THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: August 22, 2023

Subject: Noise Ordinance Technical Revisions

Staff Resource(s): Mark Matheny, Development Services Department Director

Action Requested: Adoption of an ordinance amending sections of the City Code regulating noise in order to remove possible ambiguities.

Background:

- By Ordinance number 4390, passed on July 27th, 2021, City Council adopted a set of comprehensive revisions to its ordinances regulating noise within the City.
- A minor feature of the revised Noise Ordinance, contained at Section 10-85(2) of the City Code, prohibited the use of amplified sound in the immediate vicinity of schools and medical providers.
- The constitutionality of Section 10-85(2) of the City Code has been challenged in federal court by an individual who contends it violates his First Amendment rights to protest outside of a reproductive healthcare provider within the City.
- The District Court for the Western District of North Carolina has found that several aspects of the City's noise ordinance are ambiguous and could be more narrowly tailored.
- The amendments to the City's Noise Ordinance proposed here would not modify any of the substantive standards contained therein, but would clarify the existing standards under the Noise Ordinance.

Council Goal(s):

- A clean and healthy environment.

Committee(s):

- None

Pro(s):

- Clarifies the standards found in the City's noise ordinance.

Con(s):

- None.

Fiscal Impact:

- None.

Suggested Motion:

- Motion to adopt an ordinance amending Sections 10-82 and 10-85 of the City Code.

Attachment(s)

- Ordinance

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 10-82 AND 10-85 OF THE CITY CODE TO CLARIFY THE APPLICATION AND SCOPE OF SUBSECTION 10-85(2) OF THE CITY CODE.

WHEREAS, pursuant to NCGS § 160A-184 the City has the authority to "regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens" within its jurisdiction; and

WHEREAS, the City has adopted a comprehensive Noise Ordinance, codified in Chapter 10, Article 4 of the City Code; and

WHEREAS, as part of its Noise Ordinance the City prohibits the use of "amplified sound" within one-hundred an fifty feet of schools and medical providers; and

WHEREAS, City Council wishes to make certain non-substantive modifications to its Noise Ordinance in order to clarify specifically what it intended the scope and application of Section 10-85(2) of the City Code to be;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 10-82 of the City Code is amended to add the following additional definitions:

Medical Clinic means any location where one or more "health care providers," as that term is defined in N.C. Gen. Stat. § 90-21.11, provide their services, without regard to whether such services are provided on an inpatient or outpatient basis.

Amplified Sound means a sound augmented by any electronic or other means that increases the sound level or volume.

Section 10-85(2) of the City Code is deleted in its entirety, and replaced with the following language:

Producing, or causing to be produced amplified sound within 150 feet of the property line of a public school where classes or other educational activities are occurring, or a medical clinic that is open or otherwise caring for patients. For purposes of clarity, it is expressly noted that this prohibition does not apply to sounds originating from public schools or medical clinics themselves, as such sounds are already subjected to decibel limitations under Section 10-83 of the City Code.

Read, approved, and adopted this 22nd day of August, 2023.

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City Clerk Mayor

Approved as to form:

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City Attorney