

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: June 20, 2012
PRESENTER: Sarah Zambon
SUBJECT: Noise Ordinance amendments
ATTACHMENT(S): Draft ordinance language

SUMMARY OF REQUEST:

There are only two proposed changes at this time to the Noise Ordinance:

- Based on a citizen's request, the exemption regarding members of the American Camp Association has been changed to "an appropriate national camp association". This allows camp operators to be members of any nationally recognized camp organization and not just the specific American Camp Association.
- Language regarding frivolous, unfounded, or false reports was added to prevent abuse of law enforcement resources. The exact language was also added to the Animal Ordinance that was approved by this Board at its May 16th meeting.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the draft ordinance language.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the draft language to the Henderson County Noise Ordinance.

CHAPTER 125A. NOISE

[HISTORY: Adopted by the Board of Commissioners of Henderson County 12-19-2007.

Editor's Note: This ordinance also repealed former Ch. 125, Noise, adopted 2-15-1999, as amended. **Amendments noted where applicable.]**

GENERAL REFERENCES

Animals — See Ch. [66A](#).

Nuisances — See Ch. [126](#).

Parks and recreation — See Ch. [130A](#).

§ 125A-1. Authority; title.

This chapter is hereby adopted under the power and authority granted to counties by N.C.G.S. 153A-121 and N.C.G.S. 153A-133 and shall be known and may be cited as the "Henderson County Noise Ordinance."

§ 125A-2. Jurisdiction.

This chapter shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

§ 125A-3. Loud and disturbing noise prohibited.

A. Subject to the provisions of this section, it is prohibited in Henderson County to create, cause or allow the continuance of any unreasonably loud, disturbing noise. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited. For the purposes of this section, the following definitions shall apply:

(1) "Unreasonably loud": noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.

(2) "Disturbing": noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area.

B. In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered:

(1) Time of day;

(2) Proximity to residential structures;

- (3) Whether the noise is recurrent, intermittent or constant;
- (4) The volume and intensity;
- (5) Whether the noise has been enhanced in volume or range by any type of mechanical means;
- (6) The nature and zoning of the area;
- (7) Whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; and
- (8) Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

C. The following acts, among others, are declared to be loud and disturbing in violation of this section if they annoy or disturb the quiet, comfort or repose of any reasonable person of ordinary firmness and sensibilities in the vicinity where created, caused, or continued, but this enumeration shall not be deemed to be exclusive.

- (1) The use of any loud, boisterous or raucous language, yelling, or shouting, whether or not amplified.
- (2) The congregation of persons at and participation in any party or gathering of people from which noise emanates of a sufficient volume or of such nature as to disturb the peace, quiet and comfort of any reasonable person of ordinary firmness and sensibilities in the vicinity.
- (3) The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud, disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more, thereby causing a noise disturbance. Editor's Note: See also Ch. [66A](#), Animals.
- (4) The playing of any radio, television, phonograph, drum, musical instrument, or sound production, reproduction or amplification equipment in such manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the peace, quiet, comfort or repose of any person of ordinary firmness and sensibilities in the vicinity.
- (5) The playing of any radio, cassette player, compact disc, or other similar device for production or reproduction of sound located in or on any motor vehicle on a public street, highway, within a public vehicular area, within the motor vehicular area of any public or private parking lot or park or on the premises of a private residence in any unreasonably loud or disturbing manner as defined above.

(6) The intentional sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, so as to create any unreasonably loud or disturbing noise as defined above, or the sounding of such a device for an unnecessary and/or the sounding of such a device for an unreasonable period of time.

(7) The operation of any automobile, motorcycle or other vehicle, or remote control model vehicle in such a manner as to create loud grating, grinding, rattling, screeching of tires, or other unreasonably loud or disturbing noise.

(8) The repair, rebuilding or testing of any motor vehicle, particularly during the hours between 11:00 p.m. and 7:00 a.m., which creates unreasonably loud and disturbing noises.

(9) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises therefrom or which has its muffler-exhaust or other noise control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.

(10) Operating or permitting the operation of any motor vehicle or motorcycle that engages in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.

(11) The creation of any excessive noise on any street adjacent to any school, institution of learning, library or sanitarium, or court while the same is in session, or adjacent to any hospital or any church during services, which unreasonably interferes with the working of such institution.

(12) The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance.

§ 125A-4. Exceptions.

A. The following uses and activities, among others, are not governed by and shall be exempt from the noise ordinance set forth in this chapter. It is expressly provided, however, that the following enumeration shall not be deemed or considered exclusive, and any activity that is not expressly prohibited as set forth in § [125A-3](#) shall be exempt from this chapter.

(1) Noise made by dogs while they are being lawfully used for hunting or taking wildlife, and noise made by dogs during the course of lawful training by hunters, pursuant to N.C.G.S. Chapter 113.

(2) Noise associated with or resulting from the normal operations of any facility that is properly licensed by the North Carolina Department of Agriculture, Veterinary Division, as a boarding kennel, pet shop or dealer, in accordance with the North Carolina Animal Welfare Act (N.C.G.S. 19A-20 et seq.), as may be amended, or from any animal shelter that is operated by Henderson County.

(3) Noise associated with any legal operations of any firearms club or association legally established.

(4) Noise caused by the discharge of firearms by law enforcement officers in the performance of their official duties or during the course of official firearms training.

(5) Noise resulting from farming operations, including but not limited to noises generated by machinery, equipment and farm animals.

(6) Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals.

(7) Noise associated with any public or private school activity or camp activity (defined as any function or activity approved by or generally associated with any recognized public or private camp for children accredited by the American Camp Association by an appropriate national camp association, but not including activities associated with campgrounds available to the public for overnight camping), except that it shall be unlawful for any person to use any unreasonably loud, disturbing, boisterous, raucous language or shouting in violent or offensive manner while attending such activities.

(8) Noise associated with the chimes or bells of businesses, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.

(9) Nonamplified crowd noise resulting from activities by student, government, camp or community groups.

(10) Noise associated with or resulting from operations of any construction, commercial, industrial or agricultural activities or operations, except for electronically amplified sound and acts prohibited by § [125A-3](#).

B. If any exceptions stated in this chapter would limit obligation, limit liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

§ 125A-5. Noise complaint procedure.

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

A. Filing false reports. It shall be unlawful for any person to file a false report with law enforcement, or to provide false information to an officer involving any investigation of any reported violation of this article. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

B. Frivolous or unfounded complaints. It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with law enforcement in order to intimidate or harass any member of such department or any animal owner, or to otherwise hinder or interfere with any function of the department of animal control. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

§ 125A-6. Violations and penalties; enforcement.

A. This chapter shall be enforced in accordance with any and all of the provisions of N.C.G.S. § 153A-123 and of Article II of Chapter 1 of the Henderson County Code.

B. In the case of second or subsequent violations of § 125A-3C(3), any animal which upon investigation by Deputy Sheriff is found to be creating the noise which causes the violation of § 125A-3C(3) may, in the discretion of such Deputy, be impounded by the Sheriff's Department and confined in the county animal shelter in a humane manner until the next business day for the shelter. Editor's Note: See Ch. 66A, Animals, § 66A-14, Impoundment. The owner of such animal may redeem the animal upon payment of applicable fees. If the animal is not redeemed within five days of impoundment, then such animal may be offered for adoption or destroyed in a humane manner pursuant to § 66A-14 of the Henderson County Code. Impoundment of such an animal shall not relieve the owner thereof from any penalty, civil or criminal, which may be imposed for violation of this chapter.

C. Any Deputy Sheriff of Henderson County, having first investigated this matter pursuant to § 125A-5, may obtain criminal process for violation of this chapter. A violation of any noise ordinance provision shall constitute a Class 3 misdemeanor and may be punished by fine in the discretion of the Court, up to a maximum of \$500 per offense.