Noise Ordinance Update

City Council

June 22, 2021

THE CITY OF ASHEVILLE

GUIDING PRINCIPLES



(1) Excessive noise is a **public health, welfare and safety hazard**.

(2) The community has a **right to an environment free from excessive noise** that may degrade their quality of life or diminish property values.

(3) Noise Ordinance development must **prioritize equity** as a lens through which to evaluate policy criteria and enforcement action.

(4) Noise Ordinance development must **balance the reasonable needs of residents, visitors, facilities and operations**, and recognize that all parties are essential to a thriving local economy.

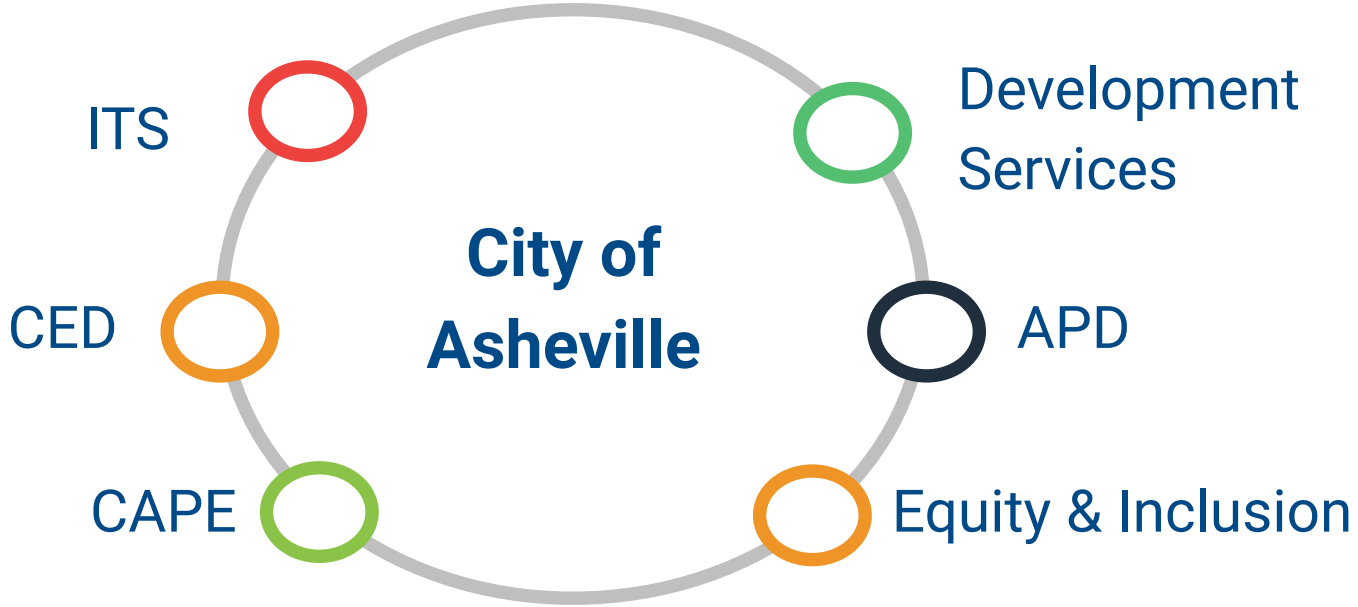
(5) Excessive noise generation can be reasonably addressed through the adoption of a Noise Ordinance that contains **clear, enforceable, and effective measures** to control noise.

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TIMELINE

Mar. - Oct. 2019	Residents, business owners, industrial/institutional operators invited to identify/prioritize noise concerns
May - Dec. 2019	Noise data gathered and analyzed; outreach continued
Dec. ‘19 - Oct. ‘20	Proposed ordinance developed; release delayed by COVID
Nov. - Dec. 2020	Proposed ordinance released for public comment
Jan. - Apr. 2021	Noise enforcement transition begun from APD to DSD; stakeholder coordination continued
May 25, 2021	Public Safety Committee updated on recommended revisions
June 22, 2021	City Council update on noise ordinance project

INTERNAL COLLABORATION



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COMMUNITY CONTRIBUTORS

The project team is grateful for the valuable contributions of many local organizations:

- Coalition of Asheville Neighborhoods (CAN)
- Asheville Music Professionals (AMP)
- Downtown Area Residential Neighbors (DARN)
- Housing Authority of Asheville (HACA)
- Asheville Downtown Association
- Asheville Brewers Alliance
- Asheville Independent Restaurants (AIR)
- And many others

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TOP NOISE CONCERNS

- Construction
- Refuse collection
- Vehicle Exhaust/Revving
- Commercial/industrial equipment
- Music overamplification: venues, outdoor events and buskers
- Fireworks
- Residential neighbors
- Dogs and animal

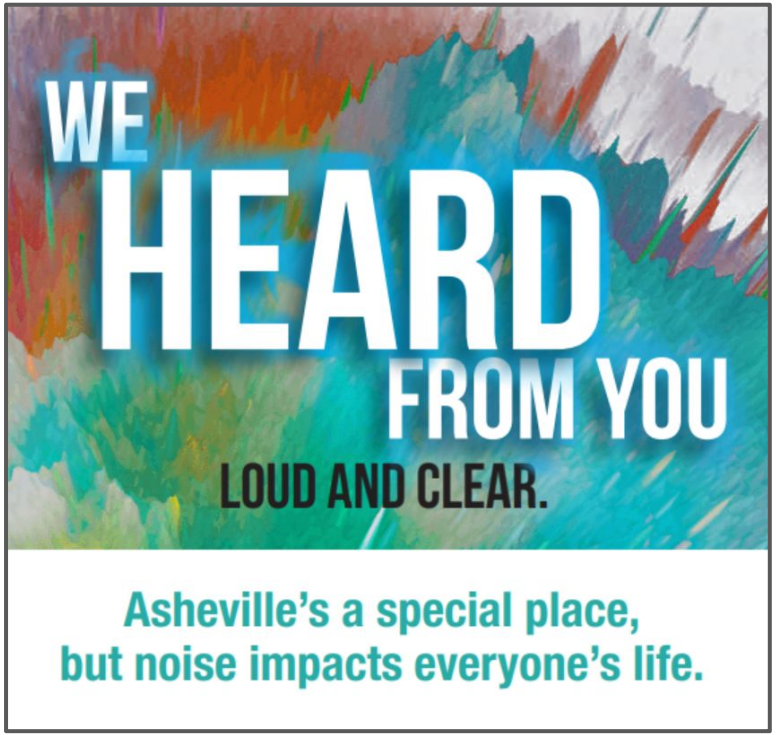
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COMMUNITY ENGAGEMENT

- 880 public comment responses on draft proposal - Nov./Dec. 2020
- 1,490 online and paper survey responses - Spring 2019
- 35+ stakeholder meetings and forums
  - Residents/Neighborhood Associations
  - Business/industry groups
  - Council committees
- Direct email outreach to 120+ local businesses and resident groups
- Buncombe County Community Market participant surveys
- 150+ NoiseScore smartphone app “noise reviews”
- Project webpage and press releases (www.ashevillenc.gov/noise)
- Newspaper articles and local news segments

SUMMARY - COMMUNITY FEEDBACK

- Keep Asheville vibrant, but don't let noise hurt **quality of life**
- Use **clear and objective sound measures**
- Develop **community-based solutions** to supplement enforcement
- Partner with community groups to **educate about noise**
- Give **clear guidelines** to businesses and permit holders about noise



PROGRAM RECOMMENDATIONS

1. **Staff administration** in Development Services Dept. (DSD)
2. **Educational resources** for residents/businesses/institutions/industries
3. ***Good Neighbor* policy** with clear guidance to residents/businesses for handling common noise issues
4. **Noise enforcement manual** that outlines detailed enforcement protocols
5. ***Development Notification System*** that notifies residents of permitted noise activity
6. **Review noise ordinance for improvements** every 18 mos - 2 yrs

Updated Ordinance + Staff Administration + Program strategies =

Noise Control Program

EQUITY STRATEGIES

- Provide **clear and accessible information** about noise ordinance
- Ensure residents have **equitable access to lodge noise complaints**
- Address noise complaints **fairly, timely and consistently**
- **Use data** to identify, track and fairly address noise complaints
- First seek to address noise issues through **education and community resources**, *before* punitive measures like civil penalties and permit revocation
- Use **community relationships and City organizational resources** to address chronic noise issues

PROPOSED ORDINANCE

Sec. 10-81. Scope
Sec. 10-82. Definitions
Sec. 10-83. General regulation
Sec. 10-84. Sound measurement
Sec. 10-85. Prohibitions
Sec. 10-86. Exceptions
Sec. 10-87. Construction noise
Sec. 10.88. Permitting
Sec. 10.89. Administration
Sec. 10.90. Noise Advisory Board
Sec. 10.91. Non-exclusivity
Sec. 10.92. Violations
Sec. 10.93. Penalties
Sec. 10.94. Appeals

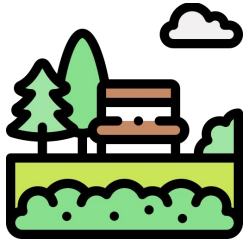
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10.83 GENERAL REGULATION

Sound originating in

public space, right-of-ways

and Residential districts



Noise Disturbance* standard for *equity

Sound originating in

CBD, Commercial

and Industrial districts



Objective Decibel standard for *clarity*

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NOISE DISTURBANCE STANDARD



Noise disturbance in public space, right-of-ways and Residential districts would be judged according to:

1) Time of day (daytime 7 am - 11 pm; nighttime 11 pm - 7 am)
2) Volume and intensity (may include decibel measurement)
3) Nature and zoning of the area
4) Amplified using megaphone, amplifier or other mechanical means
5) Frequentness and duration of the noise

OBJECTIVE DECIBEL STANDARD



Originating District	Daytime 7:00 am - 11:00 pm *12:00 am Fri-Sat	Nighttime 11:00 pm - 7:00 am *12:00 am Fri-Sat	Late Night 2:00 am - 7:00 am (CBD only)
Central Business District (CBD)*	75 ~~72~~ dBA	70 ~~67~~ dBA	65 ~~62~~ dBA
Commercial*	75 ~~65~~ dBA	65 ~~57~~ dBA	
Industrial	75 ~~70~~ dBA	65 dBA	

- Updated to reflect **Public Safety Council Committee** recommendation from June 3, 2021
- Subtract 5 dBA for pure tone, continuous, cyclically varying or repetitive impulsive sound
- Sound is measured at receiving property using LAeq1 (**average of 1 minute**)

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COMMERCIAL DECIBEL LIMITS



Jurisdiction	Daytime	Nighttime	Curfew
Charlotte, NC	85 dBC	60 dBC	Sun - Thur: 9 pm Fri - Sat: 11 pm
Raleigh, NC	70/60 dBA	65/55 dBA	11:00 pm Fri - Sat 2 am (HDEP)
Greenville, SC	60 dBA 80 dBA (CBD)	55 dBA 75 dBA (CBD)	10:00 pm
Wilmington, NC	75 dBA 75 dBA (CBD)	70 dBA 65 dBA (CBD)	Sun - Thur: 11:00 pm Fri - Sat: 12:00 am
Asheville, NC (proposed)**	**75** dBA **75** dBA (CBD)	**65** dBA **70** dBA (CBD)	Sun - Thur: 11:00 pm **Fri - Sat: 12:00 am**

* Sound measured at **noise producer** / **noise receiver**

** Sound is measured at receiving property using LAeq1 (**average of 1 minute**)

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10.84 SOUND MEASUREMENT

Noise would be measured:

- Using Class 1 or 2 ANSI-certified sound level meter
- Using A-weighting scale (dBA)
- On the property where noise is received in the proximity of where received
- For a minimum of 1 minutes (Leq1) (average dBA of 1 minute)

Example: If CBD business impacts a neighbor:

- Measure using **CBD objective decibel standard (75/70/65 dBA)**
- Measure for at least 1 minute; dBA measurement is the **average of 1 minute**
- Measure on the **neighbor's property in the proximity of where received**

10.85 PROHIBITIONS

- **The intentional projection of amplified sound onto neighboring properties for the purpose of attracting attention**
- **Producing amplified sound within 150 feet of a public school or healthcare facility**
- Operating a vehicle with a non-functional or absent muffler; using unmuffled engine compression brakes (“jake brakes”)
- Operating a front-end loader in the CBD between 7:00 pm - 5:00 am
- Operating a front-end loader in a residential district or within a 100’ of a residential district between 7:00 pm - 7:00 am
- Operating a mobile sound vehicle during nighttime hours
- Sounding a non-emergency or non-safety siren/bell/horn for more than 5 minutes/hour

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10.86 EXCEPTIONS

The proposal exempts sound from:

- Government emergency vehicles
- Construction by government/regulated utility
- Safety signals and church bells
- Permitted film/video production
- **Permitted legal fireworks displays on federal holidays**
- **Fireworks displays at McCormick Field up to 12 events/year on Friday/Saturday until 11:30 pm for up to 10 minutes**
- FAA regulated aircraft
- FRA railroad operations
- Permitted parades or military ceremonies
- Athletic events until 11:00 pm

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10.87 CONSTRUCTION SOUND

- Construction equipment must be operated with all standard noise-reducing equipment in place and in proper condition
- Construction may only occur **Monday - Saturday from 7:00 am - 7:00 pm**
- All construction **outside of these hours requires an *After-hours permit*** issued by the Chief Building Official:
  - Requires 72 hours notice with contact information to all addresses within 500’
  - May require additional noise mitigation measures
  - Violations incur permit revocation, stop-work order and $500 penalty/incident

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10.88 PERMITTING



Remove

music venue permit requirement



Require

sound exceedance permit to exceed decibel limits

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SOUND EXCEEDANCE PERMIT

Type I	1 - 2 events	Standard permit application (SPA)
Type II	3 - 8 events	SPA + sound impact plan
Type III	9 - 30 events	SPA + professional sound impact plan + permitted as ***Performance Center*** **

Standard permit application would require:

- *Site plan*
- *Event schedule*
- *On-site contact information*
- *1-week advance notice to addresses within 500'*

** ***Staff recommend revising Performance Center criteria in UDO***

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10.90 NOISE ADVISORY BOARD

The Noise Advisory Board includes 7 members serving 3 year terms:

- **3** city residents from different geographic areas
- **1** performing arts representative
- **1** restaurant representative
- **1** industrial/construction represe
- **1** acoustic engineer

Noise Advisory Board duties:

- **Evaluate effectiveness** of ordinance and enforcement measures
- **Recommend amendments**, additions and deletions
- **Develop objectives/recommendations** for reducing local sound levels

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10.93 PENALTIES

I. **Noise Ordinance violation**

Same activity in a two-year period:

Civil penalty of $100/$200/$300/$500

II. ***Sound Exceedance* permit violation**

In 90-day period:

Formal written warning + 2 documented violations = **up to 2 week suspension**

In 6 month period after suspension:

Suspension + 2 additional violations = **365 day revocation**

Violation of permit conditions: $500 per offense

Operating without a permit: $500 per offense

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10.92 VIOLATIONS

- Penalties may be assessed against persons responsible for the premises or device causing the noise disturbance
- The owner or person responsible for the premises shall be responsible for the actions by tenants, guests or licensees

10.94 APPEALS

- Appeals for permit revocation and civil penalties may be delivered in writing to the DSD Director within 10 days of decision being appealed
- DSD Director may consider appeal with or without a hearing
- DSD Director shall serve a written decision within 30 business days

ENFORCEMENT ROLES

Noise Call Type	Primary Response	After Hours Response
Refuse Collection	DSD	Online complaint form
Construction	DSD	Online complaint form
Industrial Operations	DSD	Online complaint form
***Legal* fireworks**	DSD	Online complaint form
Dog barking/Animals	Animal Services	Animal Services
Residential neighbors	DSD	APD
Outdoor Events	DSD	APD
Businesses	DSD	APD
Public Space	DSD	APD
Vehicle Exhaust/Revving	APD	APD

EXAMPLE #1: Resident-to-Resident noise

1. *Good Neighbor policy* prompts resident to **first ask neighbor to stop** disturbance (if safe)
2. If disturbance continues: resident submits **noise complaint**
3. DSD/APD responds; uses ***noise disturbance* standard** to assess violation:
    - ☐ Time of day
    - ☐ Volume and intensity
    - ☐ Nature and zoning of the area
    - ☐ Amplification
    - ☐ Noise frequentness and duration
4. DSD follows up with noise maker with **ordinance education** and **verbal warning**
5. DSD tracks complaints; **issues civil citation** when necessary; **contacts landlord** for ongoing or chronic noise issues

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EXAMPLE #2: Business-to-Resident noise

1. *Good Neighbor policy* prompts resident to **first ask business to stop** disturbance (if safe)
2. If disturbance continues: resident submits **noise complaint**
3. DSD/APD responds; uses **objective decibel standard** of noise-maker's district to assess violation
4. DSD follows-up with noise maker with **ordinance education** and **verbal warning**
5. If additional complaints, DSD visits site and uses ***objective decibel standard*** to assess violation
    - **Violation**: issue written warning; discuss mitigation options and sound exceedance permit requirements
    - **No violation**: follow up with resident and business to close case
6. If additional violations: **issue citation** and **contact landlord**

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LACK OF CONSENSUS

Requires additional attention:

1. CBD daytime/nighttime decibel level
2. Commercial daytime/nighttime decibel level
3. Possible commercial-to-residential “buffer area” decibel level
4. Day/Night definition
5. *Sound Exceedance* permitting
    - Event frequency
    - Decibel cap
    - *Sound exceedance* curfew (not event curfew)

NEXT STEPS

In response to the COVID-19 pandemic and community feedback:

1. **Delay the ordinance effective date for at least six months**
    - Continue ordinance adoption process in Summer 2021
2. **Continue to transition current noise ordinance administration** from APD to Development Services (DSD) to address present noise concerns
3. **Release final draft ordinance**, FAQs and noise sampling log
4. **Move forward with hiring and training** the Noise Control Administrator and Noise Compliance Officer as part of the “Reimagining Public Safety” initiative
5. **Make preliminary Noise Advisory Board appointments** before ordinance effective date
6. **Continue to take noise sample measurements during Summer 2021**
7. **Revisit ordinance decibel limits** before ordinance effective date

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