



Town of Surf City

ORDINANCE NO. 2021-14

AN ORDINANCE AMENDING CHAPTER 11 NUISANCES ART II. NOISE

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SURF CITY, NORTH CAROLINA, THAT:

SECTION I. The Code of Ordinances, Section Chapter **11 Article II Noise control** is hereby amended to read as:

Chapter 11 Article II Noise control.

- (a) *Intent.* It is hereby declared to be the policy of the town council to prevent unreasonably loud, disturbing or unusually excessive noise. It is the intention of the town council to maintain a noise level within the town so as to preserve, protect and promote the public health, safety and welfare and to foster convenience, peace and quiet within the town for its inhabitants and transients alike. The town council finds that every person is entitled to have noise levels maintained which are not detrimental for life, health, and enjoyment of property and that unusually excessive and unreasonable noise within the town affects and is a nuisance to the public health, safety and welfare and the comfort of the people of the town.
- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

"A" weighting scale means the sound pressure level, in decibels, as measured with the sound level meter using the "A" weighted network (scale). The standard unit of notation is dB(A).

Common carrier means any motor vehicle for hire by the public or any motor vehicle part of a public transportation system.

Construction means any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition.

Decibel (dB(A)). The decibel is a unit of measure of sound (noise) level relative to a standard reference sound on a logarithmic scale.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Electronic sound amplification system means any radio, tape player, digital, compact disc player, loud speaker or other electronic device used for the amplification of sound.

Impulsive sound means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and discharge of firearms.

Modified exhaust system means an exhaust system in which the original noise abatement devices have been physically altered causing them to be less effective in reducing noise abatement devices which are not as effective in reducing noise as their original devices, or devices have been added to the original noise abatement devices such that noise levels are increased.

Motor vehicle means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.

Motorboat means any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, jet skis and hovercraft.

Motorcycle means an unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters, minibikes and mopeds.

Muffler or sound dissipative device means a device for abating the sound of escaping gases of an internal combustion engine.

Noise means any sound which disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans or animals, or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

Noise sensitive zone means any area within 200 feet from the property lines of any church, other places of worship, educational institutions, and day care centers.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space means any real property or structures thereon which are owned or controlled by a governmental entity.

Public waterway means any navigable waters not privately owned.

Real property boundary means a line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

Residential zone means an area designated for any residential use under the town zoning laws.

Sound level (noise level) in decibels. The level measured on the A-weighted scale as defined in the American National Standards S 2.5-1991.

Sound level meter. An instrument designed for the measuring of sound levels and a means of displaying the sound level using the A-weighting network.

Unreasonably loud, disturbing, or excessive noise. Any sound which because of its volume, level, duration or character disturbs, discomforts, injures or endangers the health, peace or safety of a reasonable person with normal sensitivities. For purposes of this chapter, such a sound shall be deemed to be a noise disturbance.

(c) *Noise measurement techniques.*

(1) *Sound level meters.*

- a. For the purpose of determining decibels, (dB(A)s) as referred to in this chapter, noise shall be measured using the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.
- b. The sound level meter should be certified to meet or exceed the American National Standards Institute or its successor bodies and shall be serviced, calibrated and operated as recommended by the manufacturer. Persons utilizing the sound level meter for purposes of this chapter shall be familiar with sound level measurement and the operation of sound level measurement equipment, and shall operate the sound level meter in accordance with the manufacturer's instructions.

(2) *Alternative measurement techniques.*

- a. In the event that the noise cannot be measured on a sound level meter operated on the "A" weighting network (scale) or it is otherwise impractical to utilize this measurement technique under the circumstances:
 1. The complaints of two or more persons, at least one of whom resides in a different location from the other complaining person, when combined with the complaint of an authorized investigating officer, shall be prima facie evidence that the sound is unreasonably loud, disturbing or excessive noise; and/or
 2. If the noise is of such a nature that a reasonable person with normal sensitivities should have known that the noise was creating an unreasonably loud, disturbing or excessive noise the same shall be prima facie evidence of a violation of this chapter. Sound emission decibel measurements shall not be required for establishment of a violation under the circumstances set out above and the same shall be deemed to be a noise disturbance.
- b. In determining whether a noise, under this section, is of such character as to be noise disturbance the investigating officer shall consider the following non-exclusive list of factors:
 1. Does the noise cross property lines?
 2. Complaints of neighbors regarding the noise;
 3. Effect on neighbors complaining about the noise;
 4. Time of day at which the noise takes place;
 5. The intensity and duration of the noise;
 6. The type of noise produced;
 7. The reason or reasons for the noise; and
 8. Alternative means available which will not produce excessive noise.

(3) *Location of measurement.*

- a. Except for noise within multi-family or multi-tenanted structures, all noise measurements shall be made at or beyond the furthest point of the property line of the property from which the noise originates to determine if the noise creates a disturbance. For purposes of measurement, the back of the curb, the outside edges

of driveways, fences, hedges or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.

- b. In the case of noise within multi-family or multi-tenanted structures, noise measurements shall be made in the complaining unit with all windows and doors closed and at a point that is approximately the center of the room in the complaining unit that is nearest the unit from which the noise originates. If access to the complaining unit is not possible, then the measurement shall be at least 25 feet from the nearest point of habitable space of the unit from which the noise originates.

(d) *Maximum permitted sound levels*

- (1) It shall be unlawful to create, cause or allow the continuance of a noise disturbance which interferes with neighboring residents' reasonable use and enjoyment of their properties when measured at or beyond the property line of the property from which the sound originates.
- (2) For noise within a residentially occupied area a noise permit is required.
 - a. May be obtained by making application to the Police Department. The Police Department, along with the Fire Department will review the factors designated on the permit and will forward to the Town Manager for final approval.
 - b. Permits are screened for prior police response. Permits may be denied and/or extra conditions set forth based upon the application.
 - c. Shall be designated as a single-use permit.
 - d. Shall only permit the amplification of either music and/or human speech.
 - e. Shall be applied for no later than five working days prior to the date for which the permit is being sought.

(3) It shall be unlawful to create, cause or allow any mechanical, amplified, noise or sound from any source which registers:

Commercial			
Memorial Day- Labor Day		Labor Day - Memorial Day	
Sunday - Thursday	Friday - Saturday	Sunday - Thursday	Friday - Saturday
8:00 AM - 11:00 PM 80dB(A)	8:00 AM -11:00 PM 80db (A)	8:00 AM - 11:00 PM 70dB(A)	8:00 AM -11:00 PM 80db (A)
11:00 PM - 8:00 AM 60dB (A)	11:00 PM - 8:00 AM 60dB (A)	11:00 PM - 8:00 AM 60dB (A)	11:00 PM - 8:00 AM 60dB (A)
Residential			
Memorial Day- Labor Day		Labor Day - Memorial Day	
Sunday - Thursday	Friday - Saturday	Sunday - Thursday	Friday - Saturday
8:00 AM - 11:00 PM 80dB(A)	8:00 AM -11:00 PM 80db (A)	8:00 AM - 11:00 PM 70dB(A)	8:00 AM -11:00 PM 80db (A)
11:00 PM - 8:00 AM 55dB (A)	11:00 PM - 8:00 AM 55dB (A)	11:00 PM - 8:00 AM 55dB (A)	11:00 PM - 8:00 AM 55dB (A)

After 11:00 P.M. there is to be no amplified noise at or beyond the property line from which the sound originates.

- a) When the residential or commercial occupancy classification of the property where the sound originates differs from the residential or commercial occupancy classification of the adjoining sound receiving property, then the maximum permitted sound level which will apply will be the higher of the two.
- b) Notwithstanding their location, healthcare facilities, churches, other places of worship, educational institutions and day care facilities are considered to be in noise sensitive zones. It shall be unlawful for any person to cause or allow the emission of sound onto said facilities during the facilities' operating hours which exceeds the noise limitations or reasonable standards for sound levels affecting residential zones established for this chapter. For purposes of this section, measurements shall be made at the real property line boundary of the noise sensitive zone facility nearest the real property boundary of the property from which the noise originates. A noise sensitive zone shall not be created if the uses described above are initiated after the noise generating location.
- c) From the time period of Memorial Day to Labor Day, provisions of amplified noise may be extended to 11:00 PM any day of the week.

(e) *Prohibited acts.*

- (1) *Noise disturbances prohibited.* No person shall make, continue, or cause to be made or continued any noise disturbance. Noncommercial public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.
- (2) *Specific prohibitions.* The following acts, among others, are declared to be unreasonably loud, disturbing and unusually excessive noises in violation of this chapter, but such enumeration shall not be exclusive:
 - a. *Radios, television sets, musical instruments and similar devices.* Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound.
 - 1. In such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone.
 - 2. In such a manner as to create a noise disturbance at 50 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a motorboat or other vessel which operates on public waters; or
 - 3. In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.
 - b. *Loudspeakers and public address systems.* Using or operating for any purpose any loudspeaker, public address system, or similar device such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; on a public right-of-way or public

space. Following all guidelines concerning days and times of the amplified noise regulations that set forth in subsection (d) (3).

- c. *Street sales.* Offering for sale or selling anything by shouting or outcry within any area of the town, except in a stadium or sports arena.
- d. *Animals and birds.* Owning, possessing or harboring any animal or bird which frequently or for continued duration that howls, barks, meows, squawks, or makes other sound which creates a noise disturbance across a residential real property boundary or within a noise sensitive zone.
- e. *Loading and unloading.* Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, solid waste and/or recyclable items or similar objects between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.
- f. *Construction and demolition.* Operating or permitting the operation of any tools or equipment used in construction or demolition work:
 - 1. Between the hours of 9:00 p.m. and 7:00 a.m. the following day on weekdays or at any time on weekends or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work.
 - 2. This section shall not apply to the use of domestic power tools.
- g. *Airport and aircraft operations.* Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin, or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable federal laws or regulations.
- h. *Explosives, firearms, and similar devices.* The use or firing of explosives, firearms, firecrackers and other fireworks, or similar devices which creates impulsive sound so as to cause a noise disturbance across a real property boundary or on public space or right-of-way.
- i. *Stationary nonemergency signaling devices.*
 - 1. Sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place, for more than one minute in any hourly period.
 - 2. Devices used in conjunction with places of education and religious worship shall be exempt from the operation of this provision.
- j. *Emergency signaling devices.*
 - 1. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing.
 - 2. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 8:00 a.m. or after 9:00 p.m.

- k. *Domestic power tools.* Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tools, or similar device used outdoors, in residential areas between the hours of 9:00 p.m. and 7:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary or noise sensitive zone.
 - l. *Motor vehicles, motorcycles and motorboats.*
 - 1. *Generally.* No person shall operate a motor vehicle, motorcycle or motorboat which causes noise disturbance across a real property boundary, within a noise sensitive zone or on a public right-of-way, public space or public waterway as a result of:
 - i. A defective or modified exhaust system;
 - ii. Any unreasonably rapid acceleration, deceleration, engine revving or tire squealing; or
 - iii. Overloading or ill repair which causes unusually excessive grating, grinding, rattling or other noise.
 - 2. *Repairs and testing.* Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.
 - 3. *Horns and signaling devices of motor vehicles and motorcycles.* The sounding of any horn, PA system or signaling device on any automobile, motorcycle, or other vehicle on any street or public place of the town, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unreasonable period of time; the use of any horn, whistle, or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up. Authorized emergency vehicles may use warning sounds.
 - m. *Engine exhausts.* The discharge into the open air within the town of the exhaust of any steam engine, gasoline engine, stationary internal combustion engine, or other kind or type of engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (f) *Penalties:* The following penalties are to be levied within a calendar year following the issuance of a written warning.
- a. 1st Offense: written warning
 - b. 2nd Offense: \$100
 - c. 3rd Offense: \$250
 - d. 4th and subsequent offenses: \$500 and may be subject to a criminal offense. In addition, the town will seek nuisance abatement actions concerning habitual offenders.

SECTION II. SEVERABILITY CLAUSE. If any section, part of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the Town Council in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION III. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the Town Council of Surf City, North Carolina, at which a quorum was present, and which was held on the 22nd day of July 2021.

Adopted the 22nd day of July 2021.

TOWN OF SURF CITY

Douglas C. Medlin, Mayor

ATTEST:

Stephanie Edwards Hobbs, Town Clerk

APPROVED AS TO FORM:

Crossley, McIntosh, Collier, Hanley & Edes, PLLC

Brian Edes