
TRANSYLVANIA COUNTY PLANNING BOARD MINUTES

Regular Meeting, November 15, 2018

Call to Order, Daryle Hogsed

The Transylvania County Planning Board met in regular session on Thursday, November 15, 2018, at 7:00pm in the Community Services Building Conference Room. Members present were Chair Daryle Hogsed, Vice-Chair Mack McNeely, Bob Twomey, Sandy Watson, and Lauren Wise. Kimsey Jackson and Steve Woodsmall were absent (excused). Staff members present were Transylvania County Planning and Community Development's County Planner, Joy Fields, and Program Assistant, Kalen Lawson. Guest Eddie Gunter, Chief Deputy of the Transylvania County Sherriff's Office was present to share information regarding the Noise Ordinance enforcement. Also present were six members of the public. No media were present.

I. Welcome

II. Public Comment

– none

III. Approval of Agenda

Lauren Wise moved to approve the October 18, 2018 agenda. The motion was seconded by Sandy Watson and carried unanimously.

IV. Approval of Minutes

Sandy Watson moved to approve the minutes of the October 18, 2018 regular meeting. The motion was seconded by Bob Twomey and carried unanimously.

V. Subdivision Approvals and Updates

Joy Fields notified the Planning Board that there were 13 exception plats, and three (3) 2-lot subdivisions approved between October 18, 2018 and November 15, 2018.

VI. Old Business:

A. Watershed Protection Ordinance Review

- Joy Fields charged the planning board to consider items highlighted in grey on the draft revised ordinance document and make a decision whether they should be included. Those items were recently added from the model ordinance. There was also an addition referring to agricultural lands and the definition of 'residuals'.
- Regarding residuals, Daryle moved that the definition of residuals does not include animal waste, seconded by Bob Twomey and carried unanimously.
- Section 2, exceptions – all agreed by consensus that the exception section should be included in the watershed ordinance and that if a court ordered subdivision exemption is used, then it would be exempt from the regulations of the watershed ordinance.
- Section 3.3 – all agreed to include by consensus.
- Section 3.7 – all agreed to include by consensus.
- Section 3.8 – all agreed to include by consensus.
- Section 4.3 – all agreed to include by consensus.
- A Construction Procedures Section was decided to not be necessary.
- Penalties for transferring lots and subdivisions would apply watershed requirements to all lots and subdivisions (including those filed by metes and bounds that are not approved by the Planning Department) – agreed to add with the addition of verbiage “within the water supply watershed” for clarity.
- Section 6.1.1 – all agreed to include reference to NC GS 106-735 by consensus.
- Section 6.1.4 – format change only was agreed to by consensus.
- Section 9.2 – agreed to leave as-modified by consensus.
- Section 11.3 – agreed to by consensus.
- Section 20 - all agreed to include the statement that the planning board would be the designated watershed review board. As this is not in the Planning Board bylaws, this may need to be brought to the attention of the Board of Commissioners. This has been a role of the planning board since 1993.
- Sandy Watson moved to recommend the Watershed Protection Ordinance, with updates from this meeting, to Board of Commissioners for a public hearing and their consideration. The motion was seconded by Mack McNeely and passed unanimously.

VII. Old Business:

B. Noise Ordinance

Joy Fields noted that there have recently been a number of noise complaints made to the Board of Commissioners and county administration. The Board of Commissioners has requested the Planning Board to review the Noise Ordinance.

Joy Fields introduced Chief Deputy Eddie Gunter of the Sheriff's Department to share their experiences with the current ordinance. Joy Fields also passed out documents of resources for the planning board to review before the discussion begins at the next meeting (see attached). Joy stated that information would be gathered at this meeting with discussion to follow at the next meeting.

Chief Deputy Eddie Gunter:

- Shared information, stating there had been 166 complaints between January and mid-November 2018.
- The Sheriff's office made the attached form as a tool for responding deputies to determine if complaints were violations. The form includes a place for complainant to sign and agree to come to court.
- Years ago, a motocross track was made and the court dismissed because of lack of definition.
- It might be best to measure the noise level at a certain distance. District attorney had asked before for it to be removed. Can be researched.
- Biggest hurdle is it being too subjective and relying on opinion. There is no fair way to enforce based on current ordinance.
- When asked what complaints they hear most, the response was barking dog complaints, as well as music.
- Topography was mentioned as a mitigating factor.
- Might be good to have option for permit for exceptions for some special events or activities, like a fundraiser using an orchestra outside once.
- Daryle asked Deputy Gunter to e-mail a summary of his points to Joy Fields, County Planner.
- Deputy Gunter stated the Sheriff could purchase, maintain and train on needed equipment, like a decibel reader.
- It was noted that the City of Brevard Noise Ordinance would be good resource. Staff will email to planning board, and follow up with Chief Harris to learn his views of their ordinance, including ease of enforceability.

C. Small Area Planning Process

- Joy Fields presented the draft Small Area Planning Process (attached) for discussion and revision by the planning board, and charged them to revise or recommend to the Board of Commissioners for their approval.
- Both Cedar Mountain and Dunn's Rock communities have expressed interest and were in attendance.
- By consensus, the planning board wanted more time to consider the process before making any recommendations to the Board of Commissioners. It will be at the top of next month's agenda.

D. Planning and Community Development Update

- Next month's planning board meeting is scheduled just before Christmas, so it was decided to move it to December 13, 2018.
- JHPC and partners developed a Downtown Brevard Walking Brochure.
- The TAC is beginning to work with NCDOT and LOS RPO to develop a comprehensive transportation plan. Joy Fields asked if a planning board member could participate in the working group. It is an 18 month process and the schedule is unknown. Mack McNeely expressed he was willing to be considered.

E. Other

- none

VIII. Public and Board Member Comments

- Suzanne Lawson of Cedar Mountain thanked the planning board for their help, support and guidelines. She stated the community is excited. In regard to the Watershed Protection Ordinance, Article 2, she suggested changing the "water review board" to "watershed review board".
- Daryle thanked planning board and staff for their time and input.

IX. Adjourn

There being no further discussion, Sandy Watson moved to adjourn. The motion was seconded by Mack McNeely and carried unanimously.

MINUTES APPROVED



Daryle Hogsted, Chair



Kalen Lawson, Recording Secretary

**Noise Control Regulations
Transylvania County, North Carolina**

**ARTICLE I
SHORT TITLE**

This Ordinance shall be known and cited as the Noise Control Ordinance of Transylvania County, North Carolina.

**ARTICLE II
AUTHORITY**

This Ordinance is adopted under the authority and provisions of the General Statutes of the State of North Carolina Article 6, Chapters 153A-121 and 153A-133.

**ARTICLE III
PURPOSE**

The purpose of this Ordinance is to establish an effective means of regulating and controlling loud and offensive sound and noise within Transylvania County to 1) promote the health, safety and general welfare for residents and visitors; and 2) protect the interest of local businesses while providing reasonable regulations.

**ARTICLE IV
JURISDICTION**

This Ordinance shall apply to all areas of Transylvania County located outside the boundaries of any incorporated city or town. (amended 11-12-2013)

**ARTICLE V
NOISE REGULATIONS**

SECTION 1: Noise Regulations - It shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud and/or disturbing noise in the County. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited.

1.1 In determining whether a noise is unreasonably loud and/or disturbing, the following definitions shall apply:

- A. “Unreasonably loud”: noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.

- B. “Disturbing”: noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area, neighborhood, or vicinity.
- 1.2 In determining whether a noise is unreasonably loud and/or disturbing, the following factors incident to such noise are to be considered based on the totality of circumstances surrounding a particular determination:
- A. Time of day;
 - B. Proximity to residential structures;
 - C. Whether the noise is recurrent, intermittent, or constant;
 - D. Volume and intensity;
 - E. Whether the noise is enhanced in volume or range by any type of electronic or mechanical means;
 - F. Whether the noise is related to the normal operation of a business or other labor activity; and
 - G. Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

SECTION 2: Exempted Noises - The following noises are exempt from this Ordinance:

- 2.1 Sound emanating from regularly scheduled outdoor athletic events.
- 2.2 Construction operations from 6:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; provided all equipment is operating in accordance with the manufacturer's specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in properly operating condition.
- 2.3 Noises of safety signals, warning devices, emergency pressure valves, factory steam whistles and all mechanical and electronic church bells or chimes.
- 2.4 Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- 2.5 All noises coming from the normal operations of aircraft (not including small model aircraft).
- 2.6 Noise from lawful fireworks and noisemakers on holidays.
- 2.7 Noise from lawnmowers, weed trimmers, edging machines, or other similar small-engine yard maintenance equipment, properly equipped according to manufacturer's specifications, and used between 6:00 a.m. to 9:00 p.m.

- 2.8 Musical accompaniment at military ceremonies that is taped outdoor music, or music played with instrument not electrically amplified.
- 2.9 Farming operations shall be exempt from the operation of this ordinance.

SECTION 3: Noises Prohibited - The following noises are prohibited.

- 3.1 Noise or sounds that are substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order.
- 3.2 Noise that is perceived by a person of ordinary and reasonable sensibilities as interrupting the normal peace and calm of an area or neighborhood.
- 3.3 Dogs or any other constrained animals that, by frequent or habitually howling, yelping, barking or otherwise cause loud noises and produce seriously annoying disturbance to any person or to the neighborhood between the hours of 9:00 pm to 6:00 am.
- 3.4 Operating or permitting the operation of any automobile, motorcycle, dirt bike, go-cart, recreational vehicle, remote control vehicle, or other vehicle that engages in jackrabbit starts, spinning tires, racing engines, or other operations including without limitation operating an overloaded or out of repair vehicle which creates unreasonably loud or disturbing noise so as to disturb the comfort and repose of any person of normal sensibilities in the vicinity.
- 3.5 Knowingly permitting the occurrence or emanation of any of the foregoing specifically enumerated violations of this Ordinance on property owned, possessed, or used in whole or in part by any person or entity shall be a violation of this Ordinance.

**ARTICLE VI
NOISE COMPLAINT PROCEDURE**

In the event any person has reasonable grounds for believing that any provision of this Ordinance is being violated, he may make a report thereof to the Transylvania County Sheriffs Department, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made and may obtain criminal process for violation thereof, may issue a citation for a civil penalty, and/or may obtain other enforcement measures as allowed in this Ordinance. Criminal process for violation of this Ordinance may only be obtained by personnel from the Transylvania County Sheriffs Department.

ARTICLE VII
VIOLATIONS, PENALTIES, & ENFORCEMENT

This Ordinance may be enforced in accordance with any and all of the provisions of N.C.G. S. § 153A-123 and of any other applicable enforcement provision as may be set forth within the Transylvania County Ordinances or as may be provided for by applicable law.

A. Criminal penalties: Any Deputy Sheriff of Transylvania County, having first investigated this matter, pursuant to Article VI above, may obtain criminal process for violation of this Ordinance. A violation of any Ordinance provision shall constitute a Class 3 misdemeanor and may be punished by fine in the discretion of the Court, up to a maximum of \$500 per offense.

(1) Warning: Upon the violation of a particular provision of this Ordinance, an individual may be issued a warning. Such warning shall identify the particular practice which is in violation of the Ordinance and shall state the time, date and place of the violation. Such warning shall further state that if the individual commits further violations following the date of the warning, Transylvania County, by and through an enforcement agent, may cause a warrant to be issued for the individual's arrest.

(2) Arrest or Citation: Upon the violation of a particular provision of this Ordinance, a law enforcement officer having jurisdiction may charge the offender with a misdemeanor committed in the officer's presence, by arrest or citation, as set forth in Chapter 15A of the North Carolina General Statutes.

(3) Warrant: Upon the violation of a particular provision of this Ordinance, Transylvania County, by and through an enforcement agent, may request from a magistrate that a warrant be issued for the arrest of the individual.

B. Civil Penalties: Any individual who is found in violation of this Ordinance may be subject to a civil penalty. The amount of such civil penalty shall be assessed as described below. Each day the violation continues shall be considered a separate offense and therefore such continuing violation may be subject to multiple civil penalties as described below:

(1) Compliance Order:

A. Upon making a determination that a person is in violation of this Ordinance, Transylvania County may issue a compliance order to the person in violation of this Ordinance. The compliance order shall notify the violator of the violation in writing. Such order shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. Such notification shall further

identify the action which is necessary to comply with this Ordinance. Such order shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 15 days, Transylvania County may grant an extension of time commensurate with the magnitude of the violation. The compliance order shall further state that failure to comply with the terms of the compliance order will subject the violator to a civil penalty and shall further state the amount of said civil penalty.

B. Failure to comply with the terms of a compliance order issued by Transylvania County within the time stated in the order shall subject the violator to a civil penalty of \$500.00. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to additional \$500.00 civil penalties for each separate offense.

(2) Civil Action: When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted by the County against an individual for the collection of all accrued penalties if not paid within thirty (30) days of assessment.

C. Equitable Remedies: This Ordinance may be enforced by the County through equitable remedies, and any unlawful condition existing in violation of this Ordinance may be enforced by injunction or order of abatement in accordance with N.C.G.S. § 153A-123.

(1) Injunction: Where necessary to effectuate compliance with this Ordinance, Transylvania County may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this Ordinance. Such action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions above, and may be brought against any person or entity causing a violation of this Ordinance or against an owner of a premises upon which a violation of this Ordinance occurred.

(2) Order of Abatement: Where necessary to abate a condition existing upon land in violation of this Ordinance or a use made of land in violation of this Ordinance, Transylvania County may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this Ordinance. Such action may be enjoined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this Ordinance.

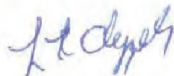
- (3) Other Equitable Remedies: This Ordinance may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.
- (4) To the extent allowable by law, reasonable attorney's fees may be sought by the County or its authorized agent in any action to enforce the provisions of this Ordinance.

**ARTICLE VIII
LEGAL STATUS PROVISIONS**

- A. Effective Date of Ordinance:
This Ordinance shall take effect immediately upon its adoption by the Transylvania County Board of Commissioners, and shall amend and supersede the previously existing Noise Control Regulations Ordinance existing prior to this Ordinance's adoption.
- B. Severability:
If any provision or provisions of this Ordinance shall be deemed by a Court of law having Jurisdiction over such matters to be unenforceable, invalid, or unconstitutional for any reason, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof that is not specifically declared to be unenforceable, invalid, or unconstitutional.
- C. Conflict of Laws or Ordinance Provisions:
Whenever the regulations of this Ordinance conflict with each other, or with the requirements of another statute, the more restrictive standard shall govern.

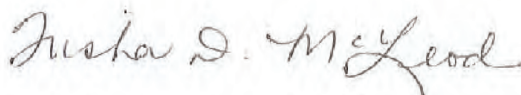
This Ordinance shall be in full force and effect from and after its adoption.

Adopted this 14th day of July, 2008.
Amended 11/12/2013



Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:



Trisha D. McLeod
Clerk to the Board

Our email editor is so easy it's preferred by 72% of first time users.*
Powerful stuff.



Constant Contact

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Guidelines for Drafting Municipal Noise Control Ordinances

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As the population increases and expanding metropolitan areas and more efficient modes of transportation continue to push residential communities further into areas formerly characterized as "rural", noise control (<https://www.epa.gov/history/epa-history-noise-and-noise-control-act>) will likely become a more prominent issue for all local communities and their governments. Noise produced by human activities has been increasingly recognized as a serious and growing environmental and health problem. Noise pollution has been implicated in a variety of health disorders, ranging from stress and hypertension to permanent hearing loss. Additionally, noise has been demonstrated to cause psychological problems: "[e]ven moderate levels of noise can heighten anxiety, decrease the incidence of cooperative behavior, and increase the risk of hostile behavior in experimental subjects." [Sidney A. Shapiro, *Lessons from a Public Policy Failure: EPA and Noise Abatement*, 19 Ecology L. Q. 1,5 (1992).]

Local communities will be in the vanguard of efforts to address noise pollution, since environmental groups thus far have all but ignored the issue with the exception of airport noise. Noise is therefore, probably the most localized form of pollution and unlike most other forms of pollution, its immediate short-term effects do not range beyond local jurisdictions. As a result, noise is almost never seen as a national, or even a statewide issue. [Frank P. Grad, *Treatise on Environmental Law Section 5.03* pg. 5-105 (3d Ed. 1985).] For example, the U.S. Environmental Protection Agency (<https://www.epa.gov/>) ("EPA") has indicated that only a handful of states have on-going noise abatement programs. [General Accounting Office, *Transportation Noise: Federal Control and Abatement Responsibilities May Need to be Revised*, p. 18 (1989).] Noise pollution control is therefore, a problem for local government to address.

Existing local ordinances directed at noise control are generally oriented toward limitations on the level of noise emissions. Local governments may enact ordinances in an attempt to control noise produced by commercial and non-commercial activities (industry, motor vehicle traffic, race tracks, etc.). Although the focus of this article will be municipal ordinances, other means of controlling noise pollution (<https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution>) "include land use planning (zoning, subdivision regulation, and site design review), environmental impact assessment, real estate disclosure requirements (related to noise levels on real property), and impact fees based on the levels of noise emissions." [Shapiro, *supra*, pg. 29.]

When a local community recognizes that there currently exists undesirable noise intrusion within the community, or that potential sources of noise pollution are imminent and that some control or means of abatement are therefore necessary, an assessment and classification of the community's existing and potential sources of unwanted noise, as well as the peculiar, subjective responses of its citizens, should be made. Experience has shown that simply enacting an ordinance is not enough unless:

1. new law is reasonable, realistic and clear;
2. there is a capable supervision and enforcement agency in place; and



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3. there is a straight-forward, practical and economical approach to solving the noise problem. [See, e.g. Crocker, Malcolm, Edit., Noise Control, 1957.]

When a municipality undertakes to draft an ordinance to control noise, the following elements must be considered:

1. authority to enact the ordinance;
2. potential conflicts with state and federal constitutions;
3. qualitative vs. quantitative noise ordinances;>
4. establishment and measurement of noise levels; and
5. specific provisions to include in the ordinance. Each of these considerations will be discussed below.

Authority To Enact Ordinances

An ordinance is a legislative enactment by the corporate authority of a municipal corporation. The authority to enact general regulatory ordinances is generally founded upon the police power of the state as delegated to the municipality. When drafting any ordinance, it is first necessary to determine whether the particular municipality concerned has the authority to legislate on the subject matter involved. The powers of a municipality are delegated powers and the municipality has no legislative authority except as granted by constitutional or statutory provisions.

In Pennsylvania, the power of a municipality to enact ordinances is dependent upon its classification. For instance, in a township of the second class (<https://codes.findlaw.com/pa/title-53-ps-municipal-and-quasimunicipal-corporations/pa-st-sect-53-65201.html>), the board of supervisors may adopt ordinances in which general or specific powers of the township may be exercised, including the assessment of fines not exceeding one thousand dollars (\$1,000.00) for a violation of a health, fire or public safety ordinance and noise pollution violations. 53 P.S. Section 66601 (a) and (c) (<https://codes.findlaw.com/pa/title-53-ps-municipal-and-quasimunicipal-corporations/pa-st-sect-53-66601.html>). Enabling legislation for cites and municipalities other than townships of the second class is set forth at 53 Pa. C.S. Sections 101 (<https://codes.findlaw.com/pa/title-53-ps-municipal-and-quasimunicipal-corporations/pa-st-sect-53-101.html>) et. seq.

Pennsylvania courts have held that a municipal ordinance is presumptively valid and municipal officers are presumed to have acted in good faith in passing an ordinance. *Bilbar Construction Co. v. Easttown Twp* (https://scholar.google.com/scholar_case?case=15074878208135880227&hl=en&as_sdt=6&as_vis=1&oi=scholar), 393 Pa. 62, 71, 141 A.2d 851 (1958); *Lutz v. Armour* (https://scholar.google.com/scholar_case?case=14406212896454582798&hl=en&as_sdt=6&as_vis=1&oi=scholar), 395 Pa. 576, 578, 151 A.2d 108 (1959); *Township of Whitehall v. Oswald* (https://scholar.google.com/scholar_case?case=12418472843793018310&hl=en&as_sdt=6&as_vis=1&oi=scholar), 400 Pa. 65, 68, 161 A.2d 348(1960); *Hines v. Winfree* (https://scholar.google.com/scholar_case?case=7064579207342586099&hl=en&as_sdt=6&as_vis=1&oi=scholar), 408 Pa. 128 (1962).

A determination must also be made whether federal legislation has preempted the subject matter of the ordinance, thus restricting the power of the municipality or prohibiting municipal regulation. [Thomas Matthews, Byron Matthews, *Municipal Ordinances*, Section 1A.01 (2nd Ed. 1991).] Generally, in the area of noise pollution, EPA merely provides recommendations for the enactment and enforcement of local regulations. Local governments, however, are prohibited from regulating railroad and motor carrier noise sources for which EPA standards exist, even by means other than noise emission standards. [See 42 U.S.C. Sections 4916(c)(2) (<https://codes.findlaw.com/us/title-42-the-public-health-and-welfare/42-usc-sect-4916.html>) and 4917(c)(2).] Local governments can, however, enforce EPA regulations by adopting local laws or ordinances identical to EPA regulations. [See 42 U.S.C. Section 4905(e)(1)(A) (<https://codes.findlaw.com/us/title-42-the-public-health-and-welfare/42-usc-sect-4905.html>) and 4916(c)(1).] In the area of noise pollution control, local authorities have wide discretion as to what standards to enact, and may use suggestions from the EPA as one of the sources of information supporting a proposed ordinance.

Constitutional Considerations

Any proposed ordinance must be analyzed to discern whether the ordinance raises any substantial constitutional questions. Pennsylvania courts have held that uncertainties in the interpretation of an ordinance are to be resolved in favor of a construction which renders the ordinance constitutional. *Archbishop O'Hara's Appeal* (https://scholar.google.com/scholar_case?case=10176422881164912244&q=Archbishop+O%27Hara%27s+Appeal&hl=en&as_sdt=6,389 Pa. 35, 50 n.5, 131 A.2d 587, 594 n.5 (1957); *Schmalz v. Buckingham Township Zoning Board*, 389 Pa. 295, 298, 132 A.2d 233, 234 (1957); *Upper Salford Tp. v. Collins* (https://scholar.google.com/scholar_case?case=14195790319946350822&q=Upper+Salford+Tp.+v.+Collins&hl=en&as_sdt=6,24), 669 A.2d 335 (1995). Municipal ordinances are presumed to be constitutionally valid whether they are enacted by the council of a city, town or borough or by the supervisors of a township. *Bilbar Const.*, supra, at 856.

As with all other enactments, ordinances establishing general rules for the conduct of citizens must be drafted clearly and completely so as to express the intention of the governing body, and the statutory requirements for the enactment of the ordinance must be followed. The ordinance must be reasonable, must avoid discrimination, and must avoid the arbitrary or unlawful delegation of power to enforcing officers.

Prior Restraint Implications

Arguably, anytime a restriction is placed on noise, the right to free speech is implicated, since verbal speech creates sound and if loud enough, noise. The First Amendment forbids the federal government from imposing any system of prior restraint, with certain limited exceptions, in any area of expression that is protected by that Amendment. Freedom of speech is a fundamental right which is not subject to impairment by state action. *Gitlow v. New York* (https://scholar.google.com/scholar_case?case=5505973138575755803&hl=en&as_sdt=6&as_vis=1&oi=scholar), 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138 (1925). A municipal ordinance constitutes state action and is addressed by the prohibition of Section 1 of the Fourteenth Amendment of the U.S. Constitution. *Lovell v. City of Griffin* (https://scholar.google.com/scholar_case?case=5706334303740337745&hl=en&as_sdt=6&as_vis=1&oi=scholar), 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 (1938).

By incorporating the prohibitions of the First Amendment in the Fourteenth Amendment, the same limitations are applicable to the states. See, *Saia v. People of State of New York* (<https://caselaw.findlaw.com/us-supreme-court/334/558.html>), 334 U.S. 558, 559-560, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948); *Cantwell v. Connecticut* (https://scholar.google.com/scholar_case?case=10099999677896592458&hl=en&as_sdt=6&as_vis=1&oi=scholar), 310 U.S. 296 (1940); *Lovell v. Griffin*, 303 U.S. 444; *Hague v. C.I.O.*, 307 U.S. 496. Running afoul of the First Amendment can be avoided by drawing the proposed local ordinance narrowly to regulate the hours and location of the noise restriction, and proscribing specific levels of sound (in decibels) that are reasonably related to the noise problem sought to be regulated. See, *NAACP v. City of Chester* (https://scholar.google.com/scholar_case?case=12640685902220320947&hl=en&as_sdt=6&as_vis=1&oi=scholar), 253 F. Supp. 707 (E.D. Pa. 1966). The U.S. Supreme Court has held that the police power of a state extends beyond regulation of health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community. *Kovacs v. Cooper* (https://scholar.google.com/scholar_case?case=15254119947371011856&hl=en&as_sdt=6&as_vis=1&oi=scholar), 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949).

In *NAACP v. City of Chester*, the Plaintiff brought an action under 28 U.S.C. Section 1343 (<https://codes.findlaw.com/us/title-28-judiciary-and-judicial-procedure/28-usc-sect-1343.html>) claiming that an ordinance of the City of Chester, regulating the use of sound amplifying equipment in streets and in public places violated the U.S. Constitution. Plaintiff claimed that the ordinance was subject to the following constitutional infirmities:

1. the ordinance was unconstitutional on its face, since it established a prior restraint on the right of free speech;
2. the twenty-five dollar per diem fee required by the ordinance was unreasonable; and
3. the ordinance imposed an unreasonable restriction on the volume-producing capacity of sound amplifying equipment.

The US District, Eastern Division Court of Pennsylvania, held that the ordinance was not an invalid prior restraint on Plaintiff's right of free speech. The court stated:

The number of hours during which a sound truck may be operated is set forth, an attempt is made to regulate the volume of sound to which amplifying devices must be adjusted and, most important, the issuance of the required permit itself does not, in any way, depend upon an administrative decision. 253 F. Supp. at 710.

The city clerk in Chester was in charge of issuing the permits and the ordinance made it clear that permit issuance was a purely "ministerial" function. The court emphasized that the ordinance interfered very little, if at all, with the Plaintiff's right of free speech because permit issuance was premised upon clear, non-discriminatory and non-discretionary standards not subject to the control of any local official and reflected the concern of the City of Chester for the maintenance of peace and tranquility within the community.

The ordinance was also not an unreasonable restriction on the volume of sound amplifying equipment since the ordinance regulated "the volume of sound (in decibels) to which they must be adjusted" in accordance with the U.S. Supreme Court ruling in *Saia v. People of the State of New York*, supra. *Id.* at 714. The court enjoined, however, the enforcement of the \$25.00 fee imposed by the ordinance because the City of Chester failed to show that the fee bore a reasonable relationship to the cost of enforcing the ordinance.

Vague, Indefinite or Uncertain Provisions

If a statute or an ordinance is so "vague, indefinite or uncertain" that the courts are unable to determine, with any reasonable degree of certainty, the intent of the legislative body, such statute or ordinance is invalid. *Murray, et ux. v. Philadelphia, et al*

(https://scholar.google.com/scholar_case?case=7364061924243242980&hl=en&as_sdt=6&as_vis=1&oi=scholar), 364 Pa. 157, 176,

71 A.2d 280 (1950); *Willcox v. Penn Mutual Life Ins. Co.*, 357 Pa. 581, 595, 55 A.2d 521(1947); *Miller v. Belmont Packing & Rubber Co.*, 268 Pa. 51, 63, 110 A. 802 (1920). The crucial test to be applied is whether the language of the legislation clearly reveals the intent of the legislative body. *Hines v. Winfree*, supra, at 702.

In *Hines v. Winfree*, another case involving the Chester sound truck ordinance, a citizen attacked the constitutional validity of an ordinance which prohibited the making of unnecessary noises and regulated the use of sound trucks. The party attacking the ordinance asserted that it was invalid because it was "vague, indefinite or uncertain." The Pennsylvania Supreme Court held that the language of the ordinance clearly set forth "the intent of the legislative body" and thus met the test. The court stated:

This ordinance clearly shows that it was the intent of the councilmanic body to protect the citizens of Chester from "unnecessary noises and sounds" as would occasion them discomfort and annoyance and to regulate the use of sound trucks and sound amplifying equipment in and about the public highways so as to decrease accident hazards, insure the orderly movement of traffic and avoid traffic congestion on such highways. *Id.*, supra, at 702.

The court found the provisions of the ordinance to be sufficiently definite because the ordinance permitted the use of sound equipment under certain stated conditions which were "... clearly set forth and with which compliance is neither onerous nor difficult." *Id.* at 702.

By setting forth the noise restrictions specifically, including the conditions under which certain sound levels will be proscribed, and by choosing restrictions which make compliance "neither onerous nor difficult", the ordinance will avoid being found to be invalid because of vagueness, indefiniteness or uncertainty. *Hines v. Winfree*, 182 A.2d 698 (1962).

Lawful Exercise of Police Power

A law which purports to be an exercise of the police power must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be obtained. As the court stated in *Lutz v. Armour*, 395 Pa. 576 (1959):

"Under the guise of protecting the public interests the legislature may not arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations. . . ." An ordinance cannot, under the guise of the police power, but really to effect some purpose not within its power interfere with a person's individual lawful property rights. *Id.* at 110, 111, quoting *Gambone v. Commonwealth* (https://scholar.google.com/scholar_case?case=13681066017068853696&hl=en&as_sdt=6&as_vis=1&oi=scholar), 375 Pa. 547, 551, 101 A.2d 634, 636 (1954).

In *Lutz v. Armour* a second class township enacted an ordinance permitting the collection of garbage, rubbish, waste material or ashes within the township and the operations of garbage disposal facilities. The same ordinance prohibited the hauling and disposition into the township of any of those materials which originate "from without the township." Operators of a garbage collection and disposal business in the township instituted a suit in equity seeking to enjoin enforcement of the ordinance after being cited for a violation. The Supreme Court of Pennsylvania affirmed the trial court's granting of a permanent injunction. In doing so, the court stated that although the regulation of garbage disposal areas was a proper exercise of police power, the township supervisors failed to demonstrate a factual distinction between waste collected from outside the township and waste collected from within. The distinction in the ordinance had to do with the place of origin of the garbage which the court held had "...no kind of relation to the evil which the ordinance apparently seeks to remedy." Based upon that lack of relationship the court concluded that the challenged ordinance provisions were "...arbitrarily capricious, discriminatory and unconstitutional."

In *Gambone v. Commonwealth*, supra, the Pennsylvania Supreme Court struck down a statute which limited the size of gas station signs that advertised the price of gasoline. A purpose of the law was to prevent the fraudulent advertising of prices, price cutting and price wars. The court found that limiting the size of the sign had no relevancy or connection to the prevention of fraud or price cutting. The court stated that larger signs would have the opposite purpose and would make it more difficult for the gasoline dealer to deceive the purchaser. Also, there was no connection proved "between the size of the sign and the upholding of a uniform price, since the evil to be avoided would not logically be prevented by forbidding conspicuous advertisement of the lower price but rather by prohibiting a lower price being charged." *Gambone*, supra, at 631-638. Consequently, the prohibition of the posting of price signs in excess of a certain size had no rational relation to public health, safety, morals, or welfare and was not a valid exercise of the police power.

Care must be taken in drafting the ordinance to ensure that the means employed for its enforcement are not unduly oppressive and that the restrictions placed upon the unwanted noise are not beyond those necessary to accomplish the purpose of the ordinance.

Qualitative vs. Quantitative Noise Ordinances

Local noise ordinances have typically included broad noise prohibitions such as the following:

The creation . . . of any unreasonable, unnecessary or excessive noise which results in the disturbance of the public peace and welfare and complaints to local government agencies is hereby prohibited and shall constitute disorderly conduct. Borough of Ebensburg Ord. No. 442, enacted September 25, 1995. Declared null and void by Court of Common Pleas Cambria County order dated October 1, 1996.

This type of ordinance is based upon vague standards that proscribe noise characterized by one or more adjectives, such as "unusual", "unnecessary", or "unreasonable". The ordinance may also define certain sound related activities or specific noise sources to be annoying or disturbing and thus violative of the ordinance. Borough of Huntingdon Ord. No. 200 (<https://ecode360.com/31385858>) proscribes inter alia, the use of auto horns, playing a radio, phonograph, musical instrument and "yelling, shouting, hooting, whistling or singing" under certain circumstances.

Such ordinances are commonly referred to as qualitative, because they define the prohibited noise by its "character or nature". In the past, noise control ordinances universally took this form. Daniels, John and Jones, Barbara, *Noise Abatement at the Municipal Level*, 7 U.S.F.L. Rev. 478 (April, 1973). Such ordinances may also prohibit certain activities, restrict activities to certain hours of the day, require permits or licenses for noisy activities or create quiet zones in which certain activities are prohibited. Linda A. Malone, *Environmental Regulation of Land Use*, Section 11.06[2], pg. 11-43. The qualitative ordinance is generally

subjective in nature, and is more likely to pose constitutional issues such as vagueness, and is also more likely to be subject to enforcement at the discretion of local police and to non-uniform application as indicated above. Many noise control ordinances fail to include quantitative acoustical criteria, and merely prohibit "loud noise".

Quantitative ordinances, on the other hand, proscribe noise-producing conduct by amount, applying scientific standards of sound intensity and frequency. The quantitative ordinance is capable of providing non-discretionary, objective and predictable standards. Quantitative standards are more amendable to tailoring in order to meet the specific, unique needs of a local community. As stated previously, a determination must be made in a given community as to how much quiet or lack of noise the community seeks. One approach to making this determination can include the following steps: 1) observe the way communities react to known noise conditions; 2) supplement this data by obtaining answers to carefully worded questionnaires; 3) use this information in developing appropriate noise restrictions. Stevens, Rosenblith and Bolt, *A Community's Reaction to Noise: Can it be forecast?* (1955).

Maximum noise levels (<http://www.dot.ca.gov/dist2/projects/sixer/loud.pdf>) are generally expressed in dBA and vary considerably from ordinance to ordinance, ranging from 40 dBA (Beverly Hills, CA (https://www.beverlyhills.org/cbhfiles/storage/files/filebank/10284-8_Noise%2001122010.pdf)) to 60 dBA (cities). The ordinance may specify varying dBA levels for different areas of the community, as appropriate.

In addition, the World Health Organization (<http://www.who.int/en/>) has published draft recommended guideline noise levels for protection against unwanted noise. These noise levels are designed to prevent sleep disturbance, annoyance, and speech interference. The levels are based upon results from numerous studies in laboratories and field surveys. The levels are as follows:

- To protect the majority from being moderately annoyed, the noise level should not exceed 50 dBA.
- To protect the majority of people from being seriously annoyed during the daytime, the level from steady continuous noise in outdoor living areas should not exceed 55 dBA.
- At night, outdoor levels should not exceed 45 dBA, so that the recommended level of 30 dBA inside bedrooms for steady state continuous noise can be met with the windows open. Dieter Gottlob, *Regulations for Community Noise*, (December, 1995) 224-225 Noise/News International. The above stated levels are in accord with the comfort values which were recommended by the EPA in 1974.

Establishing and Measuring Noise Levels

When determining appropriate noise emission levels, it is also important to outline the conditions under which they must be verified, including: 1) the reference time intervals; and 2) the location at which the noise emission is measured (determine whether the emission level will be measured near the wall of a building or in an open field; the difference amounts to 3 dBA). Gottlob, *supra*, at pg. 225.

The field of study of acoustics has provided scientifically accepted standards for the identification and measurement of a noise. By using this scientific expertise, a local community can develop an effective and meaningful noise regulation by enacting an objective, quantitative ordinance. J. Daniels, *Noise Abatement at the Municipality Level*, pg. 481.

Sound is produced by any vibrating body. The sensation of sound is caused by stimulation of the auditory nerve of the ear by sound waves produced by the vibrating body. In order to give meaning to the system used to measure sound (decibels), acoustical measurements use a reference level. The reference level for sound pressure is 0.0002 microbar. A microbar is a pressure of 1 dyne/cm² or approximately one-millionth of normal atmospheric pressure (1,013,250 microbars). A sound pressure level of 0.0002 microbar is approximately the weakest sound that can be heard by a person with very good hearing. This quantity represents the threshold of audibility and is also equal to zero decibels, the lowest point of the decibel scale of noise levels. The range of the decibel scale is from zero, at which the human ear receives little or no sensation, even though some energy may be present, to approximately 120 decibels, where the sound becomes extremely intense. Dunham, *Sound Control and Thermal Insulation of Buildings*, pgs. 15, 19, 24.

Intensity and frequency are the two significant properties of sound. Frequency is the number of complete fluctuations per second of the sound wave, and intensity (or loudness) is the magnitude of the fluctuation measured in atmospheric pressure units or microbars.

Measurements of the frequency and intensity of sound as they apply to noises in the community can be quantified using a sound-level meter. The readings are measured using the decibel scale. "Weighting" systems built into all standard sound-level meters can account for the fact that different sound frequencies affect the listener's perception of loudness. The weighting of decibel levels is done through the application of electrical filtering mechanisms. The A-weighting scale is most often used for measuring the level of noise in local communities. The A-weighted decibel scale, expressed as "dBA", is designed to correct decibel readings to account for the fact that the human ear is less sensitive to low pitched sounds than it is to high pitched sounds. The A-weighted scale provides a better measure of the subjective response of a human to any given noise.

In order to measure noise in the field effectively ambient noise levels must be accounted for. Ambient noise is defined as the surrounding or steady background noise, as distinguished from the specific noise which is the subject of the attempted measurement. When a measurement is made with a sound level meter, it is difficult to isolate the ambient noise from the subject noise, and the measurement of the subject noise is thereby affected.

Solutions to the ambient noise measurement problem include:

1. establishing maximum noise levels for fixed delineated areas within the community, which are related to particular zoning classifications and time periods;
2. including in the ordinance's definition of "ambient noise level" a provision for on-site determination; and
3. establishing quantitative noise levels in relation to the ambient noise level (i.e. "5 dBA above ambient").

The ambient noise level can be determined by taking sound level readings with the offending sound silenced. If this is not possible, most sounds can be specifically identified through the use of different types of field tests. Also, although difficult and expensive, it is scientifically possible to identify any sound through spectrum analysis.

Specific Provisions of a Noise Control Ordinance

The provisions of an ordinance should be as precise, simple and clear as possible to make them comprehensible to the public and to improve their amenability to enforcement by authorities.

General Prohibitions

This section of the ordinance should generally define prohibited acts to include making excessive noise or creating a noise disturbance.

Definitions

At a minimum, the following terms must be defined:

1. The unit of measure to be employed to determine proscribed noise levels such as "A-weighted sound pressure level" (see footnote 19);
2. "Noise" is usually defined as any sound which annoys or disturbs humans or is unwanted or which causes or tends to cause an adverse psychological effect on human beings.
3. "Noise disturbance" is defined to include any sound which endangers or injures the health of humans or disturbs a reasonable person of normal sensitivities.

Specific Prohibitions

Specific prohibited acts should include the use or maintenance of the following items or activities if they create a noise or noise disturbance:

- radios, television sets, musical instruments;
- loudspeakers;
- animals
- loading operations;
- construction;
- horns and signaling devices.

Maximum Permissible Sound Pressure Levels

Using the unit of measure defined in the "definitions" section, this section sets forth noise level restrictions for designated time periods in specific land use categories.

Exceptions

The noise prohibitions in a noise control ordinance would generally not apply to the following:

- vehicles or personnel of the municipality engaged in necessary public business
- emergency repair activity directed at vital services;
- any emergency or alarm devices; and
- public events, such as parades.

Enforcement

Penalties for violations of noise ordinances generally include fines which are of increasing severity for willful and knowing violations. Also, each day of a violation is usually considered a separate offense. Noise ordinances most often expressly do not preclude or impair any common law or statutory cause of action for injury or damage arising from a violation of the ordinance.

Conclusion

The provisions of a noise control ordinance, of course, must be tailored to meet the enforcement needs of the municipality. As the final step in drafting a noise ordinance, existing ordinances should be examined to determine if there are any currently enacted ordinances in the community that are in conflict with the proposed noise control ordinance and which for purposes of clarity and enforcement should be amended or repealed if the new noise ordinance is passed.

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ARTICLE IV. - NOISE REGULATION^[4]

Sec. 10-81. - Scope.

This article shall apply to all sound, sound vibration, and noise originating within the corporate limits of the City of Asheville. Nothing in this article shall be construed to limit or prevent the city or any person from pursuing any other legal remedies for damages or the abatement of noises in the city.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-82. - Definitions.

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:

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

Construction means erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

Daytime hours: 7:00 a.m. to 11:00 p.m., local time.

Motorized vehicles means:

Generally—Any vehicle as defined in G.S. 20-4.01(49) including, but not limited to:

- (1) Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
- (2) Common carriers of passengers as defined in G.S. 20-4.01(27)c.
- (3) Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.
- (4) Truck tractors as defined in G.S. 20-4.01(48).
- (5) Farm tractors as defined in G.S. 20-4.01(11).

Nighttime hours: 11:00 p.m. to 7:00 a.m., local time.

Noise means 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.

Noise disturbance means any unreasonably loud and raucous sound or noise which:

- (1) Endangers or injures the health or safety of humans or animals;
- (2) Endangers or injures personal or real property; or
- (3) Disturbs a reasonable person of normal sensitivity.

To determine whether a noise or sound constitutes a noise disturbance, the following factors incident to such noise are to be considered: whether the noise occurred during daytime or nighttime hours, proximity to residential areas, whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; and the nature and zoning of the area.

Person means any individual, association, firm, partnership, corporation, or business entity.

Residential areas: Any area in the city that is zoned the following: RS-2 Residential Single-Family Low-Density District, RS-4 Residential Single-Family Medium Density District, RS-8 Residential Single-Family High Density District, RM-6 Residential Multi-Family Low Density District, RM-8 Residential Multi-Family Medium Density District, RM-16 Residential Multi-Family High Density District.

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

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, §§ 1(a), (b), 11-13-12)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 10-83. - General regulation.

Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the city, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-84. - Noise producing activities; frequent sources of complaint; noise sensitive areas.

In addition to the general prohibition set forth above, the following activities are recognized as tending to produce unreasonably loud and raucous noises and as tending to constitute noise disturbances when conducted or permitted in an unreasonable manner. No person shall engage in any of the enumerated activities so as to cause a noise disturbance on neighboring premises.

- (1) Operation of radios, televisions, or other personal sound reproduction devices in such a manner as to be plainly audible by persons other than those for whose use the device is being operated, including the operation of automobile sound systems in such a manner as to be plainly audible by pedestrians or the occupants of other vehicles.
- (2) Playing of any amplified or nonamplified musical instrument;
- (3) Keeping of any animal or bird that frequently or for long periods of time makes noises that tend to annoy or disturb others;
- (4) Operation of domestic power tools or mechanical devices;
- (5) Repair or testing of any motor vehicle, however fueled or powered;
- (6) Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);
- (7) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily;
- (8) Operation of model cars, boats, or airplanes, go carts, mini bikes, or all-terrain vehicles or other unlicensed toy or recreational vehicles or devices powered by an internal combustion engine;
- (9) Street vending or peddling; or
- (10) Sounding of any automobile horn except as a warning or danger signal, or as required by law.
- (11) The erection (including excavating), demolition, alteration or repair of any building or other structure within 500 feet of a residential district as established pursuant to the city zoning ordinance, other than between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday, except by permit from the building inspector when, in his opinion, such work will not adversely affect other persons. Following the

issuance of such a permit, if the building inspector shall determine that the building operations are adversely affecting others, he shall be authorized to modify or revoke the permit. The building inspector may permit emergency work in the preservation of public health or safety at any time. This subsection shall not apply to activities associated with street and highway construction.

- (12) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other official emergency vehicle.
- (13) The blowing of any steam whistle attached to any stationary boiler, except as a warning of danger.
- (14) The operation of machinery in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates, and containers.
- (15) 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.
- (16) The firing or discharge of firearms in the streets or elsewhere, except by permit from the police department, or otherwise as permitted by law.
- (17) Yelling, shouting.
- (18) Parties.
- (19) The sounding of a security alarm for more than 20 minutes after the owner or responsible party has been notified by law enforcement personnel.

It is further recognized that certain uses, including churches, synagogues and other places of worship, medical and convalescent facilities, schools and courthouses are particularly sensitive to sound and noise. Noise-producing activities, including those specified above, may become noise disturbances when conducted in the immediate vicinity of those uses during their hours of operation.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, § 1(c), 11-13-12)

Sec. 10-85. - Exceptions.

The following are excepted from the application of this article:

- (1) Construction activity performed by an agency of government provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- (2) Sound or noise of safety signals, warning devices, emergency pressure relief valves, church bells, and the bells or chimes of the Asheville City Building and Municipal Building between the hours of 7:00 a.m. and midnight.
- (3) Sound or noise emanating from street fairs, festivals, or celebrations conducted by or with the city;
- (4) Sound or noise emanating from film and video production activities for which permits have been issued by the city; provided all equipment such as generators are properly muffled;
- (5) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
- (6) Sound or noise from lawful fireworks;
- (7) Lawnmowers and agricultural equipment operated between the hours of 8:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;

- (8) Musical accompaniment to parades or military ceremonies;
- (9) Sound emanating from regularly scheduled athletic events at city or county parks, athletic facilities, public or private schools and McCormick Field;
- (10) Governmental emergency vehicles in the course of performing their official duties;
- (11) Railroad operations, to the extent said operations are in furtherance of interstate commerce; and
- (12) Unamplified noncommercial speeches made from a fixed location in non-residentially zoned areas; and
- (13) Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission.
- (14) Commercial refuse collection vehicles operating between the hours of 6:00 a.m. and 9:00 p.m.
- (15) Sound or noise emanating from aircraft flight activity at the Asheville Regional Airport, provided said activities are conducted in accordance with FAA regulations.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 4136, § 1(d), 11-13-12)

Sec. 10-86. - Noise ordinance appeals board; powers and duties.

- (a) *Composition of board; terms.* There is hereby established a Noise Ordinance Appeals Board (herein "board") to consist of five members and two alternates as follows:

Members:

- One city zoning or building safety enforcement officer;
- One city police officer;
- One city animal control officer (or employee of contracted animal control agency);
- Two city residents.

Alternates:

- One city employee;
- One city resident.

The city employees will be designated by and serve at the pleasure of the city manager; the residents will be appointed by the city council for three-year terms, and will serve at the pleasure of the city council.

- (b) *Purpose.* The board will advise the city on matters related to noise and noise control, and will hear and decide appeals and complaints from citizens as set forth below.
- (c) *Appeals.* Persons receiving civil citations may appeal the citations to the board in writing within 15 days of issuance. After due consideration of said appeal, the board may direct that said civil citation be withdrawn or that the penalty be reduced by the issuing agency.
- (d) *Complaints.* Upon the written and verified complaint of two or more individuals from at least two separate households that a person or persons are violating provisions of this article, and after said person or persons have had notice and opportunity to be heard on the complaint, the board may find that a violation of this article has occurred, and such finding shall be a sufficient basis for issuance of a civil citation as provided in section 10-86.
- (e) *Procedure; appeal.*

- (1) *Filing; hearing.* Appeals or complaints pursuant to paragraphs (c) and (d) above may be delivered to the city office or official designated by the city manager. Hearing of a complaint shall occur within 15 days of receipt appellant or at least two of the complainants who filed the complaint fail to attend the hearing, the appeal c be dismissed. Board decisions shall be issued and served within ten days of the hearing. The times for cond and issuing decisions may be extended by order of the board.
 - (2) *Appeal.* Appeals from decisions of the board may be made to the city manager, but must be in writing and delivered to the city manager within ten days of issuance. The manager may consider such appeal with or without a hearing, and shall issue and serve a decision on such appeal within ten days of its receipt; which time may be extended by the city manager.
 - (3) *Manner of service; computation of time.* Whenever delivery or service of a notice, order or decision is required by this section, such delivery or service shall be as provided in Rule 5(b) of the North Carolina Rules of Civil Procedure for pleadings subsequent to original complaint. The times prescribed in this section for taking any action in response to a notice, order or decision delivered or served as provided herein shall be computed in accordance with Rule 6(a) of North Carolina Rules of Civil Procedure.
 - (4) *Finality of decisions.* Board decisions that are not appealed to the city manager are final upon expiration of the time for taking an appeal. Decisions of the city manager are final upon issuance.
- (f) *Rules.* Prior to consideration of any appeal or complaint under this section, the board shall adopt rules of procedure consistent with this section, which rules shall be subject to the approval of the city attorney.

(Ord. No. 2726, § 1, 6-27-00; Ord. No. 3042, § 1, 7-22-03; Ord. No. 4136, § 1(e), 11-13-12)

Sec. 10-87. - Non-exclusivity.

Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this chapter, or from pursuing said remedy simultaneously with proceedings under this chapter, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-88. - Violations; owner and occupant responsibility.

Violations of this article shall subject the offender to penalties as set forth in section 10-89, subject to the limitations set forth below.

- (1) Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.
- (2) An owner of any premises subject to this article who is not also an occupant of the premises shall be responsible for any actions by tenants, guests, or other licensees that constitute second or subsequent violations of this article; provided, that no absentee owner shall be liable unless notified of first or previous violations of the article, and further provided that such first or previous violations shall have occurred within the previous 12-month period. Notice of any first or previous violations pursuant to this paragraph shall be effected by registered or certified mail. No absentee owner may be subjected to criminal liability under this section, but shall be subject to civil penalties and equitable relief as provided in herein. This section shall in no way relieve any other person from responsibility for violations of this article.

- (3) The person responsible for any premises shall be responsible and liable for any violations of this article by t or licensees on the premises if the person responsible is actively or constructively present at the time of the

(Ord. No. 2726, § 1, 6-27-00)

Sec. 10-89. - Enforcement; penalties for violation; remedies; additional civil penalty for subsequent offenses.

- (a) Violations of the provisions of this article shall be subject to the civil penalties set forth in City Code section 1-5(c). In addition to the penalties set forth therein, second or subsequent violations of the provisions of this article by the same person for the same activity occurring within one year of the first such violation shall be subject to civil penalties as follows:

First violation (per City Code section 1-5)\50.00

Second violation\100.00

Third violation\200.00

Fourth or subsequent violation, per offense\300.00

The penalties set forth above shall be incorporated into appendix B, Schedule of civil penalties.

- (b) In addition to the civil penalties provided for above, the city may enforce the provisions of this article by appropriate equitable remedies as set forth in section 1-5(d).
- (c) This article may be enforced by employees of the city police department as designated by the chief of police, and by other employees of the city as designated by the city manager. Animal control officers employed by the city, or employees of an animal control agency working under contract with the city for the enforcement of animal control ordinances, and who have been designated by the chief of police may enforce the provisions of this article relating to animals and animal noises.

(Ord. No. 2726, § 1, 6-27-00)

Secs. 10-90—10-100. - Reserved.

State v. Garren

[Annotate this Case](#)

451 S.E.2d 315 (1994)

STATE of North Carolina v. Scott Aaron GARREN. STATE of North Carolina v. Mark Steven DENNY.

Nos. 9330SC1029, 9330SC1034.

Court of Appeals of North Carolina.

December 20, 1994.

*316 W. Paul Holt, Jr., P.A. by W. Paul Holt, Jr. and B. David Steinbicker, Jr., Sylva, for State-appellant.

Haire, Bridgers & Spiro, P.A. by R. Phillip Haire, Sylva, for defendant-appellee Mark Steven Denny.

No brief filed by defendant Scott Aaron Garren.

GREENE, Judge.

The State of North Carolina (the State) appeals from an order entered by Superior Court Judge Julia V. Jones on 4 August 1993, affirming the 27 May 1993 orders of District Court Judge Steven J. Bryant, declaring Section 1-1(b)(3) of the Jackson County Noise Ordinance unconstitutional and dismissing charges brought against Mark Steven Denny (Denny) and Scott Aaron Garren (Garren). See N.C.R.App.P. 40 (1994) (this Court may consolidate cases which involve common questions of law).

The Jackson County Board of Commissioners adopted a noise ordinance on 2 December 1991 which provides in pertinent part:

Section 1-1. Loud, Raucous and Disturbing Noise. (a) 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 County of Jackson. The term loud, raucous and disturbing *317 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. (b) In addition to the common meaning of words, the following definitions shall be used in interpreting this ordinance and the following acts, among others, are declared to be loud, raucous and disturbing noises in violation of this ordinance, but said enumeration shall not be deemed to be exclusive: ... (3) Radios, amplifiers, phonographs, group gatherings, etc. Singing, yelling, or the using, operating or permitting to be played, used or operated any radio, amplifier, musical instrument, phonograph, interior or exterior loudspeakers, or other device for the producing or reproducing of sound in such manner as to cause loud, raucous and disturbing noise.

Jackson County, N.C., Noise Ordinance art. I, §§ 1-1(a), (b)(3) (1991).

On 12 November 1992, Denny was charged with violating the noise ordinance "by playing stereo [sic] to [sic] loud." On 22 March 1993, Denny made a motion to dismiss the charge as unconstitutionally vague, indefinite and ambiguous in that the noise ordinance "does not allege an offense," "fails to adequately charge [Denny] with any offense against the laws of the State of North Carolina and ordinances of the County of Jackson," "does not apprise [Denny] of the charge against him with sufficient specificity to permit him to adequately prepare a defense," and "deprive[s] [Denny] of the rights guaranteed to him under the due process clause of the Fifth Amendment and under that clause of the Sixth Amendment guaranteeing to a Defendant the right to be informed of the nature and cause of the accusation." On 27 May 1993, Judge Bryant declared Section 1-1(b)(3) of the noise ordinance unconstitutional and allowed Denny's motion to dismiss.

On 3 April 1993, Garren was charged with violating the noise ordinance by having "a live band outside of residence [sic] playing very loud causing a disturbance to the neighbors." Before trial, Garren made an oral motion to dismiss. Judge Bryant declared Section 1-1(b)(3) unconstitutional and allowed Garren's motion on 19 April 1993. The State appealed to Jackson County Superior Court, contending "the Noise Ordinance is not unconstitutionally vague" and requesting "the matter be reviewed as provided by law."

The issue presented is whether Section 1-1(b)(3) of Jackson County's noise ordinance is unconstitutional where the ordinance declares that certain sounds are, as a matter of law, "loud, raucous and disturbing" noises and therefore violative of the ordinance.

Jackson County, pursuant to N.C.Gen.Stat. § 153A-133, enacted a noise ordinance on 2 December 1991. See N.C.G.S. § 153A-133 (1991) ("county may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens"). Noise ordinances present a great deal of problems in drafting and enforcing them because "[t]he nature of sound makes resort to broadly stated definitions and prohibitions not only common but difficult to avoid." *People v. New York Trap Rock Corp.*, 57 N.Y.2d 371, 456 N.Y.S.2d 711, 715, 442 N.E.2d 1222, 1226 (1982). A court may forbid enforcement of a noise statute or ordinance for overbreadth where it "reaches more broadly than is reasonably necessary to protect legitimate state interests" "at the expense of First Amendment freedoms." *Reeves v. McConn*, 631 F.2d 377, 383 (5th Cir.1980), reh'g denied, 638 F.2d 762 (5th Cir.1981). As the Fifth Circuit explained in *Reeves*,

most citizens desire protection from unreasonable or disruptive levels of noise on the streets and from uninvited noise within the *318 privacy of their homes. We say nothing today that prevents the city from granting that protection. When the city fears disruption, it may prohibit conduct that actually causes, or imminently threatens to cause, material and substantial disruption of the community or invasion of the rights of others. Or the city may reasonably prohibit kinds or degrees of sound amplification that are clearly incompatible with the normal activity of certain locations at certain times. But the city may not broadly prohibit reasonably amplified speech merely because of an undifferentiated fear that disruption might sometimes result. When First Amendment freedoms are involved, the city may protect its legitimate interests only with precision.

Reeves, 631 F.2d at 388. Music, be it singing, from the radio, played on a phonograph, etc., falls within these protected freedoms. See *Schad v. Borough of Mount Ephraim*, [452 U.S. 61](#), 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981). An ordinance which is overbroad, however, may be upheld as valid where it has "been afforded a narrowing construction by the state courts sufficient to limit its application to unprotected expression" or "the provision is readily susceptible to such an interpretation." *Fratiello v. Mancuso*, [653 F. Supp. 775](#), 791 (D.R.I.1987); see *Chaplinsky v. State of New Hampshire*, [315 U.S. 568](#), 62 S. Ct. 766, 86 L. Ed. 1031 (1942) (Court upheld statute prohibiting use of "offensive, derisive or annoying word[s]" in public because New Hampshire Supreme Court had construed statute to forbid only "fighting words").

In this case, Section 1-1(b) of Jackson County's noise ordinance attempts to give some examples and definitions as to what constitutes the "loud, raucous and disturbing" noise which is prohibited in Section 1-1(a) by "declaring" certain acts to be "loud, raucous and disturbing noises in violation of this ordinance." Although the ordinance therefore addresses a matter within the county's power to regulate, Section 1-1(b)(3) is drafted too broadly to be upheld as constitutional. Section 1-1(b)(3) seeks to ban any singing, yelling, or the playing of any radio, amplifier, musical instrument, phonograph, loudspeakers, or other device producing sound regardless of their level of sound or actual impact on a person. Therefore, at the expense of First Amendment freedoms, Section 1-1(b)(3) "reaches more broadly than is reasonably necessary to protect legitimate state interests," has not been given a narrowing construction, and is not readily susceptible to a narrow interpretation. See *Moore v. City of Gulf Shores*, [542 So. 2d 322](#) (Ala.Crim. App.1988) (noise ordinance defining unreasonable noise as playing of any musical instrument, appliance, amplifier, loudspeaker, or sound reproduction device as to result in sound being projected off premises so as to be audible in any residential district at any time overbroad); *Fratiello*, [653 F. Supp. 775](#) (forbidding all "unnecessary noises or sounds... which are physically annoying to persons" unconstitutionally overbroad because it extends beyond narrowly-defined classes of unprotected expression, has not been given narrowing construction, and is not necessary to further state interests); *Phillips v. Folcroft*, [305 F. Supp. 766](#) (E.D.Pa.1969) (ordinance defining disorderly conduct to include "making of loud and/or unnecessary noises" unconstitutionally overbroad in impinging on free speech and vague in leaving to officials unlimited discretion in choosing who makes "unnecessary" noises). For these reasons, the district court correctly held Section 1-1(b)(3) to be unconstitutional, and we need not address the arguments made that Section 1-1(b)(3) is unconstitutionally vague.

The constitutional infirmity of Section 1-1(b)(3), however, does not require the entire noise ordinance to be declared unconstitutional because Section 1-1(a) is constitutionally valid and separable from Section 1-1(b)(3) and may therefore be given effect. *Decker v. Coleman*, 6 N.C.App. 102, 108, [169 S.E.2d 487](#), 491 (1969) (constitutional provisions of statute which are separable from unconstitutional provision of same statute will be given effect). Section 1-1(a) does not reach more broadly than is reasonably necessary to protect legitimate state interests and defines "loud, raucous and disturbing" noise as any sound which "annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities." Because of this objective standard *319 for measuring what noise is prohibited, Section 1-1(a) is not unconstitutionally overbroad or vague and is therefore valid. See *Grayned v. City of Rockford*, [408 U.S. 104](#), 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (although "noise ... which disturbs or tends to disturb" are vague terms, they are not unconstitutionally vague because Court could expect, based on decisions of state court construing similar terms, that state court would give a reasonable, valid and objective construction to terms); *Reeves*, 631 F.2d 377 (based on expectation state court will interpret "disturbing... to persons within the area of audibility" objectively, ordinance is constitutional); *City of Madison v. Baumann*, 162 Wis.2d 660, [470 N.W.2d 296](#) (1991) (prohibiting noise tending to unreasonably disturb peace and quiet of persons in vicinity was not unconstitutionally vague because ordinance imposed reasonable person standard that had long been relied on in all branches of law); *City of Marietta v. Grams*, 40 Ohio App.3d 139, 531 N.E.2d 1331 (1987) (disturbing order and quiet by clamors or noises at night was not unconstitutionally vague because ordinance could reasonably be construed to outlaw loud continuous noise offensive to reasonable person's common sensibilities and disruptive to basic nighttime activities); *Hooks v. International Speedways, Inc.*, 263 N.C. 686, 691-92, [140 S.E.2d 387](#), 392 (1965) (whether noise rises to level of nuisance depends on their effect, "not on peculiar and unusual individuals but on ordinary, normal and reasonable persons of the locality"); *Jones v. Queen City Speedways, Inc.*, 276 N.C. 231, 239-40, [172 S.E.2d 42](#), 47-48 (1970) (quoting objective standard from *Hooks*); *Trap Rock*, 456 N.Y.S.2d at 716, 442 N.E.2d at 1226-27 (defining "unnecessary noise" as "any excessive or unusually loud sound ... which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a person" is unconstitutionally vague; conviction could be supported on "malice or animosity" or "boiling point" of a particular person); see also *Kovacs v. Cooper*, [336 U.S. 77](#), 79, 69 S. Ct. 448, 449, 93 L. Ed. 513, 518, reh'g denied, 336 U.S. 921, 69 S. Ct. 638, 93 L. Ed. 1083 (1949) (terms "loud and raucous" constitutionally valid because "[w]hile these are abstract words, they have through daily use acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden"); *State v. Dorsett*, 3 N.C.App. 331, 335, [164 S.E.2d 607](#), 610 (1968) (citing *Kovacs* to uphold noise ordinance against vagueness challenge). If, however, "actual experience" with Section 1-1(a) "were to demonstrate that it represents a subjective standard ... we would not hesitate to change our judgment accordingly." *Reeves*, 631 F.2d at 386. We expect that the ordinance will be enforced based on this objective standard; therefore, there must be some evidence at trial based on this objective standard to support a conviction under Section 1-1(a). Examples include testimony that a person could not hear a person standing next to them or that furniture or windows were rattling from vibrations created by the noise. See *Dorsett*, 3 N.C.App. 331, [164 S.E.2d 607](#) (State's evidence under noise ordinance showed occupant of house could not hear her television, windows of occupant's house rattled, and person sitting beside occupant on porch could not hear him, all because of noise from motorcycles).

For these reasons, the district court did not err in declaring Section 1-1(b)(3) to be unconstitutional. This partial unconstitutionality of Jackson County's noise ordinance, however, does not support the granting of Denny and Garren's motions to dismiss the charges, and the trial court erred in allowing their motions. Section 1-1(a) remains a valid and enforceable ordinance, and the State is entitled to proceed with the prosecution of Denny and Garren under this ordinance.

Reversed and remanded.

JOHN and McCRODDEN, JJ., concur.

McCRODDEN, J., concurs in this opinion prior to 15 December 1994.

No noise ordinance for Polk County



(<https://www.tryondailybulletin.com/author/leahjustice/>)

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Or maybe you have just settled down for the night after a long hard day at work and just put your kids to bed because they have school early the next day, however, your children will not get sleep tonight, she said, because your neighbors have decided that it is a good time to have a party. She said the music blares so loudly her windows shake.

“This does not happen once in a while, but a few times a week,” Holden said. “So you decide to do the neighborly thing and try to reason with them about the matter. The problem with this idea is that these are the kind of people who have the mind set that this is their private land, and they have the right to do anything they want no matter what.”

Cindi Staben said she doesn't have the problems people in Silver Creek do, but she lives across the street from a dirt bike track that goes seven days a week. She spoke of having to sell part of her farm several years ago and upon that sell she really took a beating because of the dirt track. She said she cannot sell her farm and it's been on the market for years.

ADVERTISING

The 11th season of "Doctor Who" premieres this week...

"I cannot sell my farm and I don't know what I'm going to do," Staben said. "I will go to Raleigh if there isn't something done."

She encouraged everyone in the vicinity to go to the Polk County Tax Office and get their taxes lowered then go to Raleigh and get them lowered again because, "nobody wants our land."

Commissioner Gasperson said Silver Creek residents have been talking to him and he had hoped the current board would be open to exploring a noise ordinance even if it's minimal. He said any ordinance will have an impact simply because people will realize there is an ordinance which is better than having to get three citizens together to file a lawsuit. Gasperson also said the current board of commissioners implemented noise regulations for White Oak development, which isn't even in existence yet and Silver Creek residents are having problems now.

"My question is, what's wrong with exploring it?" Gasperson asked.

Commissioner Ted Owens said the standards for White Oak are in the development agreement. He asked county attorney Jana Berg if the county could just do an ordinance in the Silver Creek area.

Berg said the White Oak development agreement has noise standards as a concession and developers agreed to accept the noise standards. She said White Oak is in a zoned area while Silver Creek is not.

Commissioner Pack said he feels for Silver Creek residents but at the same time it's going to be hard to come up with a noise ordinance that's not going to impact other people in a negative way.

Gage said he talked to a lot of people and they don't want a noise ordinance.

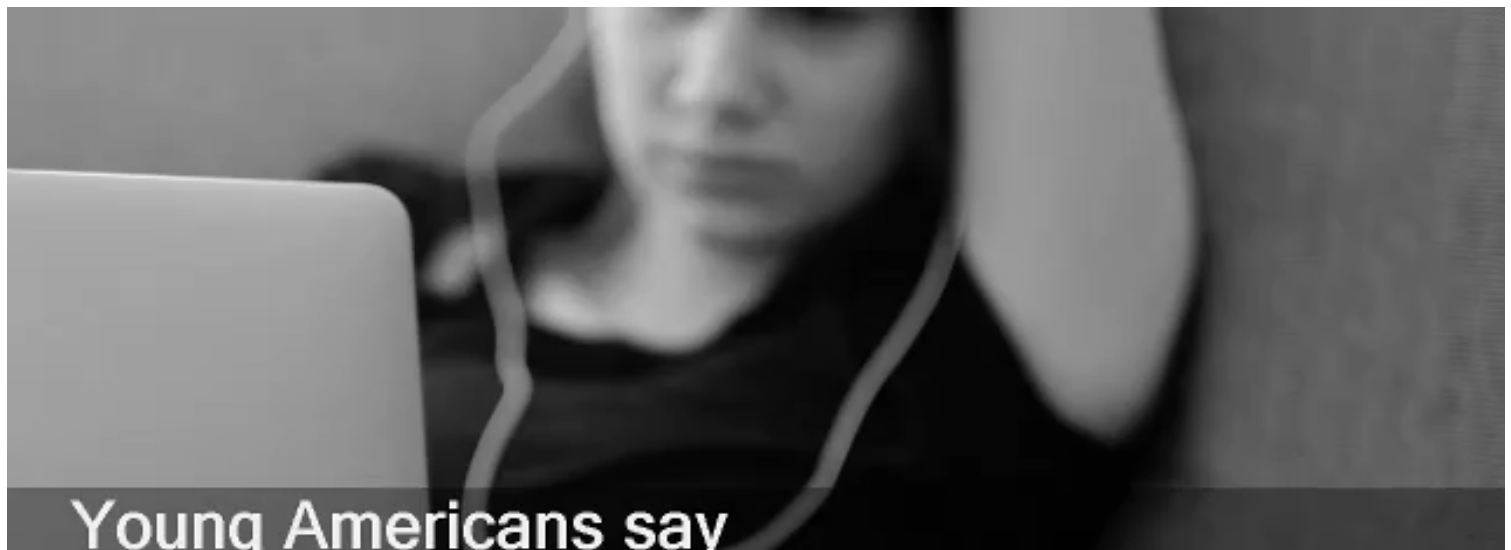
"It's other people that don't want to be affected," Gage said. "It's not just about one community we're talking about, it's about the whole county."

Gage said he does want to help Silver Creek residents and thinks through law enforcement research the county can help them out.

During citizen comments at the end of the meeting, William Day said he was impressed with how commissioners handled the noise ordinance discussion. He said the board didn't buy into the hysteria and create an ordinance immediately, but rather understood that there are 18,000 to 19,000 people in this county.

"You thought about the other people and you wanted to solve their problem and hopefully there is an answer to their problem," said Day.

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STATE	CITY/COUNTY	ACTION	RESPONSE TO NOISE COMPLAINTS AND CONCERNS
	Williamsburg/ NYC	Complaint	New residents in neighborhood complain about a record store's long term practice of playing music on outdoor speakers. The record store owner doesn't appreciate new neighbors moving in and changing the culture of the neighborhood and believed the neighbors should have been prepared for music on the block. Playing music on the speakers is illegal, but a Williamsburg councilwoman recognizes the music's importance to the local Latino community.
North Carolina	Asheville	Amend	City Council approved amendments to noise ordinance. Noise ordinance applies to certain residential areas, not downtown where people choose to live in a noisier area.
	Boone	Update	Noise complaints down since noise ordinance enacted. Police now have a way to enforce noise complaints.
	Durham	Lawsuit	Durham police cited New Hope Church under the city's noise ordinance in December, 2012 for sound considered "unreasonable and disturbing." Neighbors complained services at the church are akin to rock concerts - with the music invading their homes. Noise complaint dismissed after prosecutors unable to subpoena a key witness.
	Clayton	Amend	Town council voted (4-1) against adopting a new noise ordinance. Councilman says it puts too big of a burden on police and noise is not a big problem. Other councilmen expressed frustration with the expensive process of conducting noise studies in town to measure the average sound levels in different areas.
	Marion	Complaint	There have been about a dozen noise complaints all coming from one city councilman ever since a nightclub opened a year ago, but other neighbors say they don't hear noise, or could barely hear it.
	Marion	Complaint	Ever since a nightclub opened a year ago, there have been about a dozen noise complaints all coming from one city councilman, but other neighbors say they don't hear noise, or could barely hear it.
	Polk County	New	Residents in a community ask for a noise ordinance to address excessive noise from guns, cars and music. Polk County had a decibel-based noise ordinance in 2004, but it was rescinded after the sheriff said it was unenforceable. Planning board tabled the discussion of the issue in until the next meeting in June, 2013.
	Charlotte	Amend	City considering prohibiting bars (not restaurants) from playing music between 12 a.m. to 2 a.m., but find it's not easy to differentiate between a bar, restaurant or nightclub. Neighbors complain of noise while bar and restaurant owners complain strict noise ordinances prevent them from running business.
	Archdale	Amend	Ordinance changed to address noise from outdoor entertainment at night.
	Greenville County	Amend	New change in ordinance gives drivers two warnings to turn car stereo down if it's more than 70 decibels. On the third, drivers have to appear before a judge, and those found guilty of violating the ordinance have seven days to turn their equipment to the Greenville County Sheriff's Office.
	Greensboro	Amend	City Council looking into dropping its noise ordinance threshold from 75 decibels to 60, and ban amplified outdoor music after 11 p.m. following continuing violations and complaints. City is also taking legal action against Greene Street and Syn & Sky establishments for allegedly violating the noise ordinance. Nightclub's attorney said the ordinance violates equal protection because the city exempted its own venues and said enforcement has been biased.

Transylvania County Sheriff's Office

Noise Complaint Report

(Completed by TCSO personnel)

SECTION I

Is the noise prohibited under Article V Section 3 of the noise ordinance? Yes _____ No _____ Section _____
(If yes, complete SECTION IV and a verbal warning, written warning or citation is appropriate. If no, go to SECTION II.)

SECTION II

Is the noise exempted under Article V Section 2 of the noise ordinance? Yes _____ No _____ Section _____
(If yes, no violation has occurred. Complete SECTION V. If no, complete SECTION III.)

SECTION III

Can you hear the noise from the complainant's property?	Yes _____	No _____	Comment _____
Can you identify the exact location the noise is coming from?	Yes _____	No _____	Comment _____
Does the noise hinder normal conversation/usual actions?	Yes _____	No _____	Comment _____
Is the noise produced by non-business activities?	Yes _____	No _____	Comment _____
Is the noise constant? (30 minutes or longer sustained)	Yes _____	No _____	Comment _____
Is the noise intermittent or recurrent? (Over 30 min. period)	Yes _____	No _____	Comment _____
Is the source of the noise close to residential structures?	Yes _____	No _____	Comment _____

(If 6 or more are yes, complete SECTION IV and a verbal warning, written warning or citation is appropriate.)

SECTION IV

Statement of Complaint

(Completed by Complainant)

I/We, _____ do hereby make this complaint regarding noise caused by
or emanating from _____ of _____.

My/Our statement of complaint is as follows: _____

I/ We request the Transylvania County Sheriff's Office to pursue a criminal violation of the Transylvania County Noise Ordinance if probable cause exists. I/ We understand the District Attorney and/or Transylvania County may require my presence and testimony for any proceeding that may result from this complaint.

Signature of Complainant _____ Telephone # _____

Address of Complainant _____

SECTION V

DISPOSITION

Verbal Warning _____ Written Warning _____ Citation _____ No Violation _____

Officer Name _____ Signature _____ Date/Time _____

Additional Complainants

Name of Complainant _____ Telephone # _____

Address of Complainant _____

Name of Complainant _____ Telephone # _____

Address of Complainant _____

Name of Complainant _____ Telephone # _____

Address of Complainant _____

Name of Complainant _____ Telephone # _____

Address of Complainant _____

Officer Comments: _____

Exempted Noises:

- 2.1 Sound emanating from regularly scheduled outdoor athletic events.
- 2.2 Construction operations from 0600-2100 hours on weekdays and 0800-2100 on weekends with properly equipped mufflers and permits.
- 2.3 Noises of safety signals, warning devices, emergency pressure valves, factory steam whistles and all mechanical and electrical church bells or chimes.
- 2.4 Noises resulting from any authorized emergency vehicle when responding to any emergency call or in time of emergency.
- 2.5 All noises coming from the normal operations of aircraft.
- 2.6 Noise from lawful fireworks and noisemakers on holidays.
- 2.7 Noise from lawnmowers, weed trimmers, edging machines, or other similar small-engine yard maintenance equipment when used between 0600 and 2100 hours.
- 2.8 Musical accompaniment at military ceremonies that is taped outdoor music, or music played with instrument not electrically amplified.
- 2.9 Farming operations shall be exempt.

Prohibited Noises:

- 3.1 Noise or sounds that are substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order.
- 3.2 Noise that is perceived by a person of ordinary and reasonable sensibilities as interrupting the normal peace and calm of an area or neighborhood.
- 3.3 Dogs or other constrained animals that by frequent or habitual howling, yelping, barking or otherwise cause loud noises between 2100-0600 hours
- 3.4 Operating or permitting the operation of any automobile motorcycle, dirt bike, go-cart, recreational vehicle, remote-controlled vehicle or other vehicle that engages in jackrabbit starts, spinning tires, racing engines, or other operations including operating an overloaded or out of repair vehicle which disturbs the comfort and repose of any person of normal sensibilities.
- 3.5 Knowingly permitting the occurrence or emanation of any of the foregoing specifically enumerated violations of this ordinance.

SMALL AREA PLANNING PROCESS



DRAFT

07 November 2018