

REQUEST FOR BOARD ACTION

MEETING DATE: Wednesday, December 19, 2007

SUBJECT: Noise Ordinance

ATTACHMENTS:

1. Proposed Noise Ordinance
2. Enforcement Overview

SUMMARY OF REQUEST:

At the October 9, 2007 Public Hearing, the Board of Commissioners directed that staff revisit the Noise Ordinance and determine the most effective enforcement mechanisms for the Ordinance. Staff has reviewed and revised the Ordinance based on the Board's comments during the Public Hearing and submits the attached draft for Board review and discussion.

The only changes to this draft of the Ordinance are as follows:

- **Enforcement Authority.** Designates the Sheriff's Department as the enforcement authority and removes references to the Code Enforcement Officers and Animal Services Officers.
- **Impoundment of Barking Dogs.** Provides for the impoundment of barking dogs violating the Ordinance for one day. Impounded dogs would be subject to Animal Ordinance guidelines.

Attached you will find the proposed Noise Ordinance as well as a one-page enforcement overview. Sheriff Rick Davis will be present at the meeting to speak to the enforcement plan.

In addition, Emily Cowan, Assistant District Attorney, will be present to speak to the proposed Ordinance on behalf of the District Attorney's Office.

BOARD ACTION REQUESTED:

Staff requests that the Board review and discuss this draft and give staff direction as to any changes that it wishes to see within the Noise Ordinance.

SUGGESTED MOTION:

I move that the Board of Commissioners adopt the revised Noise Ordinance and direct that enforcement begin on _____.

Chapter 125 of the Henderson County Code is hereby amended by striking the same.

A new Chapter 125A of the Henderson County Code is ordained, as follows:

Chapter 125A: NOISE

Sec. 125A-1. Authority, title.

This Chapter is hereby adopted under the power and authority granted to counties by N.C.G.S. 153A-121 and N.C.G.S. 153A-133, and shall be known and may be cited as the "Henderson County Noise Ordinance."

Sec. 125A-2 Jurisdiction.

This chapter shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

Sec. 125A-3. Loud and disturbing noise.

(A) Subject to the provisions of this section, it is prohibited in Henderson County to create, cause or allow the continuance of any unreasonably loud, disturbing noise. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited. For the purposes of this section, the following definitions shall apply:

(1) Unreasonably Loud. Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.

(2) Disturbing. Noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area.

In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered: Time of day; proximity to residential structures; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; the nature and zoning of the area; whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(B) The following acts, among others, are declared to be loud and disturbing in violation of this section if they annoy or disturb the quiet, comfort or repose of any reasonable person of ordinary firmness and sensibilities in the vicinity where created, caused, or continued, but this enumeration shall not be deemed to be exclusive.

(1) The use of any loud, boisterous or raucous language, yelling, or shouting, whether or not amplified.

(2) The congregation of persons at and participation in any party or gathering of people from which noise emanates of a sufficient volume or of such nature as to disturb the peace, quiet and comfort of any reasonable person of ordinary firmness and sensibilities in the vicinity.

(3) The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more thereby causing a noise disturbance.

(4) The playing of any radio, television, phonograph, drum, musical instrument, or sound production, reproduction or amplification equipment in such manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the peace, quiet, comfort or repose of any person of ordinary firmness and sensibilities in the vicinity.

(5) The playing of any radio, cassette player, compact disc, or other similar device for production or reproduction of sound located in or on any motor vehicle on a public street, highway, within a public vehicular area, within the motor vehicular area of any public or private parking lot or park or on the premises of a private residence in any unreasonably loud or disturbing manner as defined above.

(6) The intentional sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, so as to create any unreasonably loud or disturbing noise as defined above, or the sounding of such a device for an unnecessary and, or the sounding of such a device for an unreasonable period of time.

(7) The operation of any automobile, motorcycle or other vehicle, or remote control model vehicle in such a manner as to create loud grating, grinding, rattling, screeching of tires, or other unreasonably loud or disturbing noise.

(8) The repair, rebuilding or testing of any motor vehicle, particularly during the hours between 11:00 p.m. and 7:00 a.m. which creates unreasonably loud and disturbing noises.

(9) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises there from, or which has its muffler-exhaust or other noise control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.

(10) Operating or permitting the operation of any motor vehicle or motorcycle that engages in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.

(11) The creation of any excessive noise on any street adjacent to any school, institution of learning, library or sanitarium, or court while the same is in session, or adjacent to any hospital or any church during services, which unreasonably interferes with the working of such institution.

(12) The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance.

Sec. 125A-4 Exceptions.

(A) The following uses and activities, among others, are not governed by and shall be exempt from the noise ordinance set forth in this chapter. It is expressly provided, however, that the following enumeration shall not be deemed or considered exclusive, and any activity that is not expressly prohibited as set forth in Section 125A-3 shall be exempt from this chapter.

(1) Noise made by dogs while they are being lawfully used for hunting or taking wildlife, and noise made by dogs during the course of lawful training by hunters, pursuant to N.C.G.S. Chapter 113.

(2) Noise associated with or resulting from the normal operations of any facility that is properly licensed by the North Carolina Department of Agriculture, Veterinary Division, as a boarding kennel, pet shop or dealer, in accordance with the North Carolina Animal Welfare Act (N.C.G.S.Chapter 19A-20 *et seq.*), as may be amended, or from any animal shelter that is operated by Henderson County.

(3) Noise associated with any legal operations of any firearms club, or association legally established.

(4) Noise caused by the discharge of firearms by law enforcement officers in the performance of their official duties or during the course of official firearms training.

(5) Noise resulting from farming operations, including but not limited to noises generated by machinery, equipment and farm animals.

(6) Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals.

(7) Noise associated with any public or private school activity or camp activity (defined as any function or activity approved by or generally associated with any recognized public or private camp for children accredited by the American Camp Association, but not including activities associated with campgrounds available to the public for overnight camping), except that it shall be unlawful for any person to use any unreasonably loud, disturbing, boisterous, raucous language or shouting in violent or offensive manner while attending such activities.

(8) Noise associated with the chimes or bells of businesses, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.

(9) Non-amplified crowd noise resulting from activities by student, government, camp or community groups.

(10) Noise associated with or resulting from operations of any construction, commercial, industrial or agricultural activities or operations, except for electronically amplified sound and acts prohibited by Section 125A-3.

(B) If any exceptions stated in this Chapter would limit obligation, limit liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

Sec. 125A-5 Noise Complaint Procedure

In the event any person has reasonable grounds for believing that any provision of this Chapter is being violated, he may make a report thereof to the Henderson County ~~Sheriff's Department~~, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made, and may obtain criminal process for violation thereof, ~~may issue a citation for a civil penalty~~, and may obtain other enforcement measure as allowed in this Chapter. Criminal process for violation of this Chapter may only be obtained by personnel from the Henderson County Sheriff's ~~Department~~.

Deleted: Code Enforcement office

Deleted: Investigations may also be undertaken by the Henderson County Sheriff's Department or Henderson County Animal Control Officers.

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Deleted: Office, Code Enforcement Office, or Animal Control Office

Sec. 125A-6 Violations and penalties, enforcement.

This chapter shall be enforced in accordance with any and all of the provisions of N.C. Gen. Stat. §153A-123, and of Article II of Chapter I of the Henderson County Code.

In the case of second or subsequent violations of Sec. 125A-3(b)(3), any animal which upon investigation by deputy Sheriff is found to be creating the noise which causes the violation of Sec. 125A-3(b)(3) may in the discretion of such deputy be impounded by the Sheriff's Department and confined in the county animal shelter in a humane manner until the next business day for the shelter. The owner of such animal may redeem the animal upon payment of applicable fees. If the animal is not redeemed within five days of impoundment, then such animal may be offered for adoption or destroyed in a humane manner pursuant to Section 66A-14 of the Henderson County Code. Impoundment of such an animal shall not relieve the owner thereof from any penalty, civil or criminal, which may be imposed for violation of this chapter.

Any Deputy Sheriff of Henderson County, having first investigated this matter pursuant to Sec. 125A-5, may obtain criminal process for violation of this Chapter. A violation of any noise ordinance provision shall constitute a class 3 misdemeanor, and may be punished by fine in the discretion of the Court, up to a maximum of Five Hundred Dollars (\$500.00) per offense.

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NOISE ORDINANCE ENFORCEMENT OVERVIEW

Based on 12-19-07 Proposed Draft

I. Enforcement Authority

Staff proposes that the Noise Ordinance be enforced by the Henderson County Sheriff's Department. The Ordinance provides the Sheriff's Department the authority to obtain criminal process, issue a citation for a civil penalty, and obtain other enforcement measures allowed.

II. Violations and Penalties

- **Addressing the Issue of Barking Dogs:** The proposed Ordinance permits the Sheriff's Department to impound a barking dog at the County animal shelter at the Deputy's discretion for the second or subsequent violation until the following business day for the shelter. This should provide a "cooling off" period in which those being impacted by the barking dog are given some degree of relief. The impoundment guidelines used in this instance would correspond with those found in the County's Animal Ordinance, Section 66A-14.
 - **Impoundment Guidelines (Per Animal Ordinance Section 66A-14):**
 - a) Animal must be reclaimed by owner within 5 days of impoundment.
 - b) If the animal is not reclaimed within 5 days, the animal may be adopted out or euthanized.
 - c) Reclaim fee is currently \$30 plus \$3 each day that the animal is kept at the shelter.
- **Addressing Other Noise Violations:** The proposed Ordinance permits the Sheriff's Department to obtain criminal process for noise violations. In so doing, a violation would constitute a Class 3 misdemeanor and may be punishable by fine up to a maximum of \$500.

III. Key Issues

- The Noise Ordinance provides discretion to the investigating Deputy to determine what noises are considered 'reasonable' and 'unreasonable'.
- Investigations of Ordinance violations would include the use of cameras being staged to record violations for use as evidence. This draft does not include the use of decibel meters as was written into the previous Ordinance.
- The Board of Commissioners may wish to issue an additional fine for repeat offenders regarding barking dog issues. This language is not included in this draft, but may be appropriate.

IV. Resources

- Enforcement of the Noise Ordinance will require the purchase of 5 cameras and tripods for capturing evidence of violations.
- Additionally, the reassignment of the Animal Control function to the Sheriff's Department will provide for better service in enforcing barking dog issues covered in this Ordinance.