

- **ARTICLE II. - NOISE<sup>[1]</sup>**

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- **Sec. 9.5-21. - Purpose.**

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It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.

It is further recognized that a substantial body of science and technology exists by which excessive sound may be measured and substantially abated. Because the regulation of excessive and unnecessary noise that may jeopardize human health or welfare or substantially degrade the quality of life is well within the power of the governing body's police powers, it is declared to be the purpose of this section to prevent, prohibit, and provide for the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life

(Ord. of 6-1-98)

- **Sec. 9.5-22. - Certain noises and sounds prohibited.**

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It shall be unlawful, except as expressly permitted herein, to make, cause, or allow the making of any noise or sound which exceeds the limits set forth in sections 9.5-23 through section 9.5-28.

(Ord. of 6-1-98)

- **Sec. 9.5-23. - Terminology and standards.**

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(a)  
*Conformance.* All terminology used in the provisions of sections 9.5-21 through 9.5-30 not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

(b)

*Definitions:* [The following definitions shall apply to this article:]

*Ambient sound.* The total noise in a given environment.

*A-weighted sound level.* The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

*A-weighted sound level meter.* An instrument which includes an omnidirectional microphone, an amplifier, an output meter, and frequency weighting network(s) for the measurement of sound.

*Background noise.* Ambient sound.

*Classification of use occupancies.* For the purpose of defining the "use occupancy" all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing transient commercial sleeping quarters shall be considered commercial use. All premises containing businesses where sales, professional, or other commercial use is legally permitted shall be considered commercial use. All premises where industry is legally permitted shall be considered industrial use. In case of multiple use, the more restrictive use category shall prevail. Hospitals, nursing homes, schools, libraries, and church uses shall be considered residential uses. Any area not otherwise classified shall conform to commercial standards. All premises where agricultural activity is legally permitted shall be considered agricultural use.

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

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

*Noise sensitive zones.* Any zone so designated by the board of commissioners which displays conspicuous signs indicating the presence of such zone.

*Octave band sound level.* The sound pressure level in decibels of the sound within a specific frequency band surrounding a specific center octave frequency (example: frequency band: 355-710 Hz; center octave frequency: 500 Hz), as measured on an octave band sound level meter set for measurement of sound level within that octave band. The level so read is designated dB, followed in parentheses by the center frequency of the octave band (example: 65 dB(500 Hz)).

*Octave band sound level meter.* An instrument which includes an omnidirectional microphone, an amplifier, an output meter, and octave band filter for octave band sound level measurement.

*Person.* Any individual, association, partnership, or corporation and includes any officer, employee, department, agency or instrumentality of the United States, the state, or any political subdivision thereof.

*Sound pressure level.* Twenty times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference of 20 micronewtons per square meter.

*Weekend.* A weekend shall be defined as that period of time between 12:00 midnight on Friday to 12:00 midnight on Sunday.

(c)

*Measurement of sound.*

(1)

*Personnel.* The operator of a sound level meter, but not persons assisting that operator with nontechnical aspects of sound level measurement, must have received special training in sound measurement from an expert or experts in sound measurement and must have received training in the use of the sound level meter used. The sheriff of the county shall prescribe minimum training standards for such operators.

(2)

*Measurement procedures.* Sound level measurement, to include A-weighted and octave band measurement, and recording of measurement readings shall be accomplished in accordance with procedures approved by the sheriff of the county. These measurement procedures shall conform to the operating instructions included in the operator's manual for the sound level meter used.

(d)

*Background sound.* When the lowest sound level reading of the highest ten percent of readings taken during a measurement period was ten or more decibels higher than the background sound level at the place of measurement shortly before or after the measurement period, as prescribed in section 9.5-24 herein, it shall be presumed, for the purposes of the enforcement of sections 9.5-21 through 9.5-30, that the recorded sound levels in excess of the applicable sound level limit were caused by the source of sound, the activation of which caused the sound level to exceed the background sound level. The period of measurement of background sound level shall be at least one minute and readings shall be taken at five-second intervals. The proof of background sound level shall not be required for enforcement of sections 9.5-21 through 9.5-30.

(Ord. of 6-1-98; Ord. of 9-8-98)

- **Sec. 9.5-24. - Maximum permissible sound levels by use occupancy.**

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No person shall operate or cause to be operated any source of sound from any occupancy in such a manner as to create a sound level which exceeds the limits set forth for the use occupancy category in Table 1 or Table 2 herein, more than five minutes, or ten percent of the sound level measurements taken at five-second intervals during a measurement period of at least ten minutes, to be measured at or beyond the property boundary of the land use from which the sound emanates.

Table 1

Sound Levels by Use Occupancy Category

Use Occupancy Category	Time	Sound Level Limit dB(A)
Residential or Public Space	<u>6</u> a.m.—10 p.m.	60
	<u>10</u> p.m.— <u>6</u> a.m.	55

Use Occupancy Category	Time	Sound Level Limit dB(A)
Commercial or Business Manufacturing, Industrial or Agricultural	<u>6</u> a.m.—10 p.m.	65
	<u>10</u> p.m.— <u>6</u> a.m.	60
	At all times	75

Table 2

Maximum Permissible Octave Band Sound Levels  
by Use Occupancy Category and Frequency  
Band and Time of Day

Frequency (Hz)	Residential or Public Space		Commercial or Business	
	6 a.m.—10 p.m.	<u>10</u> p.m.—6 a.m.	6 a.m.—10 p.m.	<u>10</u> p.m.—6 a.m.
31	88	72	90	88
63	79	71	85	79
125	69	65	73	69
250	62	57	67	62
500	58	51	61	58
1000	54	45	55	54
2000	50	43	51	51
4000	46	42	49	49
8000	43	41	47	47

EXPAND

Any source of sound which is the subject of a specific exemption or special permit in sections 9.5-21 through 9.5-30, shall not be permitted to exceed, by more than



15 dB(A) or dB in octave band measurement for all categories, those sound levels permitted in Table 1 or Table 2 hereinabove.

(Ord. of 6-1-98)

• **Sec. 9.5-25. - Specific prohibitions.**

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In addition to the general prohibitions set out in section 9.5-24 and the maximum permissible sound levels set out in Table 1, section 9.5-24, and unless otherwise exempted in section 9.5-26, the following specific acts, or the causing or permitting thereof are hereby declared to be unlawful:

(1)

*Radios, television sets, musical instruments and similar devices.* Operating, playing, or permitting the operation or playing of any drum, musical instrument, television, tape recorder, cassette player or other machine or device for reproducing sound.

a.

Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create excessive and unnecessary noise across a residential real property line or within a noise sensitive area; or

b.

In such a manner as to exceed the levels set forth for the occupancy category set forth in Table 1.

(2)

*Loudspeakers.* Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays in areas within or adjacent to residential, commercial, or noise sensitive areas, except for any noncommercial public speaking, public assembly, or other activity for which a special permit has been issued by the sheriff.

(3)

*Street sales.* Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the county, except by special permit issued by the sheriff.

(4)

*Animals.* Owning, possessing, or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive zone. This provision shall not apply to public zoos or private animal attractions operated for profit to which the public has general admission and which are regulated by the county. This section shall not apply to dogs.

(5)

*Loading and unloading.* Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of residential area or noise sensitive zone.

(6)

*Construction and demolition.* Operating or causing the operation of any tools used in construction, drilling, repair, alteration, or demolition work between the hours of 9:00 p.m. and 6:00 a.m. on weekdays, or between 9:00 p.m. and 9:00 a.m. on weekends or holidays in or within 50 yards of any residential area or noise sensitive zone, except for emergency work by public service utilities or by special permit issued by the sheriff. This section shall not apply to the use of domestic power tools as specified in subsection (11).

(7)

*Powered model vehicle.* Operating or permitting the operation of powered model vehicles:

a.

Between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends or holidays in or within 100 feet of any residential areas or noise sensitive zone; or

b.

In such a manner as to exceed the levels set for public space land use, measured at a distance of not closer than 100 feet (30 meters) from any point on the path of a vehicle operating on a public space or public right-of-way.

(8)

*Emergency signaling devices.* The intentional sounding or permitting the sounding outdoors of any fire, burglary, or civil defense alarm, fire, whistle, or similar stationary emergency signaling device, except for emergency, shall not occur before 7:00 a.m. or after 7:00 p.m., and any testing shall use the minimum cycle test time appropriate for such devices, in no case to exceed 60 seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall occur only on weekdays and not before 7:00 a.m. or after 10:00 p.m., and shall be exempt from the time limit specified herein. The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is automatically terminated within 15 minutes of activation, shall be prohibited.

(9)

*Motor boats.* Operating or permitting the operation of any motor boat in any lake, river, stream, canal, bay, or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area or noise sensitive zone, or to exceed 86 dB(A) when measured at least 50 feet from the craft.

(10)

*Noise sensitive zones.* Creating or causing the creation of any sound within any noise sensitive zone so as to exceed the decibels levels set forth for such zone when measured at a distance of at least 25 feet (seven and one-half meters) from the sound source, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone or the creating or causing the creation of any excessive and unnecessary noise within or adjacent to any noise sensitive zone containing a hospital, nursing home, school, court or other designated area, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone.

(11)

*Domestic power tools.* Operating or permitting the operation of any mechanically powered saw, drill grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 6:00 a.m. on weekdays, or 10:00 p.m. and 7:00 a.m. on weekends and holidays, unless such equipment is operated inside a building or other structure so that the sound therefrom does not travel across any residential real property line or sensitive zone and exceed the levels set forth in Table 1. All such equipment shall

be properly muffled and maintained in working order so as not to create excessive and unnecessary noise.

(12)

*Multifamily dwellings.* Operating or permitting the operation within a multifamily dwelling of any source of sound in a manner so as to exceed 55 dB(A) from 7:00 a.m. to 10:00 p.m. or 45 dB(A) from 10:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 10:00 a.m. on weekends and holidays, when measured with an adjacent intrabuilding dwelling. These noise limits shall not be exceeded more than ten percent of any measurement, which shall not be less than ten minutes. The maximum permissible sound level, when measured in an adjacent intrabuilding area between 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays shall be 50 dB(A).

(13)

*Places of public entertainment.* Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment that exceeds the level shown in Table 3 below, at any point normally occupied by a customer, without a conspicuous and legible sign stating, "WARNING" SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."

Table 3  
Permissible Noise Exposures

Duration per Day Continuous Hours	Noise Level dB(A)
8	90
6	92
4	95
3	97
2	100
1½	102
1	105
½	110
¼ or less	115

EXPAND



(14)

*Refuse collection vehicles.* No person shall collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends and holidays within a residential area or noise sensitive zone.

(15)

*Recreational motorized vehicles operating off public right-of-way.* No person shall operate or cause to be operated any recreational motorized vehicle or motorcycle that exceeds the limits set forth in Table 1 off the public right-of-way in any residential or noise sensitive zone. This section shall apply to all motorized vehicles or motorcycles, whether or not duly licensed and registered.

(16)

*Morning to evening.* Subject to the provisions of this article, the creation of any unreasonably loud, disturbing and unnecessary noise in the county between the hours of 7:00 a.m. and 10:00 p.m. within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained road or public vehicular area is prohibited.

(17)

*Nighttime.* Subject to the provisions of this article, the creation of any unreasonably loud, disturbing and unnecessary noise in the county between the hours of 10:00 p.m. and 7:00 a.m. the following morning within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained highway or public vehicular area is prohibited.

(18)

*Detrimental noise.* Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited within the county, no matter what the distance of the source of such noise is to any dwelling unit, house, trailer or building occupied by such other person, unless the person in control of such unit, house, trailer or building has given specific consent for such noise to continue.

(19)

*Prohibited acts generally.* The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive:

a.

*Blowing horns.* The sounding of any horn or signal on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sound of such device for an unnecessary and unreasonable period of time.

b.

*Radios, tape recorder, cassette player or other machine or device for reproducing sounds, etc.* The playing of any radio, tape recorder, cassette player or other machine or device for reproducing sound or other musical instrument in such manner or with such volume as to unreasonably annoy or disturb the quiet, comfort or repose of any person in any dwelling unit, house, trailer, building or other type of residence.

c.

*Pets.* The keeping of any animal or bird, which, by causing frequent or long continued noise, shall unreasonably disturb the comfort and repose of any person in the vicinity.



d.

*Use of vehicle.* The use of any automobile, motorcycle or vehicle so loaded or operated in such manner as to create an unreasonably loud or unnecessary grating, grinding, rattling or other noise.

e.

*Blowing whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.

(Ord. of 6-1-98)

• **Sec. 9.5-26. - Exemptions from section 9.5-24.**

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The following are exempt from the provisions of Table 1 [of section 9.5-24]:

(1)

Lawn mowers and agricultural equipment during daylight hours (7:00 a.m. to 10:00 p.m.) when operated with all the manufacturers' standard mufflers and noise reducing equipment in use and proper operating condition;

(2)

Nonamplified crowd noises resulting from the activities, such as those planned by student, governmental or community groups;

(3)

Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition;

(4)

Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches;

(5)

Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

(6)

Any other noise resulting from activities of a temporary duration otherwise permitted by law;

(7)

Regulation of noises emanating from operations for activities for which a permit has been issued shall be according to the conditions and limits stated on the permit and contained in 9.5-27;

(8)

All noises coming from the normal operations of aircraft (not including scale model aircraft) and all noises emanating from the Fayetteville Municipal Airport property within the NEF (Noise Exposure

Forecast) zones as established by a survey dated April, 1977, and maintained in the office of the airport manager.

(Ord. of 6-1-98)

- **Sec. 9.5-27. - Special permits for relief from allowable noise level limits.**

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Applications for a permit for relief from the maximum allowable noise level limits designated in sections 9.5-21 through 9.5-30 may be made in writing to the sheriff or his duly authorized representative. Any permit granted by the sheriff hereunder must be in writing and shall contain all conditions upon which such permit shall be effective. The sheriff or his duly authorized representative may grant the relief as applied for under the following conditions:

(1)

The sheriff may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.

(2)

Permits for entertainment. Permits may be granted for the purpose of entertainment under the following conditions:

a.

The function must be open to the public (admission may be charged).

b.

The function must take place on public property or public vehicular areas of shopping centers in an area zoned for such use.

c.

The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.

(3)

Other. Special permits for nonentertainment special purposes may be issued under the following conditions:

a.

[Relationship to trade or business.]

1.

If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or

2.

If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and

b.

If the special purpose is a recurring purpose, that it not recur more often than four times each calendar year; and

[Necessity; compatibility.]

c.

1.

That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or

2.

If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and

d.

Except in emergency situations, as determined by the sheriff, the special permit may be issued only between 7:00 a.m. and 12:00 p.m. on weekdays; and

e.

Special permit may be issued for no longer than 15 consecutive days, renewable by further application to the sheriff.

(4)

Exterior loudspeaker not permitted. No permit may be issued to permit the use of any loudspeaker or sound amplifying device on the exterior of any building which at any time exceeds the sound level limits in Table 1, except those used for emergency warnings.

(5)

Appeal. Anyone aggrieved by the provisions of this section shall have the right to appeal the decision of the sheriff to the county commissioners. The appeal shall be in writing and filed with the county clerk within ten days after the decision of the sheriff. Upon receipt of a notice of appeal, the county commissioners shall grant a hearing to the appellant at the next commissioners meeting, provided such notice of appeal is received ten days before such commissioners meeting.

(6)

At the hearing before the county commissioners pursuant to an appeal as requested herein, the county commissioners shall hold a public hearing to determine whether issuance of the permit would be detrimental to the public health, safety and welfare of the community. If the county commissioners determine that the issuance of the permit would not be detrimental to the public health, safety and welfare, the county commissioners shall specifically authorize the sheriff to issue the permit to the applicant. If the county commissioners determine that the issuance of the permit would be detrimental to the public health, safety and welfare of the community, the county commissioners shall so notify the applicant, and the sheriff shall not issue the permit.

(Ord. of 6-1-98)

- **Sec. 9.5-28. - Motor vehicle noise.**

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(a)

No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category of motor vehicle shown below. Noise shall be measured at a distance of at least 25 feet (seven and one-half meters) from the near side of the nearest lane(s) being monitored and at a height of at least four feet above the immediate surrounding surface.

Sound Pressure Level (dB(A))

	Speed limit 35 mph or less	Speed limit over 35 mph
Motor vehicles with a manufacturer's gross vehicle weight rating (GVW) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle, except those operated by an interstate motor carrier.		
Such vehicles operated by interstate motor carriers (measured at least 35 feet from the centerline of the traveled lane).	91	95
Any other motor vehicle or any combination of vehicles towed by any motor vehicle.	76	80

(b)

This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 9.5-21 through 9.5-30 relating to motor vehicle mufflers for noise control.

(c)

No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:

(1)

Free from defects which affect sound reduction;

(2)

Equipped with a muffler or other noise dissipative device; and

(3)

Not equipped with any cut-out, bypass or similar device.

(Ord. of 6-1-98)

- **Sec. 9.5-29. - Barking dogs.**



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(a)

It shall be unlawful for anyone to permit any dog or dogs which he or she owns, possesses or which may be a dog or dogs over which he or she has the authority to exercise control to bark, bay, cry, howl, or make any other noise continuously and/or excessively for a period of ten minutes or more, or who barks, bays, cries, howls or makes any other noise intermittently for one-half hour or more, to the disturbance of any person at any time.

(b)

It shall not be a violation of this section if, at the time the dog is barking, baying, crying, howling, or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any legitimate cause which teased or provoked the dog.

(c)

Any resident, owner, occupant, or tenant of property upon which the dog is situated shall be deemed a person in charge or otherwise exercising control over such dog.

(Ord. of 6-1-98; Ord. of 10-15-2012)

• **Sec. 9.5-30. - Noise from radios, tape players, loudspeakers, sound amplifiers.**

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(a)

Notwithstanding any other provision of this article, and as a separate and alternative provision, no person shall play, use or operate, or permit to be played, used or operated, any radio, tape recorder, cassette player, CD player, mp-3 player, digital music player, amplifier, speaker, or other machine or device for reproducing sound, if it is located in or on any of the following:

(1)

Any public property, including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking lot; or

(2)

Any motor vehicle on a public street, highway, public space or within the motor vehicular area of any public or private parking lot or park;

and if, at the same time, the sound generated is audible at a distance of 30 feet from the radio, tape recorder, cassette player, or other machine or device that is producing the sound.

(b)

Possession by a person or persons of any radio, tape recorder, cassette player, CD player, mp-3 player, digital music player, amplifier, speaker or other machine or device for reproducing sound, enumerated or contemplated under subsection (a) above shall be prima facie evidence that such person operates, or those persons operate, the radio, tape recorder, cassette player, CD player, mp-3 player, digital music player, amplifier, speaker or other machine or device for reproducing sound.

(Ord. of 6-1-98; Ord. of 10-15-2012)

• **Sec. 9.5-30.1. - Loud and disturbing noise.**

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(a)

Notwithstanding any other provisions of this article, the creation, causing, or allowing of any unreasonably loud or disturbing noise in the county is prohibited and the determination of whether a noise is unreasonably loud or disturbing may be made without regard to measurement by a sound meter or other measurement of the decibel level.

(b)

For the purposes of this section, the following definitions shall apply:

(l)

*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, order, or calm of the area or which is obnoxious to or unreasonably disturbing to a person whose residence, work or commercial enterprise is within a reasonable proximity to the point, place or person from which such noise is emanating or emanated and the noise is of such a kind, nature, duration or extent that a reasonable person would consider the noise to be unreasonably loud or disturbing.

(2)

*Disturbing.* Noise which is perceived by a person of reasonable and ordinary firmness and sensibilities as interrupting the normal peace, order, and calm of such person or persons or that of the proximal area or tending to annoy, disturb, or frighten such persons in such proximity to the point, place or person from which such noise is emanating or emanated, that a person of reasonable and ordinary firmness and sensibilities would reasonably be or reasonably be expected to be disturbed in his or her use, occupation, or pursuits.

(c)

In determining whether a noise is unreasonably loud or disturbing, the following non-exclusive factors incident to such noise are to be considered: time of day; proximity to residential structures; whether the noise is consistent with the nature of the surrounding area (that is, within a reasonable degree of proximity such that the noise could reasonably be expected to affect the person or persons who occupy, live or dwell in such proximity); the range or distance from the point of emanation that the sound may be unreasonably loud or disturbing; whether the noise is recurrent, repetitive, intermittent, or constant; the volume or intensity of the noise; whether the noise has been enhanced in volume or range by any type of mechanical, electronic, or other similar means; the nature and zoning of the area; whether the noise is related to the normal operation of a business or other labor activity, whether the noise is subject to being controlled without unreasonable effort or expense to the creator or person or entity causing or allowing the emanation of such noise; and any other factor which reasonably should be considered in determining whether a noise is unreasonably loud or disturbing.

(d)

The following acts, among others, are declared to be loud and disturbing noises in violation of this article, but such enumeration shall not be deemed to be exclusive:

(1)



The use of any loud, boisterous or raucous language or shouting so as to annoy or disturb the quiet, comfort or repose of persons in the vicinity or otherwise to be a loud or disturbing noise as defined under this section;

(2)

The sounding of any horn or signal device on or from any automobile, motorcycle, bus or other vehicle, except as a danger signal or as required by law, so as to create any unreasonable loud or harsh sound; or the sounding of such device for an unreasonable period of time.

(3)

The playing of any radio, television set, record player, musical instrument or sound-producing or sound-amplifying device in such manner or with such volume, particularly, but not limited to, between the hours of 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the quiet, including comfort or repose of persons of reasonable and ordinary firmness and sensibilities or normal capabilities in any dwelling, motel, hotel or other type of residence.

(4)

The keeping of any animal, except livestock and poultry maintained and kept consistent with the zoning applicable to the property where kept, which, by causing frequent or long continued noise on a regular basis, shall disturb the comfort and repose of any person of reasonable and ordinary firmness and sensibilities in the vicinity or which may otherwise be a loud or disturbing noise as defined under this section. With respect to this subsection only, if the violation continues or complaints are received from other households, the owner shall be granted ten working days to remedy and rectify the situation before issuance of a citation.

(5)

The use of any automobile, motorcycle or other motor vehicle or vehicle of any kind which may be out of repair, so loaded, so equipped or operated in such a manner as to create loud grating, grinding, rattling or other noise caused by or emanating from such vehicle or its operation or which otherwise shall be or create or cause a loud or disturbing noise as defined under this section.

(6)

The discharge of a firearm or firearms in such a manner as to create an unreasonably loud or disturbing noise as defined or contemplated under this article or in this section.

(Ord. of 10-15-2012)

- **Sec. 9.5-30.2. - Exceptions.**

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The following provisions shall apply to or exempt the following under the circumstances:

(1)

Noises generated, made or created during the regular operations of a manufacturing or industrial facility, defined as any premises where goods or wares are made, processed, warehoused or stored or where manufacturing is legally permitted and carried on and the owner of such manufacturing or industrial facility takes or has taken reasonable steps not to cause, create or allow unreasonably loud or disturbing noise not necessarily inherent to such manufacturing or industrial facility.

(2)  
Noises generated, made or created by fire, law enforcement, ambulance, rescue or other emergency vehicles while such vehicles are engaged in their proper functions.

(3)  
Parades, fairs, circuses, other similar public entertainment events, sanctioned sporting events, athletic contests, sporting events and sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of the above, when such events and activities take place between the hours of 7:00 a.m. and 11:30 p.m. After 11:30 p.m., persons engaged in these events and activities who create noise which is prohibited by section 9.5-31.1 shall be in violation of this article or of such ordinance.

(4)  
Construction operations 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 operated in accordance with manufacturer's specifications and with all standard equipment, manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition.

(5)  
All noises coming from the normal operations of properly equipped aircraft, not including scale model aircraft.

(6)  
Lawnmowers and agricultural equipment and landscape maintenance equipment when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in reasonable operating condition.

(7)  
Emergency work necessary to restore property to a safe condition following a fire, accident or natural disaster, or to restore public utilities, or to protect persons or property from an imminent danger.

(8)  
Noises resulting from the provision of government services.

(9)  
Noise from noisemakers and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to G.S. 14-410 et seq.

(10)  
Noise from trains and associated railroad rolling stock when operated in proper repair and manner.

(11)  
Noise from the discharge of a firearm or firearms when the firearm is being used to take birds or animals pursuant to G.S. Chapter 113, Subchapter IV, or when lawfully used in defense of person or property, or when used pursuant to lawful directions of law enforcement officers. It is further provided, however, that a firearm discharged for the purpose of taking birds or animals within a distance of less than 500 feet of a residence, business, or commercial establishment located in an established or dedicated subdivision, regardless of the zoning applicable to such dwelling or residence, or if such dwelling, residence or establishment is located within an area zoned as residential or, in the case of a business or commercial establishment within an area zoned for



such purposes, shall not be exempt and any such discharge shall be subject to the provisions of section 9-5-30.1.

(Ord. of 10-15-2012)

- **Sec. 9.5-31. - Enforcement responsibility.**

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(a)

[ *Primary enforcement responsibility.* ] The sheriff of the county shall have primary enforcement responsibility for sections 9.5-21 through 9.5-30 as they relate to stationary sources and as they relate to motor vehicle sources.

(b)

*Powers of arrest or citation.* Any sheriff shall issue a citation for any violation under this article, except they may arrest for instances when:

(1)

The alleged violator refuses to provide the sheriff or deputy with such person's name and address and any proof thereof as may be reasonably available to the alleged violator; or

(2)

The alleged violator willfully fails or refuses to cease the violating activity after being issued a citation or after having been directed by the sheriff or a deputy or employee of the sheriff to desist from the creation, emanation, maintenance, or allowing of such unreasonably loud or disturbing noise or activity in violation of this article.

(Ord. of 6-1-98; Ord. of 10-15-2012)

- **Sec. 9.5-32. - Penalties for violation.**

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(a)

*Civil penalties and remedies.* Civil penalties may be imposed as provided in this section and civil remedies may be sought as provided in this section or as may be available at law or in equity, as follows:

(1)

Any person, firm or corporation violating any provision of sections 9.5-21 through 9.5-31 of this Code of Ordinances shall be subject to a civil penalty in the amount of \$100.00 for each offense, and separate offenses shall be deemed committed on each day during or on which a violation occurs or continues. Any subsequent violation within a 12-month period of a first violation after the effective date of the ordinance from which this article derives shall subject the violator to a civil penalty of \$150.00 for each subsequent violation. For purposes of determining subsequent violations within a 12-month period, the date of the first violation from and after January 1, 2013, shall be the anniversary date from which a new 12-month period shall begin.

(2)

Any person, firm, or corporation violating any provision of sections 9.5-21 through 9.5-31 shall be issued a citation which shall, among other things, state upon its face the amount of the civil penalty and that it shall be paid within 72 hours from and after such violations; notify such offender that failure to pay the penalty within the prescribed time shall subject the offender to a civil action in the nature of a debt for the stated penalty plus the cost of the action to be taxed in the court; and further provide that the penalty may be paid at the Cumberland County Sheriff's Office, 131 Dick Street, Fayetteville, North Carolina 28301. If the penalty prescribed in subsection (a)(1) above is not paid within 72 hours, the county may initiate a civil action in the nature of a debt and recover the civil penalty and the cost of the action.

(3)

As an additional remedy, this article may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction to restrain or enjoin the violation. The action shall be brought in the appropriate division of the general court of justice of the county. Further, the rights and duties created or permitted under this article may also be enforced by a civil action brought by the county or the sheriff of the county or by any citizen of the county seeking, among other things, abatement and restraint of the creation, causation, or allowing such unreasonably loud or disturbing noise, including injunctive relief under Rule 65 of the Rules of Civil Procedure and the recovery of any damages which a court may award. The institution of an action for equitable relief shall not relieve any party to such proceeding from any civil remedy or civil or criminal penalty prescribed or permitted for violations of this article.

(b)

*Criminal penalties.* A violation of any provision of this article shall be a misdemeanor punishable to the extent provided in G.S. 14-4, and the fine for such violation shall be in a sum imposed in the discretion of the court but in an amount less than \$500.00. Any person or corporation or other legal entity violating this article shall be guilty of a Class 3 misdemeanor and, as provided, shall be fined not more than \$500.00. The maximum fine for such violation, therefore, shall be in excess of \$50.00 in accordance with the provisions of G.S. 14-4(a). Each day's continuing violation shall constitute a separate offense.

(c)

*Effective date.* The provisions of the ordinance from which this section derives shall be 12:01 a.m., January 1, 2013.

(Ord. of 6-1-98; Ord. of 10-15-2012)

- **Sec. 9.5-33. - Severability.**

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If any article, section, subsection, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article. It is hereby declared that this article would have been passed, and each article, section, subsection, sentence, or clause hereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, or clauses might be adjudged to be unconstitutional or for any other reason invalid.

(Ord. of 6-1-98)

- Secs. 9.5-34—9.5-40. - Reserved.