

WILKES COUNTY, NORTH CAROLINA

**AN ORDINANCE FOR THE REGULATION
OF UNREASONABLY LOUD NOISE IN
WILKES COUNTY, NORTH CAROLINA**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WILKES IN
REGULAR SESSION ASSEMBLED:

Article 1. Title.

This Ordinance shall be known and may be cited as the Wilkes County Noise Ordinance.

Article II. Authority.

The Wilkes County Board of Commissioners enacts this Ordinance pursuant to the authority granted under G.S. § 153A-121, General Ordinance-Making Power, G.S. § 153A-123, Enforcement of Ordinances; G.S. §153A-129, Firearms; and G.S. §153A-133, Noise Regulations.

Article III. Findings and Purpose.

The Wilkes County Board of Commissioners finds that the creation or existence of certain unreasonably loud or disturbing noise as hereinafter defined constitutes a danger and disturbance to the health, safety, welfare, peace, dignity, comfort and repose of the citizens of the Wilkes County. Accordingly, the Board of Commissioners, for the purpose of protecting the public and safeguarding the health, safety, welfare, peace, dignity, comfort and repose of the citizens of the County, does deem it necessary and advisable to regulate and prohibit the existence of unreasonably loud or disturbing noises as hereinafter defined.

Article IV. General Definitions.

The following definitions shall apply throughout this Ordinance:

- A. "Board of Commissioners" shall mean the Wilkes County Board of Commissioners.
- B. "County" shall mean the County of Wilkes.
- C. "Emergency Work" shall mean work that is necessary for a governmental authority or agency or private contractor to restore property to a safe condition; work required to prevent or to protect persons or property from danger or potential danger; or work by public or private utilities when restoring utility service.
- D. "Motor Vehicle" shall mean every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, as defined in G.S. Sections 20-4.01(23) and 20-4.01(27).
- E. "Ongoing Business Activity" shall mean any regular or continuous commercial activity (including farming) engaged in by a person or other legal entity for financial gain or profit. The following shall constitute prima facie evidence that a particular operation is an "ongoing business activity," though said list shall not be exclusive:

1. A privilege license, operating permit, or other similar business license or business permit issued by a governmental body or department, or issued by a regulatory agency or licensing board which is statutorily authorized to do so; or
2. A federal income tax return for the most recent taxable year, indicating that the operation in question is a business.

F. "Planning Department" shall mean the Wilkes County Planning Department.

G. "Residential Area" shall mean any neighborhood, subdivision, housing development, mobile home park, or any other area, whether on one or more streets or roads and whether or not intermixed with other types of development or land use, where two (2) or more households are situated within hearing distance of each other.

Article V. Unreasonably Loud Noise.

A. Definitions.

The following definitions shall apply under this Article V.:

1. "Unreasonably loud noise" shall mean any excessive or unusually loud sound and/or noise, or any sound or noise created with the intent to aggravate, which is of such character, intensity, and duration as to disturb the peace and quiet of any residential area or which disturbs, injures, or endangers the comfort, repose, health., peace, or safety of reasonable persons with ordinary sensibilities.
2. "Disturbing" shall mean any sound or noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the area.

In determining whether a sound or noise is unreasonably loud or is disturbing, the following factors incident to such sound or noise shall be considered: time of day; proximity to a residential structure; whether the sound or noise is recurrent, intermittent, or constant; the volume and intensity; whether the sound or noise has been enhanced in volume or range by any type of electronic or mechanical means; the character and zoning of the area; and whether the sound or noise is related to the regular operation of an otherwise lawful activity.

B. Prohibited Acts.

1. General Prohibition. It shall be unlawful to make, emit, cause, or maintain an unreasonably loud noise as defined in Section A.1. above, or for a person who owns or is in apparent control of real property to knowingly permit the same to occur or exist thereon.
2. Specific Prohibitions. The following are specifically declared to be unreasonably loud noises within the meaning of Section A.1. above, and it shall be unlawful to make, emit, cause, or maintain the same: .
 - a. Music and Voice Transmissions. The playing of any radio, television, phonograph, boom box, stereo, tape or CD player, musical instrument (whether individually or as part of a band or group), or other similar device (amplified or otherwise), or singing, in such manner or with such volume so as to create a disturbing noise in a residential area.

- b. Loudspeakers and Public Address Systems. The use or operation, for commercial purposes, of any loudspeaker, public address system, or similar device, whether from vehicles, buildings, or otherwise, such that the sound therefrom creates a disturbing noise in a residential area.
- c. Vehicles and Engines. The use or operation of any vehicle (automobile, truck, motorcycle, dirt bike, go-cart, recreational vehicle, etc.) or internal combustion engine, between the hours of 10:00 P.M. and 7:00 A.M., which is so out of repair, so loaded, operated with inadequate mufflers, or operated in such a manner as to create a disturbing noise in a residential area. The prohibition under this subsection does not apply to the normal operation of motor vehicles under Section C. 5. below.
- d. Appliances and Other Mechanical Devices. The use or operation of any noise-producing appliance or other mechanical device which, due to operational deficiencies, malfunction, or other type of disrepair, creates a disturbing noise in a residential area.
- e. Language. The use of any loud, boisterous, profane, or raucous language or shouting which, without regard to the content thereof (other than profanity), is of such a nature as to create a disturbing noise.

C. Exceptions.

Notwithstanding the provisions of Sections A. and B. above, the following do not constitute an unreasonably loud noise and are specifically excepted from the requirements of this Article V.:

1. Emergencies. Noise associated with emergency work as defined under Article IV. above, and noise made, emitted, caused, or maintained for the purpose of alerting persons to the existence of an emergency.
2. Ongoing Business Activity. Noise associated with the operation of a lawful ongoing business activity. It is specifically provided, however, that the exception under this subsection 2. shall not apply to noise as described in Sections B. 2. a., b., d., and e. above.
3. Safety Signals, Warning Devices, etc. Noises of safety signals, warning devices, church bells, clock chimes, and ventilation equipment.
4. Fairs, Concerts, Sporting Events, etc. Amplified or unamplified sound generated at street fairs, concerts, festivals, sporting events or activities (including races, trucks shows and related activities), and other similar organized indoor or outdoor activities.
5. Motor Vehicles. Noise generated by the normal operation of properly equipped motor vehicles, provided that the manufacturer's standard mufflers and noise reducing equipment are in place. Excluded from this exception is noise generated by cooling compressors on over-the-road trailers parked in residential areas.
6. Fireworks, etc. Noise generated by lawful fireworks or noise makers on holidays or religious ceremonies.

7. Lawnmowers, Equipment, etc. Lawnmowers, power equipment, and landscape maintenance equipment used for non-commercial purposes when operated with all manufacturer's standard mufflers and noise reducing equipment in use and in proper operating condition.

8. Firearms. Noise generated by the lawful discharge of a firearm or firearms:

a. By the owner on his or her own property, provided that this exception shall only apply if the firearm or firearms are discharged with the permission of the owner(s) or person(s) in apparent control of all residences located within fifty (50) yards from the point of discharge; such permission shall not be required, however, if the firearms are discharged for reasons related to the protection of person or property;

b. For hunting or sport, provided that this exception shall only apply if the firearm or firearms are discharged with the permission of the owner(s) or person(s) in apparent control of all residences located within fifty (50) yards from the point of discharge; or

c. At a firing range which meets the requirements of the Sport Shooting Range Protection Act of 1997, as codified in Chapter 14, Article 53C, North Carolina General Statutes.

D. Enforcement.

1. Enforcement with respect to the criminal penalties under this Ordinance shall be as set forth in Article VI., Section A. below.

2. Enforcement with respect to the civil remedies afforded under this Ordinance shall be through the Planning Department. Any person who witnesses or claims to be aggrieved by a violation of Article V. may file a written complaint of the same with the Planning Department, on a form which the Planning Department shall approve. Thereafter the Planning Department shall, with the assistance of the County Attorney, pursue such civil remedies as may be appropriate and available under the provisions of Article VI. below; provided, however, that the Planning Department shall only pursue civil remedies:

a. Against a person who has been convicted two (2) or more times of a criminal violation under this Article V., or

b. Against a person who is the subject of written complaints (as set forth in this Section D. 2.) filed by five (5) or more persons, all five (5) of whom reside in different homes from each other, which complaints are all directed at the same occurrence or series of occurrences alleged to constitute a violation of this Article V.

E. Presumptions and Burden of Persuasion.

1. The individual or individuals violating the provisions of this Article V., or, where appropriate, the owner, individual, or group of individuals in apparent control of the residence, vehicle, structure, or noise device from which the violations of this Article V. are originating, shall be the responsible party or parties hereunder.

2. The written complaints of two (2) or more persons who witness a violation of this Article V., at least one (1) of whom resides in a different home from the other complaining person or persons, when combined with the complaint of a duly authorized law enforcement officer, shall

be prima facie evidence that the sound or noise described therein is an unreasonably loud noise within the meaning of said Article V.

3. Sound emission decibel measuring shall not be required for the prosecution of any criminal or civil proceeding under this Article V.

4. In any proceeding pursuant to this Article V., whether criminal or civil, if an exception under Section C. may be applicable to limit an obligation to comply with the requirements hereof, the person who would benefit from the application of the exception shall have the burden of persuasion that the exception applies and that the terms of the exception have been met.

Article VI. Violations, Enforcement, and Penalties.

A. Criminal Enforcement.

Enforcement with respect to the criminal penalties under this Ordinance shall be through the Wilkes County Sheriff's Department or by private warrant.

B. Interference.

It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, contractors, or authorized representatives of Wilkes County in the performance of their duties as prescribed by this Ordinance or in the performance of their duties as prescribed by any contract entered into under the provisions hereof.

C. Violations; Penalties.

1. The violation of any provision of this Ordinance shall be a Class 3 misdemeanor, and any person convicted of such violation shall be fined not more than \$500.00, in addition to any other penalty which may be lawfully imposed for such misdemeanor.
2. Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.

D. Equitable Enforcement; Order of Abatement.

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G.S. §153A-123(d) and (e).

E. Cumulative Remedies.

The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty hereunder shall not preclude the election of any other remedy or enforcement of any other penalty which may be provided under this Ordinance or by law.

Article VII. Conflicting Ordinances.

If any section or part of any other ordinance of Wilkes County or amendment thereto is in derogation of or conflict with any of the provisions of this Ordinance, then this Ordinance shall control and said section or part in derogation thereof or conflict therewith is hereby repealed.

Article VIII. Severability.

If any section or part of this Ordinance should be held invalid for any reason, such determination shall not affect the remaining sections or parts, and to that end the provisions of this Ordinance are hereby declared severable.

Article IX. Headings.

The headings used in this Ordinance are for convenience only and shall not be used to interpret or construe its provisions.

Article X. Effective Date.

The effective date of this Ordinance shall be its date of final adoption by the Wilkes County Board of Commissioners.

IN MOTION OF Commissioner Joe Woodie , SECONDED BY Commissioner Jerry Sidden THE FOREGOING ORDINANCE WAS READ, APPROVED, AND ADOPTED BY THE BOARD OF COMMISSIONERS OF WILKES COUNTY, IN REGULAR SESSION ASSEMBLED ON THE 5th DAY OF June , 2000, BY UNANIMOUS VOTE.

WILKES COUNTY BOARD OF COMMISSIONERS

By: Robert Handy

Robert Handy, Chairman
Wilkes County Board of Commissioners

ATTEST:

Alene E. Faw
Alene E. Faw, Clerk