THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: July 27, 2021

Subject: Noise ordinance revisions

Staff Resource(s): Ben Woody, Development Services Director
Claire Richardson-Friedman, Development Process Coordinator

Action Requested: Adoption of a revised noise ordinance with a delayed effective date.

Background:

- Following a year-long engagement and data collection process, the city postponed the noise ordinance revisions due to the COVID-19 pandemic.
- In November of 2020, staff resumed the project and released a draft noise ordinance and received public comment on the draft ordinance.
- Following public comment, staff met with key stakeholders and subsequently developed recommended changes to the draft ordinance.
- Sound measurement data collected by staff between August 2019 to July 2021 illustrate decibel levels for common activities in CBD, commercial and industrial districts.
- Data indicate that all *common* activity, including outdoor patio and indoor activity, would *not* exceed the original staff recommended daytime decibel limits.
- Measurements indicate that some outdoor special events may exceed decibel limits and require a *sound exceedance* permit, depending on which decibel levels are chosen.
- Decibel limits would not apply to activity in public spaces or right-of-ways.
- Staff recommended decibel levels are:
    - CBD 72/67/62;
    - Commercial 65/57;
    - Industrial 70/65.
- These recommended decibel levels ensure that some outdoor special events and other loud sources of sound are subject to the sound exceedance permit standards.
- Staff recommend a *minimum* 30-day delayed ordinance effective date to provide adequate time for the establishment of a noise advisory board, the hiring of two staff positions, collection of additional data and establishment of a sound exceedance permitting program.
- Development Services will continue to work with the Asheville Police Department to develop enforcement strategies to address noise concerns under the current and future ordinances.

Council Goal(s):

- A well-planned and liveable community.

Committee(s):

- Public Safety Committee on June 1, 2021 voted to move forward to the City Council with staff recommendations and revised decibel levels.

Pro(s):

- The ordinance proposes objective commercial and industrial noise standards that establish clear sound level limits and measurement procedures, thereby allowing sound producers to operate within the legal limits and providing for more effective enforcement by the city.

- The ordinance and associated program propose using a residential noise-disturbance standard and community-based approaches to equitably manage chronic noise issues typically found in multi-family developments and within residential settings.
- The *Reimagining Public Safety* initiative identified noise ordinance enforcement as a quality of life issue that can be collaboratively handled outside of traditional policing and in a way that promotes racial equity.

Con(s):

- Elements of the proposed noise ordinance will require field-based evaluation, and possible modification, to ensure expected outcomes are achieved.

Fiscal Impact:

- As part of the *Reimagining Public Safety* initiative, funds have already been allocated for noise ordinance administration and enforcement.
- Additional resources may be necessary in the future.

Suggested Motion

- Motion to repeal Chapter 10, Article IV of the Code of Ordinances of the City of Asheville and replace the same with the ordinance language attached hereto, having an effective date of ____.

Attachment(s)

- Revised noise ordinance

ORDINANCE NO. _____

ORDINANCE AMENDING PROVISIONS OF CHAPTER 10, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE CONCERNING NOISE REGULATION

WHEREAS, the City of Asheville has authority pursuant to N.C. Gen. Stat. § 160A-184 to enact ordinances regulating, restricting, or prohibiting the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the City has identified several inefficiencies, administrative difficulties, and ineffective provisions in the City's noise regulations; and

WHEREAS, the City desires to amend the noise regulations to allow residents, visitors, and property owners of Asheville to enjoy residences, businesses, and public places in an environment free from excessive noise; and

WHEREAS, the City is amending the noise regulations to balance the reasonable needs of residents, visitors, and property owners and recognize that all parties are essential to a thriving local economy; and

WHEREAS, the amended noise regulations include just, fair, clear, enforceable, and effective measures to control excessive noise;

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

Section 1: Chapter 10, Article IV of the Code of Ordinances of the City of Asheville is hereby repealed as of the effective date of the new ordinance attached hereto.

Section 2: The City Council hereby adopts a revised Chapter 10, Article IV of the Code of Ordinances of the City of Asheville, which shall read:

ARTICLE IV. - NOISE REGULATION

Sec. 10-81. Scope.

This article shall apply to all sound, sound vibration, and noise originating within the corporate limits of the City of Asheville. Nothing in this article shall be construed to limit or prevent the City or any person from pursuing any other legal remedies for damages or the abatement of noises in the city.

Sec. 10-82. Definitions.

The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context. All terminology used in this ordinance, not defined below, shall be in conformance with applicable standards of the American National Standards Institute (ANSI) or its successor bodies.

Abutting means joining at a border or boundary.

Adjacent means the condition of being near to, adjoining or close to but not necessarily having a common dividing line. Two properties which are separated by only a street, alley or unopened/undeveloped right-of-way shall be considered as adjoining one another.

A-Weighted sound level (L a, dB(A), dBA) means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network as specified in ANSI documents for sound level meters. The level so read is postscripted dB(A) or dBA.

Central Business district means any area with the following zoning designation: Central Business District.

Commercial district means any area with the following zoning designation: Neighborhood Business District, Office District, Office II District, Office/Business District, Community Business I District, Community Business District II, Urban Residential District, Neighborhood Corridor District, Haywood Road Form District, River Arts Form District, Urban Village District, Urban Place District, Resort District, Resort District, Institutional District, Highway Business District, Regional Business District, River District, Commercial Industrial District, Commercial Expansion District, Mixed Use Expansion District, Institutional Expansion District, Lodging Expansion District.

Construction means erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

Continuous sound means any sound which does not vary in sound level more than 5 dB(A) during a measurement period which shall be at least 60 minutes.

Cyclically varying sound means any sound which varies in sound level more than 5 dB(A) during a measurement period such that the same level is obtained repetitively at reasonably uniform intervals of time less than 10 minutes.

Daytime hours: 7:00 AM to 11:00 PM, local time, unless otherwise specified.

Decibel (dB) means a logarithmic (dimensionless) measure used in describing the amplitude of sound.

Impulsive sound means any sound or vibration of short duration that has an abrupt increase and abrupt decay.

Industrial district means any area with the following zoning designation: Commercial Industrial District, Light Industrial District, Industrial District, Industrial Expansion District.

Intermittent sound means any sound source that ceases to emit sound at intervals. The levels during on periods may be either constant or varying.

Leq means the equivalent sound level, which is the constant sound level in a given time period that conveys the same sound energy as the actual time-varying sound. The applicable time period for the Leq must be specified.

Mobile sound vehicle means any non-emergency vehicle operated by a governmental entity and specially equipped with mechanical loudspeakers or amplifiers for the purpose of directing sound more than ten feet beyond the vehicle.

Motor vehicles means road vehicles, such as automobiles, vans, motorcycles and trucks, as well as off-road vehicles such as dirt bikes, 4-wheelers, self-propelled construction and farming equipment; vehicles powered by an internal combustion engine.

Nighttime hours: 11:00 PM to 7:00 AM, local time, unless otherwise specified.

Noise Control Administrator means any officially designated employees or agents of the municipality that have primary responsibility for noise control and have received training in the standards for the measurement of sound levels.

Noise disturbance means any sound or vibration which:

(1) May disturb or annoy reasonable persons of normal sensitivities; or
(2) Causes, or tends to cause, an adverse effect on the public health and welfare; or
(3) Endangers or injures people; or
(4) Endangers or injures personal or real property.

To determine whether a noise constitutes a noise disturbance, the following factors incident to such noise are to be considered:

(1) Whether the noise occurred during daytime or nighttime hours;
(2) The noise's volume and intensity;
(3) Whether the noise has been enhanced in volume or range by any type of megaphone, amplifier, or other mechanical means;
(4) The frequentness and duration of the noise, and;
(5) The nature and zoning of the area.

Pure tone means:

(1) Any sound that can be heard as a single pitch or combination of pitches, or;
(2) Any sound in which the one-third octave band sound pressure level in the band with the tone exceeds the level in the two contiguous one-third octave bands by 5 dB in bands 500 Hz and above, by 8 dB for bands between 160 and 400 Hz, and by 15 dB for bands below 160 Hz.

Performance center means an open, partially enclosed, or fully enclosed facility designed or intended for use for the gathering of people as an audience for presentations such as, but not limited to, music, lectures, or live theater.

Public space means a right-of-way, street, park or any real property or structures owned or controlled by a governmental entity that is permanently devoted to public use.

Real property line means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person or entity from that owned by another person or entity, but not including intra-building real property divisions.

Residential district means any area with the following zoning designation: RS-2 Residential Single-Family Low-Density District, RS-4 Residential Single-Family Medium Density District, RS-8 Residential Single-Family High-Density District, RM-6 Residential Multi-Family Low-Density District, RM-8 Residential Multi-Family Medium Density District, RM-16 Residential Multi-Family High-Density District, Residential Expansion District.

Sound means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensitivity.

Sound level meter means a device used for measuring the intensity of sound. A sound level meter uses a microphone to measure the changes in air pressure produced by the sound source. Sound level meters typically report readings in decibels.

Sec. 10-83. General regulation.

(a) No person shall make, continue, cause, or wrongfully permit to be made or continued, any noise disturbance originating from a Residential District.
(b) No person shall make, continue, cause, or wrongfully permit to be made or continued, any noise disturbance originating from a right-of-way, street or other public space.
(c) Unless otherwise specified, no person shall cause or allow the emission of any sound originating from a district which, when measured pursuant to 10-84, exceeds the maximum decibel limits specified in Table 1.

Table 1. Sound Level Limits

Originating District dB(A)			
	CBD	**Commercial**	**Industrial**
Daytime, 7:00 AM to 11:00 PM	75	75	75
Nighttime, 11:00 PM to 7:00 AM	70	65	65

(1) In Central Business (CBD) and Commercial Districts, daytime hours for sound level limits shall be 7:00 AM to 12:00 AM Friday through Saturday.
(2) In CBD, nighttime sound level limits shall be reduced by an additional five decibels between 2:00 AM and 7:00 AM.
(3) The sound level limits shall be reduced by an additional eight decibels when measured in a residential district.
(4) The sound level limits shall be reduced by an additional five decibels for any source of sound emitting a pure tone, continuous sound, cyclically varying sound, or repetitive impulsive sound.
(5) The decibel reductions provided herein are cumulative.

Sec. 10-84. Sound measurement.

(a) For the purpose of determining dB(A) as referred to in this article, sound shall be measured on the A-weighting scale set on slow response using a Class 1 or Class 2 Sound Level Meter of standard design and quality having characteristics established by the American National Standards Institute.
(b) Measurements shall be made on the property where the sound is received, within a reasonable proximity of where the sound is typically received.
(c) The exterior sound level limits are based on the Leq using a minimum measurement interval of one minute.

Sec. 10-85. Prohibitions.

Unless otherwise allowed by this Chapter, no person shall engage in any of the following enumerated activities:

(1) The intentional projection of sound from any amplified device or apparatus making or reproducing sounds onto adjoining or neighboring properties for the purpose of attracting attention by creation of noise to any business, location, performance, show, event, sale, or display, except sounds emitted by Mobile Sound Vehicles during daytime hours.
(2) 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.
(3) Operating any motor vehicle with a non-functional or absent muffler-exhaust and/or noise control system;
(4) Using unmuffled engine compression brakes except when required due to an emergency driving situation;
(5) Sounding any natural or amplified signal from any bell, horn, chime, siren, whistle or similar device intended primarily for non-emergency or non-safety purposes for more than five minutes in any hourly period;
(6) Operating a front-end loader for refuse collection in any Residential District or within 100 feet of a Residential District between the hours of 7:00 PM and 7:00 AM;
(7) Operating a front-end loader for refuse collection in a CBD between the hours of 7:00 PM and 5:00 AM; and

Sec. 10-86. Exceptions.

The following are excepted from the application of this article:

(1) Governmental emergency vehicles used in the performance of official duties;
(2) Construction activity performed by an agency of government or utilities regulated by the North Carolina Utilities Commission provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
(3) Construction activity performed pursuant to a permit issued by the City's Chief Building Official or their designee under Section 10-87 of this article;
(4) Sound emanating from refuse collection, except as specified in Section 10-85 of this article;
(5) Barking dogs or other noise caused by animals regulated in Chapter 3 of the City Code;
(6) Sound emanating from safety signals, warning devices, emergency pressure relief valves, church bells, and the bells or chimes of the Asheville City Building and Municipal Building;
(7) Sound emanating from film and video production activities for which special event permits have been issued by the City; provided all equipment are operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;
(8) Sound emanating from lawfully permitted fireworks displays occurring in celebration of Federally recognized holidays or emanating from McCormick Field between 10:00 AM and 11:30 PM Friday and Saturday provided the sound caused by the fireworks display occurs for no more than twelve ten-minute periods within a single twelve month period;
(9) Sound emanating from aircraft operated in accordance with applicable federal rules and regulations;

(10) Sound emanating from railroad operations regulated by the Federal Railroad Administration;
(11) Musical accompaniment or other sound caused by permitted parades or military ceremonies; and
(12) Sound emanating from regularly scheduled athletic events at City or Buncombe County parks, athletic facilities, public or private schools and McCormick Field between 7:00 AM and 11:00 PM, except where a permit is otherwise required by this article.

Sec. 10-87. Construction Sound.

(a) Construction equipment must be operated in accordance with manufacturer's specifications with all standard sound-reducing equipment in place and in proper condition.
(b) Except where otherwise permitted in this article, no construction activity performed pursuant to a permit issued under Chapter 4 of the City Code may be performed outside the hours of 7:00 AM and 7:00 PM Monday through Saturday absent an after-hours permit issued by the City's Chief Building Official or their designee. The Chief Building Official may issue such a permit when, in their opinion, the sound caused by the construction activity will occur on a property, or site made up of multiple parcels, for no more than three twelve-hour periods within a single seven day period.
(c) After-hours permit applicants must certify that written notice will be provided to addresses located within 500' of the real property line of the subject property where the construction activity is permitted at least 72 hours prior to the permitted date, including contact information, specific dates, times and activity purposes.
(d) After-hours permits may require compliance with sound-mitigating measures as determined by the Chief Building Official, including but not limited to, limitations on the types of construction activity performed, equipment restrictions and the erection of sound reducing barriers.
(e) Following the issuance of an after-hours permit, if the Chief Building Official determines that the construction activity is causing sound in excess of the standards specified in Section 10-83 of this article, the Chief Building Official may modify or revoke the permit.
(f) The Chief Building Official may permit emergency construction activities without an after-hours permit upon a determination that such work is necessary for the preservation of public health or safety. Such a determination may be made after the emergency construction activity has occurred.
(g) Failure to obtain an after-hours permit, or comply with any condition contained therein, shall constitute a violation of this section, and the Chief Building Official shall be authorized to issue a stop work order for any permit issued to the violating party. In addition, violation of this section shall subject the offender to a civil penalty in the amount of $500.00.

Sec. 10.88. Permitting.

(a) Sound Exceedance permit
    (1) Except where otherwise permitted under this article, a Sound Exceedance Permit shall be required to lawfully exceed the Central Business (CBD) and Commercial District sound level limits set forth in Section 10-83.
        a. The applicant for a Sound Exceedance permit shall supply at a minimum:
            1. A site plan showing the event space illustrating the following:
                i. The location of any stages or performance zones;
                ii. The location and direction of orientation of any loudspeakers to be used;
                iii. The location of any audience seating or assembly area;
                iv. The point(s) of ingress and egress for the site;

v. Land Use and zoning district of all abutting properties; and
vi. Any other information deemed necessary for enforcement of this article by a Noise Control Administrator.

2. Date and time sound exceedance is expected to begin and end.
3. The name and contact information of a person ready and able to take action to cease the sound exceedance upon notice from the City.
4. Sound impact plan if required.
5. Written certification that written notice will be provided to addresses located within 500' of the real property line of the subject property where the sound is to be produced at least one week prior to the permitted date.

b. Applications must be submitted for review:

1. 14 days prior to the desired date for Type 1 and Type 2 permits; or
2. 30 days prior to the desired date for Type 3 permits.

(2) A Sound Exceedance permit shall authorize the holder to exceed the maximum decibel limits as set forth in Section 10-83 as follows:

a. Type 1
   1. No more than two days of events within a single twelve month period.
b. Type 2
   1. No more than eight days of events within a single twelve month period; and
   2. In accordance with an approved sound impact plan.
c. Type 3
   1. Limited to approved Performance Centers;
   2. No more than 30 days of events within a single twelve month period;
   3. In accordance with an approved sound impact plan incorporating a noise model performed by an acoustical engineer that demonstrates the comprehensive management and reduction of off-site decibel impacts.

(3) Sound impact plan.

a. A sound impact plan shall include at a minimum:
   1. Performance area layout and sound orientation, including size and technical specifications of sound amplification equipment;
   2. Sound-mitigating design features, including description of any permanent or temporary sound barriers or sound mitigation devices;
   3. Location and proximity of nearby residential dwelling units and method of managing anticipated off-site decibel impacts;
   4. Prescribed decibel levels, expected duration of sound exceedance, and hours of operation; and
   5. Availability and use of decibel meters on-site including provisions for the monitoring of meters.

(4) Permitted Sound Exceedance may occur between 10:00 AM and 10:00 PM Sunday through Thursday or 10:00 AM and 11:00 PM Friday through Saturday. Sound Exceedance shall not exceed eight hours in duration.

(5) In no event shall the emission of sound measure more than 85 dBA Leq using a minimum measurement interval of one minute on a property with an occupied residential dwelling unit.

(6) The following criteria shall be considered in the determination of whether to grant or deny an application for a Sound Exceedance Permit:

a. Suitability of the site for sound exceedance based on topography, proximity to existing residential uses, and the use and activities permitted by the zoning regulations in the area;
b. Size and capacity of the site or venue covered by the permit;

c. Intensity of sound levels, including time and duration at which the sound exceedance will occur;
d. Sound mitigating design features proposed in the permit application, including performance area layout and orientation, buffering, orientation of speakers, or other mitigation strategies;
e. History of verified noise complaints and violations at the site.

(7) Should the applicant fail to abide by all applicable requirements found within this article, the Noise Control Administrator shall be authorized to suspend the permit for up to two weeks if the Administrator determines:
   a. A formal written warning was issued; and
   b. At least two documented violations of this section have occured within a 90 day period.

(8) Revocation of a Permit.
   a. A Sound Exceedance permit may be revoked by the City if:
      1. A sound exceedance event occurred during a suspension; or
      2. At least two documented violations of this section occur within six months after the end of a suspension.
   b. Permits revoked for violations of this section shall not be eligible for reissuance for at least 365 days from the date of the last violation.

Sec. 10.89. Administration.

This article may be enforced by any city employee as permitted by the City Manager.

Sec. 10.90. Noise Advisory Board.

The Noise Advisory Board is hereby established, consisting of seven members appointed by and serving at the pleasure of the city council for three-year terms, and will serve at the pleasure of the city council.

(1) Composition of board.
   a. Three city residents representing different geographic areas of the city
   b. One representative of the performing arts.
   c. One representative of the restaurant industry.
   d. One representative of the industrial or construction industry.
   e. One professional in acoustic engineering or a related field.
   f. The Noise Control Administrator shall serve as a nonvoting member.

(2) Responsibilities of the board
   a. Upon request by a majority of the City Council, the Board shall meet and may perform the following advisory functions:
      1. Evaluate the effectiveness of this article and related city policies with the goal of developing recommendations regarding amendments, additions, or deletions.
      2. Evaluate the effectiveness of enforcement of this article, including but not limited to response times, compliance rates, distribution of complaints, and ensuring equitable outcomes.
      3. Propose long-term objectives for achieving reduction of sound levels in the community, and propose means for implementing such objectives.
      4. Develop rules relative to the conduct of its meetings in accordance with City rules and policies governing advisory boards and commissions.

Sec. 10.91. Non-exclusivity.

Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this article, or from pursuing said remedy simultaneously with proceedings under this article, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

Sec. 10.92. Violations; owner and occupant responsibility.

Violations of this article shall subject the offender to penalties as set forth in section 10-92, subject to the limitations set forth below.

(1) Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.
(2) An owner of any premises subject to this article, as well as any person responsible for such premises, shall be responsible for any actions by tenants, guests, or other licensees that constitute violations of this article. This section shall in no way relieve any other person from responsibility for violations of this article.

Sec. 10.93. Penalties.

(a) Violations of the provisions of this article by the same person for the same activity occurring within two years of the first such violation shall be subject to civil penalties as follows:
   (1) First violation (per City Code section 1-5) …… $100.00
   (2) Second violation ……... $200.00
   (3) Third violation ……..... $300.00
   (4) Fourth or subsequent violation ……..… $500.00, per offense

(b) In addition to the suspension, revocation or denial of permits, violations of the provisions of this article requiring permits shall be subject to civil penalties as follows:
   (1) Operating without a permit ……..…..…… $500, per offense
   (2) Violation of a permit condition ……... $500, per offense

(c) In addition to the civil penalties provided for above, the city may enforce the provisions of this article by appropriate equitable remedies as set forth in section 1-5(d).

Sec. 10.94 - Appeals

(a) Appeals from the denial of any permit, suspension or revocation of any permit, or the issuance of any civil penalty, may be made to the Development Services Director, but must be in writing and delivered to the Development Services Department within ten business days of the decision being appealed.

(b) The Development Services Director may consider such appeal with or without a hearing, and shall issue and serve a written decision of such appeal within thirty business days of its receipt; which time may be extended by the Development Services Director for good cause.

(c) No appeal of any permit decision may be heard except those filed by a permit applicant or permit holder within the prescribed time period for filing such appeals.

Section 3: *If any section, subsection, sentence, clause, or phrase of* this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4: All ordinances or parts of ordinances in conflict are hereby repealed to the extent of such conflict as of the effective date described in Section 5 hereinbelow.

Section 5: This ordinance will become effective on the _____ day of _____, 20____.

Read, approved and adopted this the 27th day of July, 2021.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney