

Ordinance Amending Chapter 46 of the City Code Relating to Noise

Chapter 46 NOISE¹

ARTICLE I. IN GENERAL

Sec. 46-1. Penalty Reserved.

~~Any violation of this article or any section thereof shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of up to \$500.00.~~

(Code 1975, § 14-4; Ord. No. 4657, § 13, 6-15-09; Ord. No. 4759, § 1, 7-16-12; Ord. No. 2022-16, § 1, 8-2-22)

Sec. 46-1.1. Reserved.

Editor's note(s)—Ord. No. 4774, § 1, adopted December 17, 2012, repealed § 46-1.1, which pertained to definitions and derived from Ord. No. 4759, adopted July 16, 2012.

Sec. 46-2. Loud and disturbing noise.

- (a) Subject to the provisions of this section, the production or emission of noise, amplified speech, music, or other sounds that disturb or frighten individuals and is detrimental to the health, safety or welfare of any individual and the peace and dignity of the city is prohibited.
- (b) The following acts, among others, are declared to be loud, disturbing, or frightening noises in violation of this section, but such enumeration shall not be deemed to be exclusive:
- At any time during the day or night:
- (1) The use of any loud, boisterous or raucous language or shouting so as to frighten or disturb the quiet, comfort or repose of any reasonable person of ordinary sensibilities in the vicinity.
 - (2) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal; the production by means of any such signal device of any unreasonably loud, disturbing, or frightening sound; and the sounding of such device for an unreasonable period of time.
 - (3) The keeping of any animal which, by causing frequent or long continued noise, shall frighten or disturb the quiet comfort and repose of any reasonable person of ordinary sensibilities in the vicinity, however, the provisions of this ordinance are preempted by state laws relating to farming and may not interfere with lawful farm operations.

¹Cross reference(s)—Blowing automobile horns at drive-ins, § 38-26(b); operation of disc jockey shows in connection with certain cafes, § 38-26(c); sounding warning device at street crossings required, § 58-2; unnecessary sounding of warning devices prohibited, § 58-3; vehicles not to be repaired in residential areas during certain hours, § 62-4.

State law reference(s)—Authority to regulate or restrict noises, G.S. 160A-184.

(4) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud grating, grinding, rattling or other disturbing noise.

At any time during the day or night, but particularly during hours between 11:00 p.m. and 7:00 a.m.:

(5) The playing of any radio, phonograph, musical instrument, or sound production or amplifying equipment in such manner or with such volume at any time, during the day, or night, but particularly during hours between 11:00 p.m. and 7:00 a.m., as to frighten or disturb the quiet, comfort or repose of any reasonable person of ordinary sensibilities in any dwelling, hotel or other type of residence in the vicinity.

(c) *Noise limit.* It shall be unlawful to:

(1) Cause, allow or permit the operating or playing of any radio, tape player or similar device that reproduces or amplifies sound in such a manner as to produce disturbing or frightening noise at one hundred (100) feet from the device or vehicle containing that device when the device or vehicle is being operated in or on a public right-of-way or public space.

(2) This section shall not apply to emergency operations designed to protect the public health and safety, or the agricultural operations and farms in the city, or the sound amplification in conjunction with a city festival.

(d) A violation of section 46-2, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

Sec. 46-3. Reserved.

Editor's note(s)—Ord. No. 4813, § 7, adopted April 21, 2014, effective July 1, 2014, repealed § 46-3, which pertained to exceptions to county noise ordinance and derived from the Code of 1975, § 14-2.

Sec. 46-4. Streets adjacent to hospitals designated quiet zones.

Each and every street adjacent to any hospital in the city is hereby designated a "quiet zone" in the block within which such hospital is or may be located, and it shall be unlawful for any person to make or cause to be made any unnecessary noise within such quiet zones where there are clearly visible signs maintained by the city designating such areas as quiet zones.

(Code 1975, § 14-3)

Sec. 46-5. Sounds impacting residential life.

(a) The following activities as they affect normal and customary activities in and around residences during nighttime hours are deemed to be unreasonably loud. It shall be unlawful to carry on the following activities in any residentially zoned area of the city or within 300 feet of any residence in the city:

(1) The operation of a front-end loader for refuse collection between the hours of 10:00 p.m. and 6:00 a.m.;

(2) The operation of garage machinery between the hours of 10:00 p.m. and 6:00 a.m.; and

(3) The operation of lawn mowers and other gasoline-powered domestic tools out-of-doors between the hours of 10:00 p.m. and 6:00 a.m.

(b) This section shall not apply to operations which are carried on in such a manner or in such a location as not to create sounds that are plainly audible from the neighboring premises or residence and shall not apply to emergency operations designed to protect the public health and safety.

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- (c) *Residence* means any real property which is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the Winston-Salem zoning ordinance and contains a structure or building in which one or more persons may reside, such as a single-family residential building, a duplex residential building, a townhouse residential building, a twin home residential building, an urban residential building or a multifamily residential building.
- (d) Due to the density or close proximity of residences to businesses in the Growth Management Area 1, certain activities in and around residences during the nighttime hours are unreasonably loud. It shall be unlawful to dump or engage in recycling activities involving glass bottles or cans within 300 feet of any residence in the Growth Management Area 1, between the hours of 12:00 a.m. and 6:00 a.m.
- (e) A violation of section 46-5, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.
- (Ord. No. 4542, § 1, 2-6-06; Ord. No. 4742, § 1, 2-20-12; Ord. No. 4759, § 1, 7-16-12; Ord. No. 2022-16, § 1, 8-2-22)

Sec. 46-6. Exemptions to sounds impacting residential life.

Sounds caused by the following are exempt from the prohibitions against sounds impacting residential life:

- (a) Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property;
- (b) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of collision, civil defense, police activity, or imminent danger;
- (c) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work;
- (d) Repairs or excavations of bridges, streets, highways or other utilities as well as manufacture of materials necessary to support these activities in a timely manner by or on behalf of Winston-Salem, the State of North Carolina, or the United States Federal Government, between the hours of 10:00 p.m. and 6:00 a.m., when public welfare and convenience renders it impractical to perform the work between 6:00 a.m. and 10:00 p.m.;
- (e) Outdoor school and playground activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school athletic and school entertainment events; and
- (f) Other outdoor events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events for which a permit has been obtained from the appropriate permitting authority. However this exemption does not apply to activities covered by section 46-5(d).
- (g) Organized fireworks displays carried on under the supervision of licensed experts with written authority from the City of Winston-Salem. Such displays shall be exempt only between the hours of 12:00 noon and 11:00 p.m., every day except the Fourth of July on which day they are exempt from 12:00 noon until 12:00 midnight.
- (h) Parades, festivals, or other events in the Central Business District for which a city permit is issued.
- (i) Noise or sound from authorized uses of public and private parks.

(j) Sound associated with the delivery of public services by the City, County, State and the federal government.

(k) Noise or sound emitted from properly equipped aircraft operated in accordance with applicable federal rules and regulations.

(l) Noise or sound from railroad operations.

(Ord. No. 4542, § 1, 2-6-06; Ord. No. 4742, § 2, 2-20-12; Ord. No. 4813, § 8, 4-21-14, eff. 7-1-14; Ord. No. 4826, § 15, 8-18-14)

Sec. 46-7. Noise; commercial establishments within an entertainment district.

(a) ~~Definitions.~~ The following definitions apply to this section:

(1) ~~Commercial establishment.~~ An establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, night clubs, retail stores, banks and financial institutions, supermarkets, and other establishments with common business areas; provided that the term "commercial establishment" shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons.

(2) ~~Noise disturbance.~~ Any sound or combination of sounds which, because of its volume or quality, tends to disturb reasonable persons of normal sensitivity or normal human activity.

(3) ~~Person.~~ Any individual, association, firm, partnership or corporation.

(4) ~~Person responsible.~~ An owner, tenant, occupant, employee, agent or any other person who is or who appears to be responsible for the commercial establishment creating, allowing or causing to be created the noise disturbance in violation of this article.

(5) ~~Plainly audible.~~ Any sound for which any of the content of that sound is unambiguous, verifiable and discernible, such as, but not limited to, comprehensible musical rhythms, and understandable speech, above ambient noise by a person using his or her unaided hearing faculties from the distances specified herein. For the purpose of enforcement of this Code, the detection of any component of sound, including, but not limited to, rhythmic bass by a person using his or her unaided hearing faculties is sufficient to verify plainly audible sound. It is not necessary for the person to determine the title or name the artist of the music.

(6) ~~Public area.~~ Any real property or structure(s) thereon which is owned or controlled by a governmental entity.

(b) ~~Standards.~~ Except as provided herein, **Section 46-2 of the city noise ordinance** shall not apply to any commercial establishment within an area of the city designated as an "entertainment district" in accordance with city's unified development ordinances. It shall be unlawful for a commercial establishment within an entertainment district to play, operate, or cause to be played or operated, any amplified or non-amplified musical instrument or sound reproduction device in a manner that causes a noise disturbance on any neighboring premises or public area. For the purposes of this section, a noise disturbance shall be presumed to exist where the sound or noise caused by or arising out of any activity described herein is plainly audible within any occupied structure not the source of the sound or noise or within any public area in excess of 300 feet measured from the perimeter of the entertainment district.

The person responsible for and in charge of the commercial establishment or activities on the premises of such an establishment is responsible and liable for any violations of this article by any tenant, guest, invitee, permittee or licensee in the establishment or on the premises of such.

Sec. 46-7. Outdoor amplification and music at commercial establishments.

(a) It shall be unlawful for any commercial establishment (including but not limited to a restaurant, bar, or nightclub) to operate or allow the operation of sound amplification equipment out of doors or directed out of doors or to allow live acoustic music out of doors or directed out of doors other than during the times listed below or so as to create sounds registering in excess of:

(1) Sunday through Thursday:

(A) 85 db(A) between 8:00 a.m. and 9:00 p.m.:

(B) 60 db(A) between 9:00 p.m. and 8:00 a.m. the following day:

(2) Friday and Saturday:

(A) 85 db(A) between 8:00 a.m. and 11:00 p.m.; or

(B) 60 db(A) between 11:00 p.m. and 8:00 a.m. the following day.

As used herein, a "commercial establishment" shall mean an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, night clubs, retail stores, banks and financial institutions, supermarkets, and other establishments with common business areas; provided that the term "commercial establishment" shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums, prisons, and other short-term accommodations.

(b) The decibel limits prescribed in this section shall be measured at the nearest property line of the complainant, according to Section 46-8(d) and (e)(2).

(c) An establishment that has been determined to be non-cooperative pursuant to subsection 46-9(e) shall be subject to enhanced civil penalties pursuant to subsection 46-10 and, after two violations of this section within one year after having been determined to be non-cooperative shall not operate or allow the operation of sound amplification equipment out of doors or directed out of doors or allow live acoustic music out of doors or directed out of doors for a period of 18 months after the second violation. The 18-month prohibition shall apply to the establishment and the property on which the establishment is located.

(Ord. No. 4774, § 2, 12-17-12)

Editor's note(s)—Ord. No. 4774, § 2, adopted December 17, 2012, repealed § 46-7, and enacted a new § 46-7 as set out herein. The former 46-7 pertained to noise enhanced areas; commercial establishments and derived from Ord. No. 4759, adopted July 16, 2012.

Sec. 46-8. Standard for stadiums, arenas, and outdoor sports or entertainment facilities, including amphitheaters.

(a) Definitions. The following definitions apply to this section:

(1) Stadium. A structure or complex of structures designed and primarily used for hosting organized athletic competitions, exhibitions, concerts, or other large-scale spectator events, consisting of a playing field or performance area, with a permanent spectator capacity of 5,000 persons or more.

(2) Arena. An enclosed or substantially enclosed structure designed and primarily used for indoor athletic competitions, performances, concerts, exhibitions, conventions, or similar spectator events conducted before a live audience, with a permanent spectator capacity of 1,000 persons or more.

(3) Outdoor Sports and Entertainment Facility. A tract of land or complex designed and primarily used for outdoor spectator sports, performances, festivals, competitions, or similar entertainment

events that are not fully enclosed within a building, with a permanent or temporary spectator capacity of 1,000 persons or more. This use includes, but is not limited to, outdoor amphitheatres, motorsports facilities, professional or semi-professional athletic complexes, and festival grounds.

- (4) *Amplified sound.* A sound augmented by any electronic or other means that increases the sound level or volume.
- (5) *Sound Pressure Levels (SPL).* A measurement of sound intensity or loudness expressed in decibels (db).
- (6) *Equivalent Continuous Sound Level (LEQ).* Represents a steady average sound level (measured in dba) that contains the same total acoustic energy as a fluctuating sound over a specific time period.
- (7) *A-Weighted sound level (L_a, dB(A), dBA).* The sound pressure level in decibels as measured on a sound-measuring device or sound-level meter using the A-weighting network as specified in ANSI documents for sound level meters. The level so read is post scripted dB(A) or dBA.
- (b) *Standard.* Amplified sound produced at stadiums, arenas, and outdoor sports or entertainment facilities, including amphitheatres, shall not exceed 85 dB(A), as measured on a sound measuring device or according to Sec. 46-8(d) and (e).
- (c) *Period of compliance.* Events held at venues covered in this section are subject to the standard established in Sec. 46-8(c) from 7:00 a.m. to 12:00 a.m., Sunday through Saturday. This period includes allowances for delays resulting from lightning and wind.
- (d) *Measurement of sound.* For the purpose of determining dB(A) as referred to in this Code, the SPL or noise shall be measured on the A-weighting scale on a Class 1 or Class 2 sound-measuring device or sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI).
- (e) *Measurement techniques.* Measurement of sound shall be made according to these standards:
- (1) Sound measurements shall be conducted at that time of day or night when the suspect noise source is emitting sound.
- (2) The sound level measurement shall be determined as follows:
- a. Set the sound pressure level meter on the "A" weighted filter at slow response.
- b. Measurement shall be taken using the db(A) LEQ1 (one minute average) setting
- c. Where possible the measurement should be made with a clear view to the source of the sound.
- d. All measurements shall be taken at or within the nearest residential property line occupied by the complainant, unless otherwise stated in the Code. For multifamily structures, including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined or do not exist, measurements shall be taken from any point abutting the exterior of the complainant's residential unit.
- (3) Measurements recorded shall be taken so as to provide a proper representative of the noise being measured. The microphone shall be positioned facing the noise source and so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used. Using the A-weighting and slow response switch settings, the operator takes measurements at a minimal interval of one minute.
- (f) Noise emitted from motorsports events shall be exempt from the standard established in Sec. 46-8(b) during the following dates and times: Sunday through Saturday (7:00 a.m. to 12:00 a.m.).
- (g) A violation of section 46-8, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(h) The person responsible for and in charge of the stadium, arena, or outdoor sports or entertainment facility is responsible and liable for any violations of this article by any tenant, guest, invitee, or licensee in the establishment or on the premises of such.

Sec. 46-9. Enforcement and penalties; chronic commercial establishment noise.

(a) *Enforcement and penalties.* Where there is a violation of any section of this article, the city, at its discretion, may take one or more of the following enforcement actions:

- (1) The violator may be assessed a civil penalty for violations of this article by a police officer. The violator shall be assessed a civil penalty of \$100.00 for the first violation. For the second violation within one-year of the first violation a civil penalty of \$500.00 shall be assessed. For their third and subsequent violation(s) within one-year of the first violation, a civil penalty of \$1,000.00 shall be assessed. For purposes of this subsection, a civil penalty for a violation may be assessed each calendar day.
- (2) The violator of this article may be charged with a Class 3 misdemeanor and be subject to a maximum fine not to exceed \$500.00 as stated in G.S. 160A-175 and G.S. 14-4.
- (3) A civil action seeking an injunction and order of abatement may be directed toward any person creating or allowing the creation of any unlawful noise, including the owner or person otherwise having legal or actual control of the premises from which it emanates.
- (4) The violator may be assessed a \$1,000.00 civil penalty for any violation of section 46-7 that occurs within one year after the commercial establishment has been determined to be "non-cooperative" pursuant to subsection 46-9(e). After two such violations, the prohibition on sound amplification and live acoustic music established in subsection 46-7(c) shall apply.
- (5) If a violator fails to pay any civil penalty within 30 days after it is assessed, a late fee of \$50.00 shall apply. The City may recover the civil penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.

(b) *Chronic Commercial Establishment Noise.* The purpose of this section is to establish a collaborative process through which the city and a commercial establishment that has been identified as a chronic source of objectionable noise (i.e., "chronic noise producer") will develop and implement a noise mitigation plan intended to bring the noise to acceptable levels. A chronic noise producer is a commercial establishment that, because of the sound generated by or at the establishment, is cited for more than two violations of subsection 46-7.

- (1) The city manager (or designee) may designate a commercial establishment as a "chronic noise producer." In making such a designation, the city manager (or designee) shall take into consideration the following factors:
 - a. The number and frequency of valid noise complaints;
 - b. The proximity and physical relationship between the commercial establishment and complaining locations;
 - c. The severity of sound events, both observed or measured;
 - d. The times and days of the week of sound events;
 - e. The offender's history of cooperation and efforts to alleviate the surrounding problem; and
 - f. The history and context of the location, including whether the sound producing activity predates the occupation of the complaining locations and whether the sound producing location is located in what is generally recognized as an entertainment area.

Upon designation, the city manager (or designee) shall inform the commercial establishment that it has been designated a chronic noise producer along with the information that established the basis for the designation.

- (2) Upon designating a chronic noise producer, the city manager (or designee) shall schedule a mandatory initial meeting with the offender. At the initial meeting, the city manager (or designee) and the commercial establishment shall review the information that formed the basis for the designation and any evidence or information concerning the complained of noise provided by the business. Following the initial meeting, the city manager (or designee) shall determine whether a mitigation plan is warranted. If the city manager (or designee) determines that a mitigation plan is not warranted, it shall notify the commercial establishment and no further action shall be taken.
- (3) If the city manager (or designee) determines that use of a mitigation plan is warranted, the city manager (or designee) and the commercial establishment shall together develop and sign a noise mitigation plan. The plan may include, among other things:
- a. Restrictions on days of week or hours of noise producing activity;
 - b. Placement, orientation, and operation of sound producing activity or equipment;
 - c. Structural changes including but not limited to sound attenuation and baffling;
 - d. Self-monitoring and reporting requirements;
 - e. A schedule for implementation; and
 - f. A schedule for review for possible revision or termination of the plan.
- (4) In the event that a commercial establishment designated as a chronic noise producer: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan; (ii) refuses to agree to a noise mitigation plan; or (iii) fails to implement or comply with an agreed to noise mitigation plan, the city manager (or designee) may designate the commercial establishment as non-cooperative and shall notify the commercial establishment of that determination. Should a commercial establishment designated as non-cooperative cure the basis for the designation, the city manager (or designee) shall remove the designation and notify the commercial establishment of that determination.
- (5) In the event that a noise enforcement action is taken against a commercial establishment that has been designated a chronic noise producer, evidence regarding the establishment's participation in the development and implementation of and compliance with the noise mitigation plan shall be relevant to any prosecution or administrative or judicial review or appeal of the enforcement action. Specifically, the commercial establishment's participation and compliance shall be a mitigating factor and may, but is not required to be a justification for dismissing the enforcement action. A commercial establishment that has been designated as non-cooperative shall not be entitled to the benefits of this subsection unless the designation has been removed.
- (6) Appeals. A commercial establishment that has been designated a chronic noise producer or non-cooperative may appeal such designation within ten days after receiving notice of such designation. Appeals shall be heard by the city manager or the city manager's designee. The appellant shall have the right to present evidence at said hearing. A ruling on appeal is subject to review in the superior court of Forsyth County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

Sec. 46-10. Reserved.

Editor's note(s)—Ord. No. 4774, § 3, adopted December 17, 2012, repealed § 46-10, which pertained to owner and occupant responsibility: noise enhanced areas and derived from Ord. No. 4759, adopted July 16, 2012.

Sec. 46-11. Reserved.

Editor's note(s)—Ord. No. 4774, § 3, adopted December 17, 2012, repealed § 46-11, which pertained to enforcement: noise enhanced areas and derived from Ord. No. 4759, adopted July 16, 2012.

Secs. 46-12—46-30. Reserved.

ARTICLE II. SOUND TRUCKS AND SOUND AMPLIFYING EQUIPMENT

Sec. 46-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Sound amplifying equipment means any machine or device for the amplification of the human voice or music, or any other sound amplifying equipment, and shall include megaphones, amplifiers, walkie-talkies, amplifiers on fronts of business buildings or other sound devices. The term "sound amplifying equipment" shall not be construed as including standard automobile radios when used and heard only by occupants of the vehicle in which installed, or warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles, whistles or other similar devices used only for traffic safety purposes.

Sound truck or other conveyance means any vehicle, whether motorized or not, and any airplane, balloon, dirigible or other type of aircraft, having mounted therein or thereon or attached thereto any sound amplifying equipment.

(Code 1975, § 14-14; Ord. No. 4813, § 9, 4-21-14, eff. 7-1-14)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 46-32. Commercial advertising.

It shall be unlawful for any person to operate, or cause to be operated, any sound amplifying equipment, sound truck or other conveyance for commercial sound advertising purposes on any street, public square, playground or other recreational area or on any public alley in the city, without first obtaining a permit from the city, which permit may be granted by the office of ~~business inclusion and advancement~~ economic development following the department's review and, where appropriate, the review of the city's recreation and parks director and other city personnel, of an application for a permit submitted, by the person proposing to use such equipment, sound truck or other conveyance ("applicant"), at least 48 hours in advance of the proposed use. The application must contain the same information required by section 46-33.

The permit may be granted, denied or revoked by the office of ~~business inclusion and advancement~~ economic development. If the permit is granted, the use of such sound amplifying equipment, sound truck or other conveyance shall be subject to the same limitations set forth in section 46-33. The applicant shall keep a copy of the permit with him when the sound amplifying equipment, sound truck or conveyance is in use and shall produce the same upon the request of a police officer. A permit may be denied or revoked if such sound amplifying equipment, sound truck or other conveyance will create a public nuisance, endanger the public peace or create a substantial public safety hazard. Such denial or revocation shall be final. The applicant shall be notified of said denial or revocation.

A violation of section 46-32, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(Code 1975, § 14-15; Ord. No. 4813, § 10, 4-21-14, eff. 7-1-14; Ord. No. 2997, § 1, 6-18-18; Ord. No. 2020-8, § 3, 6-15-20; Ord. No. 2022-16, § 1, 8-2-22)

Sec. 46-33. Noncommercial use.

- (a) *Application required.* Before any person shall use any sound amplifying equipment, a sound truck, or other conveyance while operating its sound amplifying equipment for noncommercial purposes on any street, sidewalk, mall, public square, playground, park or other city recreational area, he shall file an application for the use of such equipment, sound truck or other conveyance at least 48 hours in advance of the proposed use with the office of ~~business inclusion and advancement~~ economic development and obtain a permit for said use from the office of ~~business inclusion and advancement~~ economic development. Said department shall be in charge of processing the application which process shall consist of providing a copy of the same to the appropriate city personnel in other city departments including the city's recreation and parks director for review. The application shall include the following:
- (1) Name, home telephone number and home address of the applicant.
 - (2) Address, business telephone number, email address and place of business of the applicant.
 - (3) Type, license number and motor number of the sound truck or other conveyance to be used by the applicant.
 - (4) Name and address of the person who owns the sound truck or other conveyance or sound amplifying equipment.
 - (5) Name and address of the person having direct charge of the sound truck or other conveyance or sound amplifying equipment.
 - (6) Names and addresses of all persons who will use or operate the sound truck or other conveyance or sound amplifying equipment.
 - (7) The purpose for which the sound truck or other conveyance or sound amplifying equipment will be used.
 - (8) A general statement as to the section of the city in or over which the sound truck or other conveyance will be used, or the public parks, public playgrounds or other recreational area at which the sound amplifying equipment will be used.
 - (9) The proposed hours of operation of the sound truck or other conveyance or sound amplifying equipment.
 - (10) The proposed dates for operation of the sound truck or other conveyance or sound amplifying equipment.
 - (11) A general description of the sound amplifying equipment which is to be used.
 - (12) The maximum sound-producing power of the sound truck or other conveyance, or otherwise stating the following:
 - a. The wattage to be used.
 - b. The volume in decibels of the sound which will be produced.
 - c. The approximate maximum distance for which sound will be thrown from the sound truck or other conveyance or sound amplifying equipment.
- (b) *Changes to application.* All persons using or causing to be used any sound truck or other conveyance or sound amplifying equipment for noncommercial purposes shall amend any application filed pursuant to subsection (a) of this section within 48 hours after any change in the information furnished.

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- (c) *Application approval; possession and exhibition.* The ~~department of business inclusion and advancement~~ office of economic development shall approve the application and issue a permit to each applicant under subsection (a) of this section, provided there are no scheduling conflicts. Said permit shall be kept in the possession of any person operating the sound truck or other conveyance or sound amplifying equipment at all times while the sound amplifying equipment or any stationary amplifying sound equipment is in operation, and such permit shall be promptly displayed and shown to any police officer of the city upon request.
- (d) *Use restrictions generally.* The noncommercial use of any sound amplifying equipment, sound truck or other conveyance with sound amplifying equipment in operation on any permitted street, sidewalk, mall, public square, playground, park or other city recreational area in the city, shall be subject to the following regulations:
- (1) The only sounds permitted are music or human speech.
 - (2) Except as otherwise provided, operations are permitted for four hours each day, except on Sundays and legal holidays, when no operations shall be authorized. The permitted four hours of operation shall be between the hours of 11:30 a.m. and 1:30 p.m. and between the hours of 4:30 p.m. and 6:30 p.m.
 - (3) Sound amplifying equipment shall not be operated unless the sound truck or other conveyance upon which such equipment is mounted is operated at a speed of at least ten miles per hour, except when such truck is stopped or impeded by traffic. Where stopped by traffic, the sound amplifying equipment shall not be operated for longer than one minute at each such stop.
 - (4) Sound shall not be issued within 100 yards of hospitals, schools or churches.
 - (5) No sound truck or other conveyance with its amplifying device in operation shall be operated on any street or on any public or private alley within the fire limits of the city as described in section 22-3.
 - (6) Except as otherwise provided, the volume of sound shall be controlled so that it will not be audible for a distance in excess of 100 feet from the sound truck and so that the volume is not a nuisance to persons within the area of audibility; provided, however, that the limitation of audibility to a distance not in excess of 100 feet shall not apply to sound issued from aircraft.
 - (7) No sound amplifying equipment shall be operated having an excess of 15 watts of power in the last stage of amplification.
- (e) *Use in public squares, parks and recreational areas.* The regulations in subsection (d) of this section, insofar as applicable, shall apply to any noncommercial use of any sound amplifying equipment in public squares, parks and recreational areas, except that the hours for such use shall be between 2:00 p.m. and sunset on any day of the week, including Sundays and legal holidays, except for Winston Square and Corpening Plaza, where the hours of operation shall be unlimited. No such sound amplifying equipment shall be used on any public playground in connection with any public school building on days in which such public building is being used for school purposes. Further, the volume of sound from sound amplifying equipment used in public squares, parks and recreational areas shall be controlled so that it will not be audible for a distance in excess of 300 feet from the sound amplifying equipment.
- (f) *The permit provided for in this section shall be revoked if one or more the restrictions listed herein are violated.* The applicant or holder of any permit so revoked shall be notified in writing of the revocation and the basis therefore. The revocation of a permit may be appealed by the applicant to the city manager within 48 hours of notification of the revocation. The appeal must be filed with the ~~department of business inclusion and advancement~~ office of economic development within the aforementioned time. A hearing before the city manager or his designee shall be scheduled within 48 hours after receipt of the appeal. Within 48 hours after the hearing, the city manager or his

designee shall notify the applicant or holder of his decision in writing. The city manager's decision shall be final.

- (g) A violation of section 46-33, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(Code 1975, § 14-16; Ord. of 1-6-03, § 1; Ord. No. 4813, § 11, 4-21-14, eff. 7-1-14; Ord. No. 2997, § 1, 6-18-18; Ord. No. 2020-8, § 3, 6-15-20; Ord. No. 2022-16, § 1, 8-2-22; Ord. No. 24-0203, § 10, 6-3-24)

Sec. 46-34. Drive-in theaters in residential districts.

It shall be unlawful for any person to create or permit sounds for entertainment, between the hours of 8:00 p.m. and 8:00 a.m., at an outdoor or so-called drive-in theater operated wholly or partially as a nonconforming use in any district zoned residential by the city zoning ordinance, which are audible within such residential district more than 1,000 feet from the point of origin. Creating or permitting such sounds in violation of this section is hereby declared to be a nuisance and is prohibited. A violation of section 46-34, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(Code 1975, § 14-17; Ord. No. 2022-16, § 1, 8-2-22)

Sec. 46-35. Mobile ice cream units.

- (a) It shall be unlawful for any person selling or offering to sell ice cream products from local ice cream units on any of the streets of the city to use any amplified recorded sound upon the mobile ice cream units for the purpose of attracting customers, except in accordance with the following regulations:
- (1) The amplified sound so used shall not be audible for a distance in excess of 600 feet from the point of amplification while the motor vehicles carrying such equipment are moving.
 - (2) The amplification equipment shall be turned off while the motor vehicle is stopped or parked for the purpose of vending products.
 - (3) The amplification equipment shall not be used after 9:00 p.m.
- (b) It shall be the responsibility of the complainant, in the event of a violation of this section, to obtain the necessary warrant.
- (c) A violation of section 46-35, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(Code 1975, § 14-18; Ord. No. 4759, § 1, 7-16-12; Ord. No. 2022-16, § 1, 8-2-22)

Sec. 46-36. Radios, tape players or similar devices operated in street or other public area.

- (a) *Noise limit.* Notwithstanding anything to the contrary in ~~the county~~ this noise ordinance, no person shall cause, allow or permit the operating or playing of any radio, tape player or similar device that reproduces or amplifies sound in such a manner as to create noise at 50 feet from the device or vehicle containing that device when the device or vehicle is being operated in or on a public right-of-way or public space.
- (b) *Exceptions.* This section shall not apply to the exceptions granted by sections 46-33 or 46-35.
- (c) A violation of section 46-36, or any part thereof, shall constitute a class 3 misdemeanor, as provided by G.S. 14-4, and shall subject the offender to a fine of not more than \$500.00.

(Code 1975, § 14-19; Ord. No. 4813, § 12, 4-21-14, eff. 7-1-14; Ord. No. 2022-16, § 1, 8-2-22)