Chapter 22

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

Sec. 22-1. Placing advertising in motor vehicles.
Sec. 22-2. Heavy articles; unloading on buffer.
Secs. 22-3—22-22. Reserved.

Article II. Offenses Involving Property Rights

Sec. 22-23. Damage to flowers, trees and shrubs.
Secs. 22-24—22-49. Reserved.

Article III. Offenses Involving Public Safety

Sec. 22-50. Electric fences.
Sec. 22-51. Prohibition of the carrying and display of handguns, firearms and other weapons at certain public locations.
Sec. 22-52. Discharging firearms or other guns.
Sec. 22-53. Graffiti.
Secs. 22-54—22-77. Reserved.

Article IV. Offenses Involving Public Peace and Order

Division 1. Generally

Sec. 22-78. Disturbing public meeting.
Sec. 22-79. Consumption and possession of malt beverages and unfortified wine on town property and town streets.
Sec. 22-80. Hotel guest registration.
Secs. 22-81—22-101. Reserved.

Division 2. Noise

Sec. 22-102. Statement of purpose and intent; loud, disturbing noises prohibited, generally.
Sec. 22-103. Definitions.
Sec. 22-104. Noise measurement.
Sec. 22-105. Exceptions.
Sec. 22-106. Prohibited sounds.
Sec. 22-107. Sounds impacting residential life.

***State law references—**Criminal law, G.S. Ch. 14; general welfare power of municipalities, G.S. § 160A-174.

Sec. 22-108. Motor vehicles.
Sec. 22-109. Amplified sound.
Sec. 22-110. Permits.
Sec. 22-111. Responsible party.
Sec. 22-112. Enforcement and penalties.

ARTICLE I. IN GENERAL

Sec. 22-1. Placing advertising in motor vehicles.

No person shall distribute handbills, circulars, dodgers, pamphlets, cards, pictures or any advertising matter of any kind by placing the same in or upon any motor vehicle standing or parked in the streets or other public places except in a manner that will prevent them from being blown about or scattered by the elements.
(Code 1976, § 10-24; Code 1982, § 11-1)

Sec. 22-2. Heavy articles; unloading on buffer.

No person shall push, roll, drag over, unload, drop or throw onto any street or sidewalk any object, box, barrel, case or any article of sufficient weight to be injurious to the street or sidewalk without preparing a suitable buffer of sufficient size and thickness to prevent damage.
(Code 1976, § 14-48; Code 1982, § 12-143)

Secs. 22-3—22-22. Reserved.

ARTICLE II. OFFENSES INVOLVING PROPERTY RIGHTS

Sec. 22-23. Damage to flowers, trees and shrubs.

Any person desiring to remove, destroy, cut, or severely prune, including the root system, any tree or shrub in or upon any public street right-of-way or public property owned by the town, shall first obtain the permission of the director of public works and utilities or designee. Such permission shall be granted upon a showing that such work is necessary for other permitted projects or for preservation of public safety. Any work performed must be done in strict compliance with the conditions set forth in granting such permission, except permission shall not be required for the development of any property for a site plan, as required under the land development ordinance. Individual permission shall not be required of public and private utilities, including CATV installations and water and sewer regulations by or at the direction of the town, provided that the company's written pruning and trenching specifications have first been received and approved by the director of public works and utilities.
(Code 1976, § 10-17; Code 1982, § 13-2; Ord. No. 87-104, § 1, 12-10-1987; Ord. No. 92-25, § 1, 2-13-1992)

Secs. 22-24—22-49. Reserved.

ARTICLE III. OFFENSES INVOLVING PUBLIC SAFETY

Sec. 22-50. Electric fences.

No person shall erect, install or construct, operate or maintain, or allow the installation or operation of a fence or similar structure or device which is electrically charged, within the corporate limits.
(Code 1976, § 10-6; Code 1982, § 13-9)

Sec. 22-51. Prohibition of the carrying and display of handguns, firearms and other weapons at certain public locations.

(a) *Concealed handguns.*

(1) *Possession prohibited.* No person shall carry a concealed handgun in town-owned buildings, on the appurtenant premises of those buildings, or in town recreational facilities as defined by G.S. 14-415.23, which are all town athletic fields and athletic facilities. A list of recreational facilities shall be set out in a Schedule of Recreational Facilities at which Concealed Handguns are Prohibited which shall be updated as necessary and retained permanently in the office of the Director, Parks, Recreation and Cultural Resources. Notwithstanding the foregoing, nothing in this section shall prohibit a concealed handgun permittee from securing the handgun within an enclosed compartment of a locked motor vehicle.

(2) *Posting required.* The director of public works or designee is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each recreational facility and each building and the grounds and parking areas of such buildings owned, leased as lessee, operated, occupied, managed or controlled by the town, as well as any other appurtenant premises to such buildings, indicating that carrying a concealed handgun on the properties and locations described in this section is prohibited therein and thereon unless specifically permitted or authorized by state law or the provisions of the town's code of ordinances. The director of public works or designee shall exercise discretion in determining the number and appropriate location of signs to be placed.

(b) *Other firearms and weapons.*

(1) No person shall display any firearm in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks and recreation areas, including town greenways. On all other public property within the town, including public streets, alleys, and sidewalks, display of firearms shall comply with the following:

(a) no firearms other than handguns, as defined in G.S. 14-409.39, may be displayed;

(b) the handgun shall be holstered such that firing of the weapon is not possible;

(c) the handgun shall be clearly visible and not concealed or partially concealed;

(d) display of handguns is prohibited for any person while consuming alcohol or at any time while the person has remaining in the person's body any alcohol or in the person's blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in the person's blood was lawfully obtained and taken in therapeutically appropriate amounts;

(e) display of handguns is prohibited on any public streets, including adjacent sidewalks, that have been closed by the chief of police or designee pursuant to Section 34-74; and

(f) display of handguns is prohibited within the area and boundaries of the Lazy Daze Arts & Crafts Festival during the times listed in Section 24-18, and within the area and boundaries of any other town-sponsored event to which the provisions of Section 24-18 are made to apply by the town council.

(2) No person shall display any deadly weapon as defined in G.S. 14-269(a), or any knife having a blade of three inches or longer, BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon, while on any public street, alley, sidewalk or other public property within the town, including town greenways, unless specifically permitted or authorized by law. No person shall carry or have possession of a knife having a blade of three inches or longer, a BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon in any park, including town greenways.

(3) This subsection (b) is not applicable to concealed handguns, which are governed by subsection (a) above.

(c) *Exceptions.* The possession or display of a firearm or other weapon is exempt from the provisions of this section 22-51 in the following situations:

(1) If the chief of police, or designee, has authorized the public possession or display of a firearm, or other weapon, as part of an official program or event sponsored or sanctioned by the town.

(2) If the possession or display of the firearm, or other weapon, was the result of an individual(s) exercising his or her legitimate right to self defense or the defense of others as allowed by law.

(3) If the possession or display of the firearm, or other weapon, was conducted by a person(s) authorized by law to carry and display such items as part of their official or otherwise recognized lawful duties (e.g., law enforcement officers, military personnel, security guards, etc.).

(4) If the possession or display of the firearm, or other weapon, was necessary for the temporary transport and securing of the item and was not otherwise in violation of existing statutes or ordinances (e.g., recent purchase and movement to vehicle for transport, securing of firearm by CCH permit holder in vehicle, found item to be turned in to authorities, firearm in approved vehicle gun rack, etc.).

(5) The possession or display of a knife with a blade longer than three inches in Symphony Lake park property and Fred G. Bond Metro Park when used for fishing purposes only.

(6) The possession or display of a knife with a blade longer than three inches for the performance of the duties of a town employee or contractor.

(d) *Violation.* The carrying of concealed handguns or the possession or display of any firearm or other weapon as defined in this section, in or upon any of the locations specified by this section, shall constitute a misdemeanor and subject any violator(s) so convicted to such penalties as may be imposed by the court.

(Code 1982, § 13-9.1; Ord. No. 95-031, 12-14-1995; Ord. No. 01-010, 5-24-2001; Ord. No. 06-010, 6-22-2006; Ord. No. 2011-Code-08, 11-17-2011; Ord. No. 2013-Code-03, 9-12-2013)

State law reference—Local regulation of firearms, G.S. 14-415.23; 14-409.40; 160A-189.

Sec. 22-52. Discharging firearms or other guns.

(a) No person shall fire or otherwise discharge any type of firearm, air gun, gun or pistol, or any spring gun, pistol, or other similar device which impels with force any projectile, shot or pellet of any kind within the corporate limits, unless:

(1) Such firing or discharge is made pursuant to an approved recreational or instructional program supervised by competent authority acceptable to either the director of parks and recreation or the chief of police; or

(2) When lawfully used in defense of person or property or pursuant to lawful directions of law enforcement officers.

(b) Police officers performing official duties are exempt from the provisions of this section.

(c) It shall be unlawful to discharge a bow and arrow or crossbow within the town limits unless carried out under the following restrictions and conditions:

(1) If used for target shooting, the arrows must be discharged into an archery backstop made for the purpose of stopping arrows. A safety buffer of 1,000 feet in a straight line from the archer is required within the incorporated area of the Town of Cary.

(2) Must be 18 years of age or in the company of a parent or guardian.

(3) For a bow and arrow or crossbow to be considered under this Code, it must have a draw strength of nine pounds or more. Anything less would be a toy and not considered under this Code.

(Code 1982, § 13-9.2; Ord. No. 96-002, 2-8-1996; Ord. No. 05-017, 11-10-2005)

State law reference—Local regulation of firearms, G.S. 14-409.40.

Sec. 22-53. Graffiti.

(a) *Definitions.* The following definitions shall apply to this section.

Graffiti means any inscription, word, writing, drawing, figure, mark of paint, ink, chalk, dye or other similar substance, etching, engraving or other defacement (collectively 'defacement') by a graffiti implement or chalk or by the application of any material, gum label, paper, fabric or other matter (collectively "matter") with adhesive or other substance which is intended to make the application of the matter permanent or difficult to remove, on public or private property. Graffiti does not include temporary, easily removable chalks or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.

Graffiti implement means any aerosol paint container or paint applicator or brush, indelible marker containing ink or other pigmented liquid that is not water soluble, stick on label, paint stick, etching equipment or any other device capable of defacing or leaving a visible mark on public or private property.

Paint means paint, wax, epoxy or similar substance capable of being applied to a surface and leaving a defacement.

Property owner(s) means the owner as defined in section 1-2 and such owner's agent or manager, or any other person in lawful control or possession of property if known to the town. The owner of the property shall be deemed to be those persons whose names appear on the tax records as having an interest in the property.

Public or *private property* means public or private buildings, sidewalks, streets, structures, walls, equipment and other similar things and places.

(b) *Placing graffiti prohibited.* It shall be unlawful for any person to place graffiti upon the surface of any public or private property.

(c) *Removing graffiti required.*

(1) *Removal by perpetrator.* It shall be unlawful for any person placing graffiti on public or private property to fail to remove such graffiti or cause such graffiti to be removed within seventy-two (72) hours after notice from the town. If graffiti is applied by a person under the age of eighteen (18) years of age, the parents or legal guardians of such minor shall be responsible for removal of the graffiti with seventy-two (72) hours after notice from the town.

(2) *Removal by property owner.* It shall be unlawful for any property owner to fail to remove or effectively obscure any graffiti upon property they own, manage, or are in lawful control or possession of within five (5) business days after receiving written notice from the town to remove such graffiti ("Notice to Remove"). Notice to Remove shall be sent by certified mail, return receipt requested or by personal delivery, to the property owner(s). The notice to remove shall provide:

(i) the street address or other description of the property sufficient for property identification;

(ii) a description and general location of the graffiti;

(iii) a statement that the property is a public nuisance due to the existence of the graffiti;

(iv) a statement that the graffiti must be removed or effectively obscured within five (5) business days after receiving notice to remove and that if the nuisance is not so abated within that time the town will abate the public nuisance at the cost of the property owner as set forth herein;

(v) information identifying any graffiti removal assistance available through the town; and

(vi) information concerning procedures for appeal of the Notice.

(3) *Removal by town.* If the town has provided notice to remove under (c)(2) above and property owner fails or refuses to remove or effectively obscure graffiti upon their property, then, in addition to other enforcement actions hereunder, the town is authorized to remove the graffiti as provided herein at the expense of property owner. If the expenses of removing or obscuring the graffiti is not paid by the property owner within thirty (30) days of receipt of a statement for the cost of such removal or obscuring, the town may sue in a court of competent jurisdiction to recover all such expenses, including all administrative personnel costs, attorney's fees and costs related to enforcing this section, and the town may record a lien in the public records of Wake County, which lien shall be for all such expenses, and the amount of the lien shall bear interest from the date of recording.

(4) *Appeals.* Any property owner who receives a notice to remove may appeal the notice within five (5) business days of receipt of notice to the town manager. The appeal shall be in writing and shall state with specificity the reasons for the appeal ("appeal notice"). The manager or designee shall set a hearing date within ten (10) days of receipt of the appeal notice, and shall render a decision within a reasonable time after the hearing date. If, on appeal, the manager or designee determines that the graffiti is a public nuisance and must be removed, the manager shall establish a new date for such removal or obscuring.

(5) *Emergency removal.* If the town determines that any graffiti is a danger to the health, safety or welfare of the public and is unable to provide notice by personal service after at least two attempts to do so, then forty-eight (48) hours after either (i) mailing of the notice described in subsection (2) above by certified and first class mail or (ii) the posting of the notice in a conspicuous place on the property, the town may remove or cause the graffiti to be removed or obscured at its expense.

(6) Removal/obscuring. The town shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The town shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. Notwithstanding the preceding, if the town manager determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, the Town of Cary or its authorized private contractor is expressly permitted to perform the work necessary to do more extensive repainting or repairing.

(d) *Enforcement/remedies.*

(1) *Civil penalties.* Violation of subsections (b), (c)(1), or (c)(2) shall subject the offender(s) to a civil penalty in the amount of one hundred dollars ($100.00). In the event there is more

than one violation within any thirty-day period, then the civil penalty shall be increased for each additional violation over one during such period, as follows. The date of the first violation shall establish the beginning date for the initial thirty-day period. The next violation within that 30-day period shall be considered the second violation. Any violations that follow within that thirty-day period shall be numbered sequentially. The penalty shall be:

Second offense within same thirty-day period: $250.00.

Third offense within same thirty-day period: $500.00.

Fourth offense within same thirty-day period: $750.00.

Fifth and any subsequent offense within same thirty-day period: $1,000.00.

Once the thirty-day period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new thirty-day period. Each subsequent violation that follows more than thirty (30) days from the previous first violation shall be a new first violation for the purpose of establishing a new thirty-day period. In the event there are more than six violations within any twelve-month period, then each violation after six shall subject the violator(s) to a civil penalty of one thousand dollars ($1,000.00).

Violators shall be issued a written citation which must be paid within seven (7) days from the issue date and time to the Town of Cary Finance Department. The town is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. Any police officer may issue a citation for violations of this article.

(2) *Criminal penalty.* In addition to or in lieu of civil penalties or other remedies, violation of subsection (b) of this section shall constitute a misdemeanor. Any person convicted of a violation of this section shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and five hundred dollars ($500.00) for a second or subsequent offense. In addition to any other remedy, the court shall order any person convicted of a violation of subsection (b) to make restitution to the victim and/or to the Town of Cary for the damage or loss suffered by the victim and/or to the Town of Cary as a result of the offense. The court may determine the amount, terms, and conditions of the restitution.

(e) *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the Town of Cary for the purpose of this section, the town shall make a reasonable attempt to secure the consent of the property owner or manager for release of the town from liability for property damage or personal injury. If the property owner or manager fails to remove the offending graffiti within the time specified herein, or the town has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the town and consistent with the terms of this section, the town shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified herein.

(f) *Severability.* The provisions of this section shall be deemed severable. If any portion of this section is deemed unconstitutional, it shall not affect the constitutionality of any other portions of this ordinance.
(Ord. No. 06-021, 12-14-2006)

Secs. 22-54—22-77. Reserved.

ARTICLE IV. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

DIVISION 1. GENERALLY

Sec. 22-78. Disturbing public meeting.

No person shall disturb any public meeting or exhibition, whether held in a house or out of doors, in any manner whatsoever.
(Code 1976, § 10-1; Code 1982, § 13-6)

State law references—Disorderly conduct, G.S. 14-288.4; disruption of official meetings, G.S. 143-318.17.

Sec. 22-79. Consumption and possession of malt beverages and unfortified wine on town property and town streets.

(a) *Definitions.* The following definitions shall apply in the interpretation and enforcement of this section:

ABC permit means any permit required by the North Carolina Alcoholic Beverage Control Commission or any successor agency.

Malt beverage means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume.

Open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container.

Public street means any streets, sidewalks, alleys, bridges and other ways of public passage within the town's corporate limits.

Town property means any property owned, occupied, or controlled by the town, excluding the public streets.

Town sponsored or co-sponsored event means a celebration, festival, activity, or other event which is sponsored wholly or in part by the Town.

Unfortified wine means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry,

rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(b) *Possession and Consumption on Public Streets.* It shall be unlawful for any person to possess an open container of or consume malt beverages or unfortified wine on any public street, except that such possession and consumption shall be permitted within the area encompassed by a valid encroachment agreement granted by the town which includes the permission for such possession or consumption ("outdoor consumption area"), so long as appropriate ABC permits are in effect. Possession or consumption of malt beverages and unfortified wine are not permitted in outdoor consumption areas located within the area described in Code Section 24-18(b)(1) on the scheduled day of Lazy Daze, or its rain date, if necessary.

(c) *Possession and Consumption on Town Property.* It shall be unlawful for any person to possess an open container of or consume malt beverages or unfortified wine on town property, except that such possession and consumption shall be permitted on town property if appropriate ABC permits are in effect and (i) in connection with Town sponsored or co-sponsored events; (ii) pursuant to a written agreement between the town and a concessionaire; (iii) pursuant to the terms of a lease or rental agreement for a town facility; or (iv) at the Cary Arts Center, the Cary Downtown Theater, the Koka Booth Amphitheatre, or the Soccer Park, when the malt beverages or wine are provided by the Town, a vendor, or a concessionaire.

(d) *Possession and Consumption during Special Events.* It shall be unlawful to possess or consume malt beverages and unfortified wine on any public street, alley or parking lot which is temporarily closed to regular traffic for a special event unless (i) the special event is a Town sponsored or co-sponsored event located with the Town Center zoning district and for which the Town makes malt beverages or unfortified wine available for purchase; or (ii) a resolution of the town council makes other provisions for the possession and consumption of malt beverages or unfortified wine for the special event on the closed street, alley or parking lot.

(e) *Exception.* This Section does not apply to persons who are occupants of a motor vehicle. (Code 1976, § 10-4; Code 1982, § 13-8; Ord. No. 87-104, § 3, 12-10-1987; Ord. 2015-Code-01, 1-28-2015)

Sec. 22-80. Hotel guest registration.

(a) *Definitions.*

Innkeeper. Any person engaged in the ownership or operation of hotels, motels, inns, tourist homes, tourist camps and similar types of businesses and persons who rent private residences and cottages to transients (hereafter jointly "hotel"). The term innkeeper includes the proprietor or any other person who has the right to rent rooms within the hotel including clerks and other employees and agents of the hotel owner or operator.

Guest. Any person renting or otherwise using or inhabiting a sleeping room or living room unit in a hotel.

(b) *Numbering of rooms.* Every innkeeper shall at all times number and designate all sleeping room or living room units in the hotel in a plain, conspicuous manner. Such number or designation

shall be placed on the outside of each sleeping room or living room unit, and no two units shall bear the same number, unless also clearly designated as to building, wing, or other identifier.

(c) *Guest register.* Every innkeeper shall at all times keep and maintain on the premises of hotel a guest register in which shall be inscribed the name and home address of each guest and shall contain such guest's vehicle description and license plate state and number.

Upon registration, the innkeeper shall require all guests to provide a valid driver's license or identification card from within the U.S., Canada or U.S. Territories, U.S. Military identification, or a valid passport. The corresponding identification number and type of identification shall be recorded in the register.

The innkeeper shall write opposite each guest name the number of each room or unit assigned to and occupied by such guest, together with the date when such room or unit is rented, and shall sign the register. No person shall be allowed to occupy any sleeping room or living room unit in a hotel unless all of the aforesaid entries have been made in such guest register.

(i) The innkeeper shall keep and maintain all guest registers in a manner that provides quick and easy reference to the number of each room or unit assigned, and the name of the guest assigned to that room or unit, together with the date when such room or unit is rented.

(ii) The information required by this section shall be maintained by the innkeeper for one year from the date of rental. An officer of the Town of Cary Police Department ('Officer') may request to inspect the guest register as part of the Police Department's public safety responsibilities by asking the innkeeper's consent to inspect the guest register. If such inspection is refused, the innkeeper must secure the guest register in the presence of the Officer in a manner directed by the Officer to ensure that no one can tamper with the guest register and the innkeeper must maintain the security of the guest register until such time as a subpoena, warrant, or court order has been issued or denied.

(iii) The guest vehicle parking area of any hotel shall be accessible in a reasonable manner at all times to any law enforcement officer or by an official of the Fire Department with territorial jurisdiction while in the performance of his or her duties.

(Ord. No. 06-019, 12-14-2006; Ord. No. 2015-Code-006, 11-19-2015)

Secs. 22-81—22-101. Reserved.

DIVISION 2. NOISE*

Sec. 22-102. Statement of purpose and intent; loud, disturbing noises prohibited, generally.

The provisions hereinafter contained are enacted for the purpose of preventing noise disturbances or unreasonably loud noise and are enacted pursuant to the authority granted in G.S. § 160A-184. Above certain levels or durations and during specific times of day, unreasonably loud noise or noise disturbance is detrimental to health, safety and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment. It is the policy of the town to prohibit noise disturbances or unreasonably loud noise from all sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Cary. Nothing in this Article IV, Division 2 is intended to deter individuals from lawfully exercising the individual right of freedom of speech and commerce, or any other freedom guaranteed under the Constitutions of the United States of America or of the State of North Carolina, and nothing in this Article IV, Division 2 is intended to unreasonably limit or restrain commercial or industrial enterprise.

Subject to the provisions of sections 22-104 through 22-112, it shall be unlawful for any person to create or assist in creating any unreasonably loud, disturbing noise in the town which does frighten, annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of citizens within the Town of Cary or causes damage to property or business within the Town of Cary. Such sounds do not include the ordinary and usual sounds, noises, commotion or vibration incidental to residential living or operation of business or commercial establishments when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business.
(Code 1982, § 13-10; Ord. No. 93-29, 5-13-1993; Ord. No. 98-008, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-103. Definitions.

For the purpose of this division, the following words and phrases are defined below unless it shall be apparent from the context that a different meaning is intended:

Construction shall mean on-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting, landscaping, mixing or pouring concrete, and the operation of vehicles or equipment in connection with such activities.

Disturbing noise shall mean noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of an area.

Emergency work shall mean any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

***State law reference—**Authority to regulate noise, G.S. § 160A-184.

Motor vehicle or vehicle shall mean any vehicle propelled on land by a motor, including, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, automobiles, motorcycles or buses. It shall exclude trains and emergency response vehicles such as police, fire and rescue vehicles.

Noise control officer shall mean any police officer or other person so designated by the town manager.

Occupied residential structure shall mean any structure that is occupied for residential use or that reasonably appears to be occupied for residential use; it is not necessary that a person be inside the structure at the time an unreasonably loud or disturbing noise is caused or created.

Person shall mean any individual, association, partnership or corporation, including any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.

Unreasonably loud noise shall mean noise which is substantially incompatible with the time and location where created or heard to the extent that it brings about an actual or imminent interference with peace, rest, or good order.

Technical terms:

(1) *A-weighted sound level:* The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

(2) *Decibel (dB):* A 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.

(3) *Sound:* An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression, and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(4) *Sound pressure level:* 20 times the logarithms to the base 10 of the ratio of the root mean squared (RMS) sound pressure to the reference pressure of 20 micronewtons per square meter.

(5) *Sound-level meter:* An instrument which includes a microphone, amplifier, RSM detector, integrator or time average, output meter and weighting network used to measure sound pressure levels.

(6) *Sound level:* The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute Specifications for sound level meters (ANSI S1.41971 or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(7) *Slow response:* A measuring technique to obtain an average value when measuring a noise level that fluctuates over a range of four dB or more. By way of illustration only, a sound level meter set on "slow response" would record a sound level between two and six decibels less than the reading for a steadying signal of the same frequency and amplitude when a tone of 1,000 Hz and for a duration of 0.5 seconds is applied.

(8) *Amplified sound:* Any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside or to other dwellings or interior locations under separate ownership or occupancy.

(Code 1982, § 13-11; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-104. Noise measurement.

For the purpose of determining dB(A)'s as referred to in this article, sound levels shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute (ANSI) or its successor body.

All measurements shall be taken at or within the nearest residential property line occupied by the complainant, unless otherwise stated. For multifamily structures, including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined or do not exist, measurements shall be taken:

(1) from any point abutting the exterior of the complainant's residential unit; or

(2) from any point on the interior of the complainant's residential unit if taking an exterior measurement is impractical or if the noise complained of is emanating from an adjoining unit.

The sound measurement shall be averaged over a period of one minute for purposes of determining the sound level (the "measurement period"). It shall be a violation of this ordinance for the averaged sound measurement to exceed the prescribed dB(A), or for any sound or noise to exceed the prescribed dB(A) level by three or more decibels at any time during the measurement period.

(Code 1982, § 13-12; Ord. No. 93-29, 5-13-1993; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-105. Exceptions.

The following acts and activities are exempt from the provisions of this article unless such acts produce a risk of serious and unnecessary bodily harm:

(1) *Emergency Work.* Emergency work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril. This emergency exception includes maintenance, backup or upkeep ("maintenance") strictly necessary to keep emergency equipment, such as generators, in operating order as prescribed by the manufacturer, provided such maintenance is done only on weekdays between the hours of 9:00 a.m. and 4:00 p.m., sounds created do not exceed 80 dB(A), the equipment is maintained as far from the property line as reasonably possible to serve its purpose, and the equipment has all the manufacturer's standard mufflers and noise-reducing equipment intact.

(2) *Athletic Events.* Sound emanating from outdoor athletic events scheduled by the Town; educational, religious, or other institutions; or organized sports leagues.

(3) *Safety Signals.* Noise of safety signals, warning devices, and emergency pressure relief valves, provided such signals are used in a manner consistent with promoting public health and safety.

(4) *Religious Bells.* Noise resulting from the operation of religious bells or chimes.

(5) *Emergency Vehicles.* Noise resulting from any authorized emergency vehicle.

(6) *Public Demonstrations.* Noise resulting from parades, lawful picketing or other public demonstrations protected by the U.S. Constitution or federal law, or for which a local permit has been granted by the town, provided such activity is of a temporary duration lasting no longer than two hours during any 24-hour period. Regulation of noise emanating from activities under permit shall be according to the conditions and limits stated in this Article IV, Division 2 and according to any additional conditions stated on the permit.

(7) *Town Sanctioned or Sponsored Events.* Unamplified and amplified sound at street fairs community concerts, other celebrations and events, provided that such event is sponsored or sanctioned by the town.

(8) *Noisemakers and Pyrotechnics.* Noise from noisemakers on holidays and fireworks on holidays or at times allowed under a pyrotechnics permit issued pursuant to G.S. ch. 14, art. 54 (G.S. 14-410 et seq.).

(9) *Aircraft.* All noises coming from the normal operations of properly equipped aircraft, but not including scale model aircraft.

(10) *Lawn Mowers and Landscaping Equipment.* Lawn mowers, landscaping equipment, and agricultural equipment used between the hours of 7:00 a.m. and 9:00 p.m. on Monday through Friday and between the hours of 9:00 a.m. and 9:00 p.m. on Saturdays and Sundays when operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work to ready a golf course for play beginning at 6:00 a.m. during the months of April through September and at 7:00 a.m. during the months of October through March. Typical and routine work includes the mowing, blowing and raking of all of the course's playing surfaces, using equipment operated with all the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition. Typical and routine work does not include the use of chainsaws, chippers, shredders or equipment that is used on a sporadic, irregular basis.

(11) *Marching Bands.* Practice sessions or performances by marching bands.

(12) *Railroads.* Noise from trains and associated railroad rolling stock when kept in proper repair and operated in a proper manner.

(13) *Operations of Local Government Employees.* Noise created by the normal operations of the town government, including the work of its contractors.

(14) *Unamplified Recreational Noise.* Unamplified sound originating from recreational activities at public or private recreational, civic or community clubs, and religious institutions, when such noise is created by patrons and/or guests during the legitimate operation of the establishment between the hours of 7:00 a.m. through 9:00 p.m.

(15) *Refuse Collection.* Operating a front-end loader or other truck for refuse collection Monday through Saturday between the hours of 7:00 a.m. and 8:00 p.m.

(16) *Construction Work.* Performing construction work or operating construction machinery Monday through Friday between the hours of 7:00 a.m. and 6:00 p.m. or between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays and holidays which are observed by the state.

(17) *Garages.* Noises created by the ordinary business activities of garages or service stations between the hours of 7:00 a.m. and 9:00 p.m.

(Code 1982, § 13-18; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 2, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-004, 3-10-2005; Ord. No. 2013-Code-05, 10-10-2013; Ord. No. 2015-Code-004, 7-9-2015)

Sec. 22-106. Prohibited sounds.

The following actions are hereby declared to be unreasonably loud and disturbing noise in violation of section 22-102, except as provided in section 22-105. This enumeration shall not be construed to be an exclusive list of actions which violate section 22-102, nor shall satisfying any requirements of this section render a sound in itself reasonable:

(1) *Horns or signal device.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other motor vehicle, except as a warning or danger signal; the creation of any unreasonably loud or harsh sound by means of any such horn or signal device, whether or not such device is on any vehicle, and the sounding of any such device for an unnecessary and unreasonable period of time.

(2) *Gongs, bells, and sirens.* The use of any gong, bell or siren upon any motor vehicle.

(3) *Steam whistle.* 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.

(4) *Exhaust discharge.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat engine, except through a muffler or other device which effectively prevents unreasonably loud and disturbing or explosive sounds therefrom.

(5) *Compressed air devices.* The use of any mechanical device operated by compressed air unless the sounds created are effectively muffled and reduced.

(6) *Chimes, bells, gongs, attached to buildings.* The sounding of any chime, bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity thereof.

(7) *Vendors.* The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of a residential neighborhood.

(8) *Pyrotechnics.* The firing, discharge or ignition of squibs, firecrackers, gunpowder or other pyrotechnics, except with a permit as set forth in section 22-110.

(Code 1982, § 13-13; Ord. No. 93-29, 5-13-1993; Ord. No. 06-020, 12-14-2006; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-107. Sounds impacting residential life.

Except as provided in sections 22-105 (exceptions) or 22-109 (relating to amplified noise), it shall be unlawful for anyone to create or cause a sound that exceeds 60 dB(A) affecting any occupied residential structure or unit other than the unit occupied by the person creating the sound.

(Code 1982, § 13-14; Ord. No. 93-29, 5-13-1993; Ord. No. 94-022, § 1, 8-11-1994; Ord. No. 05-003, 2-24-2005; Ord. No. 05-011, 8-11-2005; Ord. No. 2012-Code-03, 4-19-2012; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-108. Motor vehicles.

It shall be unlawful to operate or allow the operation of any motor vehicle in the town:

(1) By engaging in operations which create unreasonably loud and disturbing noises, or

(2) By playing any radio, tape player, compact disc player or other sound-making device or instrument from within the motor vehicle so that the sound is plainly audible 30 feet away from the vehicle. This subsection shall not apply to motor vehicles used for business or political purposes which, in the normal course of conducting business, use sound-making devices or sound-amplification equipment, so long as such devices or equipment do not register more than 60 dB(A) at or on the edge of the pavement.

(Code 1982, § 13-17; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-109. Amplified sound.

Except in accordance with a permit obtained from the town, or as provided in section 22-110, the following shall be unlawful:

(1) *Places of public entertainment.* As to places of public entertainment, including, but not limited to, restaurants, taverns and bars, coffeehouses and private clubs, to operate or allow the operation of any sound amplification equipment so as to create sounds registering more than 65 dB(A) affecting occupied residential structures or units between 9:00 a.m. and 9:00 p.m., or 55 dB(A) between 9:00 p.m. and 2:00 a.m., or 40 dB(A) between 2:00 a.m. and 9:00 a.m.

(2) *Advertising.* Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which register more than 60 dB(A) at or on the boundary of the edge of pavement of any public right-of-way.

(3) *Public right of ways.* Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in the public parks so as to produce sounds registering more than 60 dB(A) at any point 50 feet or more from any electromechanical speaker emitting sound between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) 50 feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.

(4) *Other Amplified Sounds.* As to sounds other than those listed in subsections (1)-(3) of this section, to operate or allow the operation of any sound amplification equipment so as to create sounds registering 60 dB(A) or greater affecting occupied residential structures or units between the hours of 9:00 a.m. and 9:00 p.m., or 50 dB(A) or greater between 9:00 p.m. and 9:00 a.m.

(Code 1982, § 13-15; Ord. No. 93-29, 5-13-1993; Ord. No. 98-009, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-110. Permits.

(a) *Application.* Application for a permit under section 22-106(8) or for additional amplification under section 22-109 shall be submitted in writing to the police department at least 15 working days in advance of the planned use. The application shall designate an individual person or persons who shall be:

(1) in control of the amplification in the case of a permit for section 22-109;

(2) in control of the firing or discharge of a gun or pyrotechnics in the case of a permit under section 22-106(8); and

(3) responsible for seeing that the activity complies with the terms of the permit.

(b) *Notice of tentative approval.* In the case of permits for additional sound amplification pursuant to section 22-109, if the permit is tentatively approved, the applicant shall be responsible for mailing or otherwise delivering to the occupants of each property within a 1,000-foot radius of the property or facility for which the permit has been granted, as shown on the county tax maps, a notice on a form provided by the noise control officer showing the date and hours of the event. The notice shall be delivered at least 72 hours in advance of the event. The permit will not be approved and issued by the town until the applicant submits an affidavit to the noise control officer confirming that such notices have actually been mailed or otherwise delivered.

(c) *Number of hours.* In the case of excess amplification under section 22-109, no permits shall be issued which shall have the effect of allowing more than 20 hours of excess amplification per year at any place of public entertainment or ten hours of excess amplification at any other location. Permits shall be tentatively approved and subsequently granted by the noise control officer in the order of receipt unless permits for 20 or more hours have previously been issued for the same or other locations within a 1,000-foot radius of the facility in the same calendar year, in which event the applicant shall elect whether to limit his request so as to keep the year's accumulated hours of excess amplification in that location between 20 hours or select another location.

(d) *Not permitted in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 dB(A) at any point on or within the

boundary line of the nearest residentially occupied property. For multifamily structures, including apartments, condominiums, or other residential arrangements, and for structures where boundary lines cannot readily be determined or do not exist, measurements shall be taken from any point abutting the exterior of the residential unit.

(e) *Denial; exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, the applicant shall promptly submit a copy of the denied permit application together with a short statement of the reasons the applicant believes he is entitled to a permit to the town manager. The town manager shall have the discretion to grant an exceptional permit waiving locational, time, and/or dB(A) requirements, upon the determination by the town manager that the applicant has made a substantial showing of legal entitlement. Any such exception permit shall be promptly reported to the town council.
(Code 1982, § 13-16; Ord. No. 93-29, 5-13-1993; Ord. No. 05-003, 2-24-2005; Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-111. Responsible party.

(a) Persons responsible for remedying any violation under this Article IV, Division 2 or to be held liable for any civil or criminal penalties under section 22-112 shall be any person who creates or assists in creating the unreasonably loud, disturbing noise or other violation. A person shall be deemed to create or assist in creating the unreasonably loud, disturbing noise or other violation if that person owns, manages, or operates any residence, business, or location at which the noise is generated.

(b) When the noise which violates this Article IV, Division 2 is emanating from a motor vehicle, the violator is the operator of the motor vehicle, and/or the employer of the operator if the motor vehicle is being used for commercial purposes, and/or the person which possesses or controls the motor vehicle used by the operator if the motor vehicle is being used for commercial purposes.

(c) When the noise which violates this Article IV, Division 2 is emanating from construction activities, the violator is the individual doing the activity and/or their employer, the general contractor for the site, or the owner of the property.
(Ord. No. 2013-Code-05, 10-10-2013)

Sec. 22-112. Enforcement and penalties.

(a) *Civil penalty.* Violation of this Article IV, Division 2 shall subject the offender(s) to a civil penalty in the amount of $100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: $250.00

Third offense within one year: $500.00

Fourth offense within one year: $750.00

Fifth and any subsequent offense within one year: $1,000.00

(1) Once the one year period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.

(2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer, animal control officer enforcing subject matter jurisdiction, or other employee duly authorized to enforce the noise control ordinances may issue a citation for violations of this article.

(3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:

(a) the gravity of the violation;

(b) any action taken by the violator to correct the violation;

(c) the cost of the action to correct the violation; and

(d) any previous violations committed by the violator, on the same or different site.

(b) *Remedies.* This article may also be enforced through equitable remedies issued by a court of competent jurisdiction.

(c) *Criminal penalty.* In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.

(Code 1982, § 13-19; Ord. No. 93-29, 5-13-1993; Ord. No. 98-010, § 1, 6-11-1998; Ord. No. 2013-Code-05, 10-10-2013)

State law reference—Civil penalties, G.S. 160A-175(c).