
- iv. the times and days of the week of sound events;
- v. the business’ history of cooperation and efforts to alleviate the problem; and
- vi. the history and context of the location, including whether the sound producing activity predates the occupation of the complaining locations and whether the sound producing location is located in what is generally recognized as an entertainment area.

Upon designation, the Chief of Police shall inform the business that it has been designated a chronic noise producer and refer the business to Neighborhood & Business Services (N&BS) along with the information that established the basis for the designation.

(c) Upon receiving a Chronic Noise Producer referral, N&BS shall schedule a mandatory initial meeting with the business that it has been designated a Chronic Noise Producer. At the initial meeting, N&BS and the business shall review the information that formed the basis for the designation and any evidence or information concerning the complained of noise provided by the business. Following the initial meeting, N&BS shall determine whether a mitigation plan is warranted. If N&BS determines that a mitigation plan is not warranted, it shall notify the business and CMPD of that determination and no further action shall be taken under this Section.

(d) If N&BS determines that a mitigation plan is warranted, N&BS and the business shall together develop and sign a noise mitigation plan. The plan may include, among other things:

- i. restrictions on days of week or hours of noise producing activity;
- ii. placement, orientation, and operation of sound producing activity or equipment;
- iii. structural changes including but not limited to sound attenuation and baffling;
- iv. self monitoring and reporting requirements;
- v. a schedule for implementation; and
- vi. a schedule for review for possible revision or termination of the plan.

(e) In the event that a business designated as a Chronic Noise Producer: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan; (ii) refuses to agree to a noise mitigation plan; or (iii) fails to implement or comply with an agreed to noise mitigation plan, N&BS may designate the business as Non-Cooperative and shall notify the business and CMPD of that determination. Should a business designated as Non-Cooperative cure the basis for the designation, N&BS shall remove the designation and notify the business and CMPD of that determination.

(f) In the event that a noise enforcement action is taken against a business that has been designated a Chronic Noise Producer, evidence regarding the business' participation in the development and implementation of and compliance with the noise mitigation plan shall be relevant to any prosecution or administrative or judicial review or appeal of the enforcement action. Specifically, the business' participation and compliance shall be a mitigating factor and may, but is not required to be a justification for dismissing the enforcement action. A business that has been designated by N&BS as Non-Cooperative shall not be entitled to the benefits of this subsection unless the designation has been removed.

(g) Appeals. A business that has been designated a Chronic Noise Producer or Non-Cooperative may appeal such designation within 10 days after receiving notice of such designation. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of CMPD or N&BS. The appellant shall have the right to present evidence at said hearing. A ruling on appeal is subject to review in the superior court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

Sec. 15-66. - Animals.

It shall be unlawful for any person to own, keep or have in his possession, or harbor, any dog, other animal or bird which, by frequent or habitually howling, yelping, barking or otherwise, causes loud noises and produces seriously annoying disturbance to any person or to the neighborhood.

Sec. 15-67. - Motor vehicles.

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

- (1) Which has had its muffler-exhaust and/or other noise-control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.
- (2) By engaging in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.
- (3) Off the boundaries of a public street for racing or other operations which create unreasonably loud and disturbing noises.

Sec. 15-68. - Enforcement and penalties.

Where there is a violation of any section of this article, the city, at its discretion, may take one or more of the following enforcement actions:

- (1) ~~The violator may be assessed a \$100.00 civil penalty. For purposes of this subsection, a violation committed after a civil penalty has been assessed shall constitute a separate violation. A police officer or animal control officer may issue a notice of violation as provided in section 2-24 of this Code subjecting the violator to a civil penalty of \$100.00, which penalty may provide for a delinquency charge of \$10.00 upon nonpayment, and which penalty and delinquency charge may be recovered by the city in a civil action.~~
- (2) The violator may be charged with a misdemeanor and be subject to any penalty prescribed by section 2-21.
- (3) A civil action seeking ~~a penalty of \$500.00 per day of violation~~ plus an injunction and order of abatement may be directed toward any person creating or allowing the creation of any unlawful noise, including the owner or person otherwise having legal or actual control of the premises from which it emanates.
- (4) A police officer may issue a notice of violation, as provided in section 2-24 of this Code, subjecting the violator of section 15-63(a)(1) to a civil penalty of \$200.00;

~~which penalty may provide for a delinquency charge of \$10.00 upon nonpayment and which penalty and delinquency charge may be recovered by the city in a civil action.~~ For the purposes of this subsection, the term "violation" means either the operator of the front-end loader; the employer of the operator; or the company, partnership, corporation or other person or entity which owns, possesses or controls the front-end loader utilized by the operator.

- (5) The violator may be assessed a \$1,000.00 civil penalty for any violation of Sec. 15-61 or Sec. 15-65.1 that occurs within one year after the commercial establishment has been determined to be "Non-Cooperative" pursuant to Sec. 15-65.3(e). After two such violations, the prohibition on sound amplification and live acoustic music established in Sec. 15-65.1(c) shall apply."

Section 2. Sec. 15-65.2 shall be effective on August 1, 2011. The remainder of this ordinance shall be effective June 15, 2011.

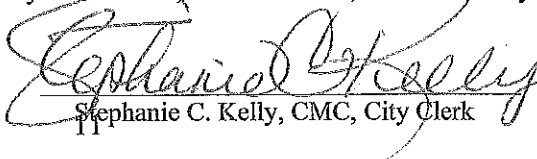
Approved as to form

City Attorney

CERTIFICATION

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the city of Charlotte, North Carolina, in regular session convened on the 23rd day of May, 2011 the reference having been made in Minute Book 131, and recorded in full in Ordinance Book 57, Pages (118-128).

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25th day of May


Stephanie C. Kelly, CMC, City Clerk

