

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

~ Adopted July 6, 2011

Code of Highlands – Chapter 8: Nuisances Article I, II & III

Pursuant to an affirmative vote on the motion of and by Commissioner _____, and a vote of __ to __ by the Board of Commissioners of the Town of Highlands, at its regular meeting on the ___ day of _____ 20__, and (applicable where there were less than 4 affirmative votes on said date) the subject matter hereof having been first introduced by being voted on by the Board at its regular meeting on the 15th day of June, 2011, as required by N.C.G.S. 160A-75, now therefore the following ordinances are hereby **ADOPTED, AMENDED, OR REPEALED** as set forth hereinbelow:

(EXISTING CODE SECTIONS ARE FOLLOWED BY CHANGES IN ITALICS)

I.

Sec. 8-8. Loud, raucous, and disturbing noise prohibited. *TO BE REPEALED*

It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue, or cause to be made or continue any loud, raucous, and disturbing noise, which term shall mean any sound which, because of its volume level, duration, and character annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities within the limits of the town. The term loud, raucous, and disturbing noises shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital, or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof.

(Code 1982, § 11.11; Amend. of 7-26-2006, § 1)

State Law References: Authority to regulate noise, G.S. § 160A-184.

Sec. 8-9. Noises specified. *TO BE REPEALED*

The following acts, among others, are declared to be loud, raucous, and disturbing noises in violation of this section, but such enumeration shall not be deemed to be exclusive, namely:

- (1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time;
- (2) The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle;
- (3) The use or operation of any piano, manual or automatic, phonograph, radio, loud speaker, or other instrument, or sound amplifying devices so loudly as to disturb persons in the vicinity thereof, or in such a manner as renders the same a public nuisance; provided, however, that upon application to the mayor, permits may be granted to responsible organizations to produce programs in music, speeches or general entertainment;
- (4) The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity;

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

- (5) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling, or other noise;
- (6) 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;
- (7) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;
- (8) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
- (9) The erection, including excavating, demolition, alteration or repair of any building, or any road or utility excavation, other than between the hours of 7:30 a.m. and 6:00 p.m. on weekdays, excluding the holidays of Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, and except in the case of urgent necessity in the interest of public safety, and then only with a permit from the town clerk, which permit may be renewed for a period of three (3) days or less while the emergency continues.
- (10) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same is in session, or within one hundred fifty (150) feet of any hospital, which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, court or hospital street;
- (11) The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street;
- (12) The creation of loud and excessive noise in connection with loading or unloading any vehicle, of the opening and destruction of bales, boxes, crates and containers;
- (13) The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof;
- (14) The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood;
- (15) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise;
- (16) The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the board;
- (17) The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.; and
- (18) The firing or discharging of squibs, crackers, gunpowder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the board. (Code 1982, § 11.12; Amend. of 7-26-2006, §§ 2, 3; Amend. of 8-6-2006, § 3)

Sec. 8-10. Dangerous property conditions. *TO BE RE-CODIFIED AS SEC. 8-8*

For the occupant, owner, or tenant in possession of any lot or parcel of ground to permit or have any well, excavation, or embankment remain thereon, without sufficient enclosure or covering to prevent persons or stock from injury thereby, is declared a nuisance, and all persons so offending shall, upon conviction, be fined.

(Code 1982, § 11.27)

Sec. 8-11. Firearms and pellet guns. *TO BE RE-CODIFIED AS SEC. 8-9.*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

(a) No person may discharge any firearm, pellet gun, or any other mechanism or device designed or used to project a missile by compressed air or mechanical action at any time or place within the town except when used in the following specific circumstances:

- (1) In defense of person or property;
- (2) To destroy any rabid or marauding animal; or
- (3) Pursuant to the lawful directions of any member of the town police department.

(b) This section shall not be construed to preclude the discharge of firearms, pellet rifles, or other similar devices pursuant to a competition or match conducted by any bona fide civic group, organization, or sponsoring entity provided always, however, that such organization shall first secure from the chief of police permission to conduct such competition or match and shall further assume all liability for all personal injury or property damage or both arising out of such meet.

(c) Any person violating this section shall be guilty of a misdemeanor and shall be subject to the punishment provided by section 1-5.

(Code 1982, § 11.28)

State Law References: Authority to regulate discharge of firearms, G.S. § 160A-189; authority to regulate possession and use of pellet guns, G.S. § 160A-190.

Sec. 8-12. Keeping of animal pens. *TO BE RE-CODIFIED AS 8-10*

For the owner or user to allow any animal pen, or other stock pen, or closet, to remain filthy or in an unsanitary condition so as to emit stench or offensive odor, or to be detrimental to the citizens within the corporate limits, is declared a nuisance, and any person so offending shall, upon conviction, be fined and shall be punished in accordance with the provisions of section 1-5.

(Code 1982, § 9.6)

State Law References: Public health, G.S. § 130A-1 et seq.; abatement of public health nuisances, G.S. § 160A-193.

Sec. 8-13. Hog pens. *TO BE RE-CODIFIED AS 8-11.*

No person shall be permitted to keep or maintain any hog pen, or keep any hogs, within one hundred fifty (150) feet of any dwelling within the corporate limits.

(Code 1982, § 11.33)

Secs. 8-14--8-30. Reserved.

Article II of the existing Chapter 8 (Abandoned, Nuisance and Junked Motor Vehicles) shall become Article III (sections 8-31 to sections 8-45).

New Article II shall be as follows:

Article II. NOISE ORDINANCE

Sec. 8-12. Scope. *This article shall apply to all sound and noise disturbances (defined herein) originating within the corporate limits of the Town of Highlands. Nothing in this article shall be construed to limit or prevent the Town or any person from pursuing any other legal remedies for damages or the abatement of noises in the Town under other provisions of its Code.*

Sec. 8-13. Definitions. *The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

“Amplified sound” means any sound or noise, including the human voice, which is increased in volume or intensity by means of electrical power.

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

“Holidays” means Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, New Years Day and Christmas Day.

“Motor vehicle” means any vehicle as defined in G.S. 20-4.01(49) including, but not limited to:

- (a) Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.*
- (b) Common carriers of passengers as defined in G.S. 20-4.01(27)c.*
- (c) Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.*
- (d) Truck tractors as defined in G.S. 20-4.01(48).*
- (e) Farm tractors as defined in G.S. 20-4.01(11).*

“Noise disturbance” means any sound that annoys, disturbs, injures, or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities due to its volume level, duration, location, and character, provided that such noise is heard upon the public streets, or in any public park, or in or upon the grounds of any school or public building while in use, or in or upon the grounds of any religious, medical, or convalescent facility, while in use, or upon any parking lot open to members of the public as invitees or licensees, or in or upon the grounds of any occupied residential unit which is not the source of the noise.

“Overnight hours” means between 11 p.m. and 7 a.m. Eastern Standard Time (or daylight savings time, whichever is in effect at the time).

“Person” means any individual, association, firm, partnership, corporation, or business entity.

“Residential district” means the R-1, R-2 and R-3 districts as established by the Zoning Ordinance of the Town.

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

“Working hours,” in relation to construction activity, means between Monday through Friday from 7:30 a.m. 6:00 p.m.

Sec. 8-14. General prohibition and prohibition of noise in excess of 85dB(A). It shall be unlawful for any person or group of persons, regardless of number, to willfully make, allow, or continue, any activity that is or creates a noise disturbance as defined in this article. Without limiting the foregoing prohibition, no person, corporation or other entity shall create, generate or produce, directly

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limit of 85dB(A) when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.

Sec. 8-15. Noise producing activities; frequent sources of complaint; noise sensitive areas. *Without limiting the scope of the preceding section, the following activities are generally recognized as tending to create noise disturbances, and it shall be a violation of this article to engage in these activities if such activities create a noise disturbance as defined in this article:*

- (a) Creation of amplified sound from any source, including, by way of example, radios, home audio systems, automobile audio systems, televisions, and musical instruments;*
- (b) Playing of musical instruments not amplified;*
- (c) Keeping of an animal, such as a bird or dog, which frequently or for long periods of time makes noises that are noise disturbances;*
- (d) Operation of domestic power tools or mechanical devices, including devices using compressed air, in the overnight hours;*
- (e) Repair or testing of any motor vehicle, however fueled or powered;*
- (f) Operation of any motor vehicle with an improper muffler system in violation of G.S. 20-128(a) and (b);*
- (g) Operation of any motor vehicle in such a state of disrepair, or which is loaded in such a manner as to create grating, grinding, rattling, or other noise.*
- (h) Operation of any motor vehicle so as to cause the tires to squeal or screech;*
- (i) Operation of model cars, boats, airplanes, go carts, mini bikes, all-terrain vehicles or other unlicensed toy or recreational vehicles, or devices powered by an internal combustion engine;*
- (j) Shouting or other noise in relation to street vending or peddling;*
- (k) Sounding of any motor vehicle horn (including electronic horns that play music) except as a warning or danger signal, or as required by law;*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

- (l) *Construction in a residential district, or within 200 feet of a residential district, unless during working hours and days that are not holidays as defined herein;*
- (m) *The use of any or siren upon any motor vehicle other than police, fire, ambulance, or other official emergency vehicle;*
- (n) *The blowing of any steam whistle attached to any stationary boiler, except as a warning of danger;*
- (o) *The operation of machinery in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates, and containers;*
- (p) *The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise;*
- (q) *The firing or discharge of firearms or use of fireworks in the streets or elsewhere, except by permit from the police department, or otherwise as permitted by law.*

Sec. 8-16. Exemptions.

The following activities are exemptions from the application of this article:

- (a) *Emergency work in the preservation of public health or safety at any time.*
- (b) *Construction activities associated with street and highway construction.*
- (c) *Construction activity conducted during working hours as defined herein, provided that all equipment is operated in accordance with manufacture's specifications and is equipped with appropriate noise-reducing equipment in proper condition;*
- (d) *Sound or noise of safety signals, warning devices, and emergency pressure relief valves;*
- (e) *Church bells between the hours of 7:00 a.m. and 7:00 p.m.;*
- (f) *Sound or noise emanating from street fairs, festivals, or celebrations conducted under the direct supervision by the Town, or pursuant to a permit issued by the Town;*
- (g) *Sound or noise emanating from film and video production activities for which permits have been issued by the Town; provided all equipment such as generators are properly muffled;*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

- (h) *Sound or noise emanating from properly equipped aircraft operated in accordance with applicable Federal rules and regulations;*
- (i) *Sound or noise from lawful fireworks;*
- (j) *Non-commercial lawnmowers and agricultural equipment operated in working hours and only if operated in accordance with manufacture's specifications and with all standard noise reducing equipment in place and in proper condition;*
- (k) *Musical accompaniment to parades or military ceremonies;*
- (l) *Sound emanating from regularly scheduled athletic events at Town or County parks, athletic facilities, and public schools;*
- (m) *Governmental emergency vehicles in the course of performing their official duties;*
- (n) *Unamplified noncommercial speeches made from a fixed location in non-residentially zoned areas;*
- (o) *Sound or noise emanating from construction or repair work by public utilities; and*
- (p) *Refuse collection vehicles operating during working hours.*
- (q) *Activities conducted in compliance with conditions of a Permit to Exceed.*

Sec. 8-17. Permit to Exceed (PTE).

(a) *A person, firm, corporation or other entity (herein, "the Applicant") shall be exempt from the provisions of this article upon obtaining and complying with a Permit to Exceed (PTE). All applications for a PTE shall be fully completed, on a form provided by the Town, and must be submitted to the Town Manager (or designee) at least 48 hours prior to the event for which such permit is needed. A non-refundable processing fee for a PTE will be shown on the Town's schedule of fees and must be paid at the time the application is submitted.*

(b) *No PTE will be issued without payment by the Applicant of a security deposit. The amount of the security deposit shall be determined by the Town Manager on a case-by-case basis, limited to the amount shown on the Town's schedule of fees. The purpose of this deposit is to insure compliance by the Applicant with the conditions included in the PTE. Upon the satisfaction of all the conditions of the PTE, the security deposit shall be*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

promptly refunded to the Applicant. If the Applicant fails to comply with the conditions of the PTE, the security deposit shall be forfeited.

(c) No PTE will be issued to an applicant that is an establishment located in a Business or Governmental/Institutional zoning district within the Town, which as part of its business activities presents live performances of music.

(d) The criteria for a decision to allow or deny an application for a PTE shall include, by way of example, the following:

- 1. The nature of the requested activity;*
- 2. The previous experience with the applicant as to this article;*
- 3. The time of the event;*
- 4. The location of the event;*
- 5. The number of people expected to attend the event;*
- 6. Other activities in the vicinity of the proposed location; and*
- 7. The effect of the activity on any adjacent residential property.*

(e) A PTE shall specify the date, time period and location to which it applies. The permit shall also prescribe the conditions necessary to minimize the adverse effects the event may have upon the community or surrounding neighborhoods. The Town Manager may require, but shall not be limited to, the following conditions:

- 1. That the sound created by the event not create a noise disturbance;*
- 2. That the sound created by the event not exceed a decibel level determined by the Town;*
- 3. That the Applicant place sound speakers in such a manner as to not create a noise disturbance;*
- 4. That the Applicant change the arrangement of the amplifying equipment or sound instruments upon the request of the Police Department so as to minimize the noise and the potential for noise disturbance related to the position or orientation of the amplifying equipment;*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

5. *That adequate provisions be made to ensure the proper cleanup of any litter resulting from the event; and*
 6. *That adequate security personnel will be at the event for the purpose of crowd and traffic-control. The adequacy of such security may be determined by the Police Department if so requested by the Town Manager, or his or her designee.*
- (f) *All PTEs shall be subject to the following limitations:*
1. *Permits will only be granted for temporary purposes not to exceed eight continuous hours at any one time period;*
 2. *No more than two permits shall be allowed per address (person or group of persons) during a six-month period established by the following sentence. January 1 through June 30 shall constitute one six-month period. July 1 through December 31 shall constitute the second six-month period;*
 3. *No permit shall be granted for the time period between 1:00 a.m. and 10:00 a.m.*
 4. *All noise created outside of the time period of the PTE shall be subject to the other (non-PTE) provisions of this article.*
- (g) *Applicants shall cooperate with the Police Department in enforcing this article and shall be personally available at the site of the event during the entire time period for which a permit has been issued.*
- (h) *The PTE shall be revoked and the security deposit shall be forfeited if:*
1. *The Applicant fails to be personally present during the entire time period for which the permit has been issued;*
 2. *The Applicant fails or refuses to assist the police in enforcing this chapter;*
 3. *Sound is created, generated, or produced, directly or indirectly by the permitted activity, that exceeds the limits set by the Town; or*
 4. *The Applicant fails to comply with any of the conditions of the PTE.*
- (i) *Upon revocation of a PTE, the Applicant shall be subject to the other (non-PTE) provisions of this article, just as if no PTE had been granted.*

TOWN OF HIGHLANDS

HIGHLANDS, NORTH CAROLINA

Sec. 8-18. Enforcement and Penalties.

- (a) *The first violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$100.*
- (b) *The second violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$200.*
- (c) *The third violation of any provision of this article, in any 12-month rolling period, shall subject the offender to a notice of violation and a civil penalty in the amount of \$500, and a criminal citation and prosecution under G.S. 14-4. The maximum fine under that statute will be \$500.*
- (d) *The Town Police Department shall issue notices of violation and criminal citations for violations of this article. The notice of violation shall set forth the violated provision(s) of this article, and shall be issued to the owner, or lessee, or other person in charge of the property where the noise disturbance originates, or the person responsible for creating the noise disturbance.*
- (e) *All civil penalties must be paid within 30 days after the receipt of the notice of violation. If the violator does not pay the penalty within 30 days, the Town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the Town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.*