

CHAPTER 5 - GENERAL OFFENSES

Section 5-1 Excessive, Unnecessary, Loud Noises Prohibited.

It shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary, unreasonable or unusually loud noise or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of reasonable persons of normal sensitivity, or to interfere with normal human activity within the corporate limits of the town. *[Amended November 11, 2003]*

Section 5-1.1 No Service or Consumption Outside Enclosed Structure After 12:00 O'Clock Midnight Local Time.

It shall be unlawful for any restaurant or other establishment serving food or beverages to provide for service of or consumption of food or beverages on the premises of said business and outside a fully enclosed structure between the hours of 12:00 midnight and 7:00 a.m. local time. *[Amended October 24, 1988][Amended November 11, 2003] [Amended August 11, 2009]*

Section 5-1.2 Terminology.

(A) *Terminology.* The following definitions apply to Section 5-1 and all subsections.

- (1) ***Emergency work:*** Any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or eminent peril.
- (2) ***Outdoor amplified sound:*** Any sound using amplifying equipment whose sound is outside or whose source is inside and the sound propagates to outside through open doors or windows or other openings in the building.
- (3) ***Sound amplifying equipment:*** Any device for the amplification of the human voice, music, or any other sound, including jukeboxes, stereos, and radios.
[Amended November 11, 2003]

Section 5-1.3 Noises Expressly Prohibited.

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

- (1) ***Horns, signaling devices, etc.*** The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicles or equipment.
- (2) ***Radios, phonographs, etc.*** The using, operating or playing, or permitting to be played, used or operated, of any television set, radio receiving set, musical instrument, phonograph, musical instrument or sound amplifying device or other machine or device for the producing or reproducing of sound in such manner or with such volume as to annoy or disturb the peace, quiet, comfort or repose of the neighboring inhabitants or of any person in any dwelling, motel, hotel or other

type of residence. The operation of any such machine or device, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place in such a manner as to be plainly audible at a distance of fifty feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(3) ***Loudspeakers, amplifiers, etc., used for advertising.*** The using or operating, or permitting to be played, used or operated, of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(4) ***Yelling, shouting, etc.*** Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or any place in such manner as to annoy or disturb the peace, quiet, comfort or repose of the neighboring inhabitants or of any persons in any office, or in any dwelling, motel, hotel or other type of residence, or of any persons in the vicinity.

(5) ***Animals, birds, etc.*** 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.

(6) ***Defect in vehicle or load.*** The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(7) ***Loading, unloading, or opening boxes, etc.*** The creation of a loud and excessive noise in connection with loading or unloading any vehicle, or the opening and destruction of bales, crates, containers, or the disposal of garbage or recyclables between the hours of 11:00 p.m. and 7:00 a.m. [*Amended November 11, 2008*]

(8) ***Noises near schools, courts, churches and hospitals.*** The creation of any excessive noise on any street adjacent to any school, institution of learning, church, court, or hospital while the same is in use, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital; provided, that conspicuous signs are displayed in such streets indicating that the same are schools, churches, courts or hospitals.

(9) ***Hawkers and peddlers.*** The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

(10) ***Noises to attract attention.*** 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.

(11) ***Raucous parties.*** Any party or assembly of persons in dwelling units or on residential premises producing loud and raucous noise, particularly between 11:00 p.m. and 7:00 a.m., or at any time or place in such a manner that tends to disturb the comfort, quiet, or repose of persons in other dwelling units or on other residential premises. The person in possession of the premises where such a party or assembly of persons takes place shall be deemed responsible for the emission of loud and raucous noises under this subdivision.

[*Amended November 11, 2008*]

(12) **Construction noise.** Including but not limited to hammering, pneumatic nailing, power saws, heavy equipment, delivery trucks, other construction vehicles or equipment associated with a construction site, inconsistent with the time periods set forth in Section 5-1.5 (A)(2). *[Amended November 11, 2008]*

(13) **Motor vehicles.** A motor vehicle, including a motorcycle, moped, snowmobile, all-terrain vehicle, or other vehicle equipped with and propelled by an engine, whether operated on a public street or on private property, shall at all times be equipped with a muffler in good working condition and in constant operation to prevent excessive or unusual noise or annoying smoke. A person shall not remove, destroy, or damage any of the baffles contained in the muffler, nor shall a person use a muffler cutout, bypass, or similar device upon any such vehicle. Such vehicle shall at all times be equipped with a properly operating exhaust system, which shall include a tail pipe and a resonator on a vehicle where the original design included a tail pipe and a resonator, consistent with G.S. 20-128. *[Amended November 11, 2003]*

Section 5-1.4 Owner and Occupant Responsibility.

(A) Penalties for violations of this section may be assessed against persons, jointly and severally, responsible for the premises or devices producing or causing the noise disturbance.

(B) An owner, or rental agent, of any premises subject to this section who is not also an occupant of the premises shall be responsible for any actions by tenants, guests, or other licensees that constitute second or subsequent violations of this section; provided, that no absentee owner or rental agent, shall be liable unless notified of first or previous violations of the section, and further provided that such first or previous violations shall have occurred within the previous 12-month period. Notice of any first or previous violations pursuant to this paragraph shall be sent by certified mail. No absentee owner, or rental agent, may be subjected to criminal liability under this section, but shall be subject to civil penalties and equitable relief. This section shall in no way relieve any other person, jointly and severally, from responsibility for violations of this section.

[Amended November 11, 2003]

Section 5-1.5 Exceptions.

(A) The following are exempt from the provisions of this section:

(1) Sound emanating from regularly scheduled outdoor athletic, musical, and cultural events, no later than 11:00 p.m., on the campuses of local schools, Chetola Resort, Blowing Rock Country Club, and other civic and public functions.

(2) Construction operations and/or sanitation collection services from 7:00 a.m. to 9:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturday. Construction activities are prohibited on Sunday and the following holidays: New Year's Day, Good Friday, Thanksgiving Day, and Christmas Day. Construction operations include those activities for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of the government; provided all equipment is operated in accord with manufacturer's mufflers and noise-reducing equipment and in proper operating condition.

[Amended November 11, 2008]

- (3) Noises of safety signals, warning devices, emergency pressure relief valves, all church bells, and clock towers.
- (4) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- (5) Unamplified and amplified sound at street fairs and parades.
- (6) All noises coming from normal operation of motor vehicles properly equipped with the manufacturer's standard mufflers and in good working order.
- (7) Noise from lawful fireworks and noisemakers on holidays, special events, and at religious ceremonies.
- (8) Lawn mowers, agricultural equipment, and landscape maintenance equipment, including leaf blowers, weed trimmers, chain saws, and chippers used between the hours of 7:00 a.m. and 9:00 p.m. Monday through Saturday, and 1:00 p.m. to 6:00 p.m. on Sunday when operated with all the manufacturer's standard mufflers and noise-relating equipment in use and proper operating condition." *[Amended November 11, 2008]*
- (9) Musical accompaniment or firearm discharge related to military ceremonies.
- (10) Emergency work and equipment necessary to restore and maintain property to a safe condition following a fire, accident or natural disaster, or to restore public utilities, or to protect persons or property from an imminent danger.
- (11) Noises resulting from the provision of government services.
[Amended November 11, 2003]

Section 5-1.6 Enforcement.

The chief of police or his designee may adopt standards for sound level measurement and enforcement consistent with this section. Complainants may be required to provide a written record of the noise disturbance(s) at issue, such as a log of basic details with time, date and location of the disturbance(s). Complainants and defendants may be permitted to present witnesses and documentation such as photos and police records in support of their case.

[Amended November 11, 2003]

Section 5-1.7 Penalties and Remedies.

(A) A violation of any of the provisions of this section shall subject the offender to a civil penalty of one hundred dollars (\$100.00) for the first offense, two hundred and fifty dollars (\$250.00) for the second offense, and five hundred dollars (\$500.00) for the third and subsequent offenses. If a person fails to pay this penalty within ten days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt.

(B) A violation of any of the provisions of this section may constitute a misdemeanor, punishable as provided in G.S. 14-4.

(C) The town may seek to enforce this section through any appropriate equitable action.

(D) Each separate occurrence that a violation continues after the offender has been issued a violation penalty within the same evening, shall be considered a separate offense. Each day that a violation continues after the offender has been notified of the violation shall also constitute a separate offense. In these instances, the civil penalty shall escalate to the next level, not to exceed \$500.00.

(E) After a period of 24 months lapses without a violation, any additional violations of this section will subject the offender to the schedule of penalties as described in (A) above.

(F) The town may seek to enforce this section by using any one or a combination of the foregoing remedies.

(G) Any appeal to this section shall be heard by the Board of Commissioners.
[Amended November 11, 2003]

Section 5-2 Reserved.

Section 5-3 Discharge of Firearms and Air Rifles.

(A) Subject to subsection (B), no person may discharge any firearm within the town.

(B) Subsection (A) shall not apply to private citizens acting in justifiable self-defense or pursuant to the lawful directions of a police officer nor to police officers acting in lawful performance of their duties.

(C) No person may discharge or shoot within the town any air rifle, air pistol, B-B gun, pellet gun, pump gun or similar weapon within 100 yards of any building or house or gathering of people.

Section 5-4 Operation of Public Enterprises Without Franchise.

Except as otherwise provided by law, no person may operate within the town any public enterprise, as defined in G.S. 160A-311, without first obtaining a franchise from the town, nor may any person continue to operate such public enterprise after the expiration of such franchise.

Section 5-5 Begging Prohibited.

No person may within any public street or sidewalk or on other town property engage in begging or canvassing the public for contributions for the private benefit of the solicitor.

Section 5-6 Consumption of Beer and Wine on Public Property Prohibited.

(A) ***Definitions.*** In addition to the common meanings of words, the following definitions shall be applicable herein:

(1) ***“Malt beverage”*** shall mean beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent (0.5%), and not more than six percent (6%) alcohol by volume. [G.S. 18B-101(9)]

(2) “**Open container**” shall mean a container whose seal has been broken or a container other than the manufacturer’s unopened original container. [G.S. 18B-300(c)]

(3) “**Public street**” shall mean any highway, road, street, avenue, boulevard, alley, bridge, or other way within and/or under the control of the Town and open to public use, including sidewalks of any such street.

(4) “**Unfortified wine**” shall mean wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume. [G.S. 18B-101(15)]

(B) **Consumption on the Public Streets and on Municipal Property Prohibited.** It shall be unlawful for any person who is not an occupant of a motor vehicle to consume malt beverages and/or unfortified wine on the public streets. Furthermore, it shall be unlawful for any person to consume malt beverages and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied, or controlled by the Town, including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts, basketball courts, and other athletic fields.

(C) **Possession of Open Containers on the Public Streets and on Municipal Property Prohibited.** It shall be unlawful for any person who is not an occupant of a motor vehicle to possess any open container of malt beverage and/or unfortified wine on the public streets. Furthermore, it shall be unlawful for any person to possess any open container of malt beverage and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied, or controlled by the Town, including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts, basketball courts, and other athletic fields.

(D) **Possession During Special Events Prohibited.** It shall be unlawful for any person to possess malt beverages and/or unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events. [Amended November 14, 1995]

Section 5-7 Display of Sexually Explicit Materials.

(A) The words and phrases defined below shall have the meaning indicated when used in this section.

(1) **Display.** To put or spread before the view of those passing within sight distance of the matter displayed, in an ostentatious manner designed to attract attention to or show off the matter displayed. Magazines that meet the definition of sexually explicit materials shall be considered displayed if they are placed in a location (e.g., a magazine rack or shelf) accessible to minors and arranged in a manner calculated to encourage minors to view or read such materials. Sexually explicit materials located within any business or commercial establishment shall not be considered displayed if they are placed in a location that is only accessible to adults or if they are located such that they are only available to customers upon request made to a person in charge of or employed by such business or commercial establishment.

(2) **Harmful to minors.** That quality of any description or representation, in whatever form of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors; and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(3) **Knowing.** Having general knowledge of, or reason to know or a belief or ground for belief that warrants further inspection or inquiry of, the character and content of any of the materials described in subsection (B) that are reasonably susceptible of examination by the person charged with such knowledge.

(4) **Minor.** Any person under the age of eighteen.

(5) **Nudity.** The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(6) **Sadomasochistic abuse.** Flagellation or torture by or upon a person clad in undergarments, a mask or a bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(7) **Sexual conduct.** Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or if such person be a female, breast.

(8) **Sexual excitement.** The condition of human male or female genitals when in a state of sexual stimulation or arousal.

(9) **Sexually explicit materials.** Materials consisting of:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subdivision (a) or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(B) Subject to subsection (C), no person, knowing the character of the materials involved, may display or cause or permit the display of any sexually explicit materials in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, or other public right-of-way or in any business or commercial establishment where minors as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials.

(C) Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government or any library operated by any unit of state or local government.

Section 5-8 Penalties and Remedies.

(A) A violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable as provided in G.S. 14-4.

(B) A violation of any of the provisions of this chapter shall also subject the offender to a civil penalty of one hundred dollars (\$100.00). If a person fails to pay this penalty within ten days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt. *[Amended July 13, 1993]*

(C) The town may seek to enforce this chapter through any appropriate equitable action.

(D) Each day that a violation continues after the offender has been notified of the violation shall constitute separate offense.

(E) The town may seek to enforce this chapter by using any one or a combination of the foregoing remedies.