

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING VARIOUS SECTIONS OF CHAPTER 17, OFFENSES AND MISCELANEOUS PROVISIONS PERTAINING TO EXCESSIVE AND UNNECESSARY NOISE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Sections 17-7 through 17-18 are amended by deleting the same in their entirety and substituting the following therefor:

Sec. 17-7. Purpose for Regulating Excessive and Unnecessary Noise.

- a. It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.
- b. It is further recognized that because the regulation of excessive and unnecessary noise that may jeopardize human health or welfare or substantially degrade the quality of life is well within the purview of the governing body's police powers, it is declared to be the purposes of this section to prevent, prohibit, and provide for the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life.
- c. It is further recognized that there are many sources of excessive and unnecessary noise, which can and is often generated when no city official or law enforcement officer is present and able to take enforcement action. It is therefore declared to be the purpose of this section to create a private cause of action for enforcement of sections 17-7 through 17-18 as set forth in section 17-17.

State law reference—Noise regulation, G.S. 160A-184.

Sec. 17-8. Certain Noises and Sounds Prohibited.

It shall be unlawful, except as expressly permitted in this chapter, to make, cause, or allow the making of any noise or sound which exceeds the limits set forth in sections 17-9 through 17-16.

Sec. 17-9. Definitions.

Ambient Sound means the total noise in a given environment.

Classification of Use Occupancies. For the purpose of defining the "use occupancy" all premises containing habitually occupied sleeping quarters shall be considered in residential use.

All premises containing transient commercial sleeping quarters shall be considered tourist use. All premises containing businesses where sales, professional, or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In case of multiple use, the more restrictive use category shall prevail. Hospitals, nursing homes, schools, libraries, and church uses shall be considered residential uses. Any area not otherwise classified shall conform to commercial standards.

Decibel (dB) means a standard unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

Emergency Work means any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

Sound Level Measurement Device means any device designed by the manufacturer to measure audible sound levels in dB. Failure to maintain or calibrate the device in accordance with manufacturer specifications shall not require exclusion of the reading at any hearing or trial for a violation of this section, but may be considered by the finder of fact in determining whether sections 17-7 through 17-18 has been violated.

Weekend means that period of time between 12:00 midnight on Friday to 12:00 midnight on Sunday.

Sec. 17-10. Maximum Permissible Sound Levels by Use Occupancy.

No person shall operate or cause to be operated any source of sound:

1. From any occupancy in such a manner as to create a sound level audible, at a distance from the boundary of the property, greater than the limits set forth in Table 1 below; or
2. Which exceeds the limits set forth for the use occupancy category in Table 1 below for more than five minutes, to be measured at or beyond the property boundary of the land use from which the sound emanates.

Table 1 Sound Levels by Use Occupancy Category			
User Occupancy Category	Time	Sound Level Limited dB	Audibility Distance (ft)
Residential or Public Space	6 a.m.—10 p.m.	60	75
	10 p.m.—6 a.m.	55	35
Commercial or Business	6 a.m.—10 p.m.	65	90
	10 p.m.—6 a.m.	60	55
Manufacturing, Industrial or Agricultural	At all times	75	150

Sec. 17-11. Specific Prohibitions.

In addition to the general prohibitions set out in section 17-10 and the maximum permissible sound levels set out in Table 1 of section 17-10, and unless otherwise exempted in section 17-12, the following specific acts, or the causing or permitting thereof, are hereby declared to be unlawful:

1. *Radios, television sets, musical instruments and similar devices.* Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, or similar device which produces or reproduces sound between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create excessive and unnecessary noise across a residential real property line or within a noise sensitive area.
2. *Loudspeakers.* Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays in areas within or adjacent to residential, commercial, or noise sensitive areas, except for any noncommercial public speaking, public assembly, or other activity for which a special permit has been issued by the chief of police.
3. *Street sales.* Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the city except by special permit issued by the chief of police.
4. *Animals.* Owning, possessing, or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive zone. This provision shall not apply to public zoos or private animal attractions operated for profit to which the public has general admission and which are regulated by the city. This section shall not apply to dogs.
5. *Loading and unloading.* Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of residential area or noise sensitive zone.
6. *Construction and demolition.* Operating or causing the operation of any tools used in construction, drilling, repair, alteration, or demolition work between the hours of 9:00 p.m. and 6:00 a.m. on weekdays, or between 9:00 p.m. and 9:00 a.m. on weekends or holidays in or within 50 yards of any residential area or noise sensitive zone, except for emergency work by public service utilities or by special permit issued by the chief of police. This section shall not apply to the use of domestic power tools as specified in subsection 11 of this section.

7. *Powered model vehicles.* Operating or permitting the operation of powered model vehicles:
 - a. Between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends or holidays in or within 100 feet of any residential areas or noise sensitive zone; or
 - b. In such a manner as to exceed the levels set for public space land use, measured at a distance of not closer than 100 feet (30 meters) from any point on the path of a vehicle operating on a public space or public right-of-way.
8. *Emergency signaling devices.* The intentional sounding or permitting the sounding outdoors of any fire, burglary, or civil defense alarm, fire, whistle, or similar stationary emergency signaling device, except for emergency shall not occur before 7:00 a.m. or after 7:00 p.m., and any testing shall use the minimum cycle test time appropriate for such devices, in no case to exceed 60 seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device shall not occur more than once in each calendar month. Such testing shall occur only on weekdays and not before 7:00 a.m. or after 10:00 p.m., and shall be exempt from the time limit specified in this subsection. The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is automatically terminated within 15 minutes of activation, shall be prohibited.
9. *Motor boats.* Operating or permitting the operation of any motor boat in any lake, river, stream, canal, bay, or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area or noise sensitive zone, or to exceed 86 dB when measured at least 50 feet from the craft.
10. *Noise sensitive zones.* Creating or causing the creation of any sound within any noise sensitive zone so as to exceed the decibels levels set forth for such zone when measured by a Sound Level Measurement Device as defined in Sec. 17-9, at a distance of at least 25 feet (7.5 meters) from the sound source, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone or the creating or causing the creation of any excessive and unnecessary noise within or adjacent to any noise sensitive zone containing a hospital, nursing home, school, court or other designated area, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone.
11. *Domestic power tools.* Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 6:00 a.m. on weekdays, or 10:00 p.m. and 7:00 a.m. on weekends and holidays, unless such equipment is operated inside a building or other structure so that the sound therefrom does not travel across any residential real property line or sensitive zone and exceed the levels set forth in Table 1 of section 17-10. All such equipment shall be properly muffled and maintained in working order so as not to create excessive unnecessary noise.
12. *Multifamily dwellings.* Operating or permitting the operation within a multifamily dwelling of any source of sound in a manner so as to exceed 55 dB from 7:00 a.m. to 10:00 p.m. or 45 dB from 10:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 10:00 a.m. on

weekends and holidays, when measured with an adjacent intrabuilding dwelling. These noise limits shall not be exceeded more than ten percent of any measurement, which shall not be less than ten minutes. The maximum permissible sound level, when measured in an adjacent intrabuilding area between 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays shall be 50 dB.

13. *Places of public entertainment.* Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment that exceeds the level shown in Table 3, at any point normally occupied by a customer, without a conspicuous and legible sign stating, "WARNING" SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT.

Table 2 Permissible Noise Exposures	
Duration per day Continuous Hours	Noise Level dB
8	90
6	92
4	95
3	97
2	100
1½	102
1	105
½	110
¼ or less	115

14. *Refuse collection vehicles.* No person shall collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends and holidays within a residential area or noise sensitive zone.
15. *Recreational motorized vehicles operating off public right-of-way.* No person shall operate or cause to be operated any recreational motorized vehicle or motorcycle that exceeds the limits set forth in Table 1 of section 17-10 off the public right-of-way in any residential or noise sensitive zone. This section shall apply to all motorized vehicles or motorcycles whether or not duly licensed and registered.
16. *Morning to evening.* Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 7:00 a.m. and 10:00 p.m. within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained road or public vehicular area, is prohibited.

17. *Nighttime*. Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 10:00 p.m. and 7:00 a.m. the following morning within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained highway or public vehicular area, is prohibited.
18. *Detrimental noise*. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited within the city, no matter what the distance of the source of such noise is to any dwelling unit, house, trailer or building occupied by such other person, unless the person in control of such unit, house, trailer or building has given specific consent for such noise to continue.
19. *Prohibited acts generally*. The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:
 - a. *Blowing horns*. The sounding of any horn or signal on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sound of such device for an unnecessary and unreasonable period of time.
 - b. *Radios, phonographs, etc.* The playing of any radio, phonograph or other musical instrument in such manner or with such volume, as to unreasonably annoy or disturb the quiet, comfort or repose of any person in any dwelling unit, house, trailer, building or other type of residence.
 - c. *Pets*. The keeping of any animal or bird, which by causing frequent or long continued noise, shall unreasonably disturb the comfort and repose of any person in the vicinity.
 - d. *Use of vehicle*. The use of any automobile, motorcycle or vehicle so loaded, or operated in such manner as to create an unreasonably loud or unnecessary grating, grinding, rattling or other noise.
 - e. *Blowing whistles*. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.

Sec. 17-12. Exemptions from Section 17-10.

The following are exempt from the provisions of Table 1 of section 17-10:

1. Lawn mowers and agricultural equipment during daylight hours (7:00 a.m. to 10:00 p.m.) when operated with all the manufacturers' standard mufflers and noise reducing equipment in use and proper operating condition;
2. Nonamplified crowd noises resulting from the activities such as those planned by student, governmental or community groups;

3. Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise reducing equipment in use and in proper operating condition;
4. Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches;
5. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
6. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with this section. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in this section;
7. Noises made by persons having obtained a permit to use the streets;
8. All noises coming from the normal operations of aircraft, not including scale model aircraft, and all noises emanating from the Fayetteville Municipal Airport property within the NEF (Noise Exposure Forecast) zones as established by a survey dated April 1977, and maintained in the office of the airport director.

Sec. 17-13. Motor Vehicle Noise.

- a. No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category or motor vehicle shown below. Noise shall be measured at a distance of at least 25 feet (7.5 meters) from the near side of the nearest lane being monitored and at a height of at least four feet above the immediate surrounding surface.

SOUND LEVEL (dB)		
	Speed Limit 35 mph or less	Speed Limit over 35 mph
Motor vehicles with a manufacturer's gross vehicle weight rating (GVW) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle, except those operated by an interstate motor carrier.		
Such vehicles operated by interstate motor carriers (measured at least 35 feet from the centerline of the traveled lane).	91	95
Any other motor vehicle or any combination of vehicles towed by any motor vehicle.	76	80

- b. This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 17-7 through 17-13 relating to motor vehicle mufflers for noise control.
- c. No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:
 - 1. Free from defects which affect sound reduction;
 - 2. Equipped with a muffler or other noise dissipative device; and
 - 3. Not equipped with any cut-out, bypass or similar device.

Sec. 17-14. Special Permits Re Relief from Allowable Noise Level Limits.

Applications for a permit for relief from the maximum allowable noise level limits designated in sections 17-7 through 17-13 may be made in writing to the chief of police or his duly authorized representative. Any permit granted by the chief of police under this chapter must be in writing and shall contain all conditions upon which the permit shall be effective. The chief of police or his duly authorized representative may grant the relief as applied for under the following conditions:

- 1. *General conditions and requirements.* The chief of police may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.
- 2. *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:
 - a. The function must be open to the public; admission may be charged.
 - b. The function must take place on public property or public vehicular areas of shopping centers in an area zoned CIP as prescribed in Chapter 30 of this Code, pursuant to subsection 1 of this section.
 - c. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
- 3. *Other conditions.* Special permits for nonentertainment special purposes may be issued under the following conditions:
 - a. Prohibition on special permits for routine activity.
 - 1. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or
 - 2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and

- b. If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year; and
 - c. Other restrictions:
 - 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or
 - 2. If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and
 - d. Except in emergency situations, as determined by the chief of police, the special permit may be issued only between 7:00 a.m. and 12:00 p.m. on weekdays; and
 - e. The special permit may be issued for no longer than 15 consecutive days, renewable by further application to the chief of police.
4. *Exterior loudspeaker not permitted.* No permit may be issued to permit the use of any loudspeaker or sound amplifying device on the exterior of any building which at any time exceeds the sound level limits in Table 1 of section 17-10 except those used for emergency warnings.
5. *Appeal.* Anyone aggrieved by the provisions of this section shall have the right to appeal the decision of the chief of police to the city council. The appeal shall be in writing and filed with the city clerk within ten days after the decision of the chief of police. Upon receipt of a notice of appeal, the city council shall grant a hearing to the appellant at the next city council meeting, provided such notice of appeal is received by 5:00 p.m. of the Friday before such council meeting.
6. At the hearing before the city council pursuant to an appeal as requested pursuant to subsection 5 of this section, the city council shall hold a public hearing to determine whether issuance of the permit would be detrimental to the public health, safety and welfare of the community. If the city council determines that the issuance of the permit would not be detrimental to the public health, safety and welfare, the city council shall specifically authorize the chief of police to issue the permit to the applicant. If the city council determines that the issuance of the permit would be detrimental to the public health, safety and welfare of the community, the city council shall so notify the applicant, and the chief of police shall not issue the permit.

Sec. 17-15. Reserved.

Sec. 17-16. Noise from Radios, Tape Players, Loudspeakers, Sound Amplifiers.

- a. No person shall play, use, or operate, or permit to be played, used, or operated, any radio, tape recorder, cassette player, or other machine or device for reproducing sound, if it is located in or on any of the following:
 1. Any public property, including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking lot unless such person receives a special event or public assembly permit; or
 2. Any motor vehicle on a public street, highway, public space or within the motor vehicular area of any public or private parking lot or park;and if at the same time the sound generated is audible at a distance of 30 feet from the radio, tape recorder, cassette player, or other machine or device that is producing the sound.
- b. Possession by a person of any radio, tape recorder, cassette player or other machine or device for reproducing sound as enumerated in subsection a of this section, shall be prima facie evidence that such person operates, or those persons operate, the radio, tape recorder, cassette player, or other machine or device for reproducing sound.

Sec. 17-17. Enforcement Responsibility for Control of Excessive Noise.

- a. Enforcement by City:
 1. The city manager shall have the authority to authorize any city department to issue civil citations for violations of any part of sections 17-7 through 17-16.
 2. The chief of police of the city is authorized to issue civil or criminal process for violations of any part of sections 17-7 through 17-16, as more specifically set forth in Section 17-17.a.3.
 3. Powers of arrest or citation: Any police officer may only issue citations and not physically arrest violators of sections 17-7 through 17-16 except as permitted below.
 - a. Officers may not arrest for violations of Sections 17-7 through 17-16, except they do have the power to arrest for violations of section 17-13.c or section 17-16.
 - b. When an officer has probable cause to believe any offense under Sections 17-7 through 17-16 was committed, officers are expressly authorized by this section to:
 - i. Require the violator to provide the officer with such person's name, address, date of birth, any other information necessary to issue a citation for the violation, and any proof thereof as may be reasonably available to the alleged violator; and
 - ii. Direct the violator to cease such illegal activity after being issued a citation.

- c. Refusal to obey the lawful directives of an officer under this section can be the basis for a charge of resisting a public officer under N.C. Gen. Stat. § 14-223.
- b. Enforcement by Private Party:
 - 1. In recognition that excessive noise violations can occur at any time in any place, and in recognition that police officers and other city personnel cannot be present for all excessive noise violations, it is the intent of the city council to create a private cause of action for relief from violations of sections 17-10, 17-11, 17-13.a, or 17-13.b of this chapter.
 - 2. Any person who has been harmed by a violation of sections 17-10, 17-11, 17-13.a, or 17-13.b of this chapter, committed on or after April 1, 2018, may file a civil complaint with the appropriate trial division of the General Court of Justice seeking damages (if any) or injunctive relief.

Sec. 17-18. Penalties for Violation.

- a. Civil Penalties:
 - 1. Any person violating any provision of sections 17-10, 17-11, 17-13.a, or 17-13.b shall be subject to a civil penalty in an amount in accordance with the fee schedule as adopted by city council for each offense, and separate offenses shall be deemed committed on each day during or on which a violation occurs or continues.
 - (a) A second or subsequent violation of sections 17-10, 17-11, 17-13.a, or 17-13.b occurring within 24 months after the date of the original offense shall subject the offender to a civil penalty twice the amount that would be assessed for the first such violation.
 - (b) Calculation of the 24 month period:
 - (1) If no hearing on the original violation is requested, the 24 month period described in this section shall begin on the date of the first violation; or
 - (2) If a hearing on the original violation is requested, the 24 month period described in this section shall be deemed to begin on the date that the first violation is upheld by the hearing officer.
 - 2. Any person found to be in violation of any provision of sections 17-7 through 17-16, except for a violation of section 17-13.c or section 17-16, shall be issued a civil citation which shall, among other things: (i) state upon its face the amount of the civil penalty and that it shall be paid within 72 hours from and after such violations; (ii) notify such offender that failure to pay the penalty within the prescribed time shall subject the offender to a civil action in the nature of a debt for the stated penalty plus the cost of the action to be taxed in the court; and (iii) further provide that the penalty may be paid at the cashier's window on the first floor of City Hall, 433 Hay Street, Fayetteville, North Carolina 28301.

3. If the penalty prescribed in subsection a. of this section is not paid within 72 hours, the city may initiate a civil action in the nature of a debt and recover the civil penalty and the cost of the action.

b. Criminal Penalties:

Any violation of section 17-13.c or section 17-16 shall be punished as a class 3 misdemeanor pursuant to N.C. Gen. Stat. § 14-4 and punished with a fine of not less than \$100.00 and not more than \$250.00.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk