

## CHAPTER 130: GENERAL OFFENSES

### Section

- 130.01 Noise generally
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- 130.03 Discharge of firearms and air rifles
- 130.04 Operation of public enterprises without franchise
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### § 130.01 NOISE GENERALLY.

No person may authorize or cause to be emitted from any property or source under his or her control any noise that is both:

(A) Sufficiently loud to frighten or pose a danger to the health of or seriously disturb any person who:

(1) If the noise emanates from a source located on private property, is located on other property; or

(2) If the noise emanates from a street or other public property, is located on private property or the street or other public property.

(B) Louder, or of greater duration, or otherwise more disturbing than is reasonably necessary for the performance of some lawful public or private function, enterprise, operation or activity.

(1980 Code, § 5-1) Penalty, see § 130.99

**§ 130.02 PARTICULAR NOISE.**

The following are declared to be illustrations of noises prohibited under § 130.01 and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (A) The blowing of a horn on any motor vehicle except when the horn is used as a warning device;
- (B) The operation of any motor vehicle without a muffler or with a muffler that is so defective or so designed that the vehicle emits an unusually loud noise;
- (C) The operation of a motor vehicle so as to create unnecessary and unusual noise through the screeching of tires or racing of engines;
- (D) The playing of any radio, television, tape recorder, phonograph or similar electronic device or any musical instrument so as to disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, hospital, theater, library or other similar place of assembly; and
- (E) The use of any drum, loudspeaker or other amplification instrument or device for the purpose of attracting attention by the creation of noise to any performance, show, sale, display, advertisement of merchandise or other commercial venture.

(1980 Code, § 5-2) Penalty, see § 130.99

**§ 130.03 DISCHARGE OF FIREARMS AND AIR RIFLES.**

- (A) Subject to division (B) below, no person may discharge any firearm within the town.
  - (B) Division (A) above 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 a lawful performance of their duties.
  - (C) No person may discharge or shoot within the town any air rifle, air pistol, BB gun, pellet gun, pump gun or similar weapon within 100 yards of any building or house or gathering of people.
- (1980 Code, § 5-3) Penalty, see § 130.99

**§ 130.04 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 a public enterprise after the expiration of the franchise.

(1980 Code, § 5-4) Penalty, see § 130.99

**AMENDMENT TO SECTION TITLE XIII, CHAPTER 130.02: "PARTICULAR NOISE" UNDER "GENERAL OFFENSES" OF THE CODE OF ORDINANCES FOR THE TOWN OF BURNSVILLE, NORTH CAROLINA.**

**WHEREAS**, the Council for the Town of Burnsville has adopted a Noise Control ordinance setting forth certain rules, regulations and prohibitions concerning the emanation of loud, offensive noise which disturbs the peace and quiet of the community of the Town of Burnsville;

**WHEREAS**, pursuant to NCGS 160A-174 the Town of Burnsville is authorized to adopted and enforce ordinances concerning the abatement of nuisances within the city limits to promote the peace and dignity of the Town;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BURNSVILLE THAT TITLE XIII, CHAPTER 130.02: "PARTICULAR NOISE" UNDER "GENERAL OFFENSES" OF THE CODE OF ORDINANCES FOR THE TOWN OF BURNSVILLE, NORTH CAROLINA BE AMENDED TO ADD SECTION 130.02 (F) AS FOLLOWS:**

- (F) (1) UNMUFFLED ENGINE BRAKING. The following is hereby unlawful and prohibited: Any method of slowing diesel trucks in a manner that produces a loud noise, particularly by venting the cylinder of the diesel, engine midway through its cycle causing the engine, instead of producing power, to absorb power, thereby slowing the truck down dramatically. It shall also include the production of excessive noise produced by engine retarders due to a truck operating with improperly maintained, defective, or modified muffler systems or the use of straight exhaust pipes with no mufflers.
- (2) It shall be unlawful for any person to use an un-muffled engine brake on any public streets or highways located within the city limits of the Town of Burnsville from the hours of 9pm until 6am.
- (3) Enforcement, civil and criminal penalties. The town shall have the power to administer and enforce the provisions of this section as set forth in section 130.99 pursuant to NCGS 160A-175 and NCGS 14-4.

Read, approved and adopted at 6:00 a.m./p.m. this the 26<sup>th</sup> day of June, 2017, by a vote of 5 (for) and 0 (against).



MAYOR

ATTEST:



CLERK

APPROVED AS TO FORM:



ATTORNEY for Town of Burnsville

I, Jeanne Martin, Town Clerk to the Town of Burnsville, NC, do hereby certify that this is a true and accurate copy of Ordinance No. 2017.6.26.1 adopted by the Town Council of Burnsville on June 26, 2017 and found in Ordinance Book No. 1.



JEANNE MARTIN, TOWN CLERK

ORDINANCE NO. 2022.07.14.01

AN ORDINANCE AMENDING TOWN OF BURNSVILLE'S NOISE ORDINANCE  
CHAPTER 130: GENERAL OFFENSES OF THE GENERAL CODE OF ORDINANCES

WHEREAS, Pursuant to NCGS 160A-174A a city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances;

WHEREAS, Chapter 130 of the General Code of Ordinances for the Town of Burnsville is entitled "General Offenses" and contains the Town's provisions for Noise Control;

WHEREAS, The Burnsville Town Council is of the opinion that it is in the best interest of the citizens and residents of Burnsville to amend portions of the Noise Control Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE BURNSVILLE TOWN COUNCIL THAT:

Chapter 130 entitled General Offenses be amended to include a new section, 130.97 entitled "EXCEPTIONS to sections 130.01 and 130.02" and new section 130.98 entitled "Permits to Exceed Limits" as follows:

**130.97 EXCEPTIONS**

**1. Between the hours of 8:00 a.m.-9:00 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday or, between the hours of 8:00 a.m. and 10:00 p.m. on Friday and Saturday the following are exempt from the provisions of sections 130.01 "Noise Generally" and 130.02 "Particular Noise": :**

- a. Sounds emanating from commercial business establishments located within commercial zoning districts for the purposes of entertainment for the patrons of that business between the hours of 8:00am and 9:00pm on Sunday, Monday, Tuesday, Wednesday and Thursday; or, between the hours of 8:00am-10:00pm on Friday and Saturday.
- b. Sounds emanating from festivals, parades or other events that are approved by the Burnsville Town Council.
- c. Noise from lawful fireworks and noisemakers on holidays and at religious ceremonies.
- d. Noise resulting from any authorized emergency vehicle when responding to any emergency call or acting in a time of emergency.
- e. Musical accompaniment or firearm discharge related to military ceremonies.
- f. Any other noise resulting from activities of a temporary duration permitted by law, and for which a permit has been issued according to the limits and conditions contained within this chapter.

### 130.98 PERMITS TO EXCEED LIMITS

1. A person or group of persons may produce or cause to be produced sound prohibited in section 130.01 or section 130.02, and not listed as an exemption in section 103.97 of this chapter, only if a permit to exceed the limit for the time and place of the activity has been obtained.
2. Any person or group of persons desiring a permit shall apply as provided herein, and shall provide all the information required. All applications shall be submitted to the Chief of Police or his designee at least seven (7) days prior to the scheduled event. Failure to comply with this requirement may be grounds for denying the permit.
3. The Chief of Police or his designee shall have authority to take final action on all applications for permits specified in this article. In considering acting to approve or deny issuance of permits, the Chief of Police or his designee shall consider, but shall not limit consideration to the following:
  - a. the timeliness of the application; the nature of the requested activity;
  - b. previous experience with the applicant;
  - c. the nature of the event;
  - d. other activities in the vicinity of the location proposed;
  - e. the frequency of the application;
  - f. the cultural or social benefit of the proposed activity;
  - g. the effect of the activity on the residential areas of the town;
  - h. previous violations of the requirements of this article, if any, by the applicant.
4. Permits to exceed limits shall specify the duration for which noncompliance shall be permitted and may prescribe the conditions or requirements necessary to minimize adverse effects upon the community or surrounding neighborhood. The Chief of Police or his designee may require, without limitation, the following:
  - a. That no sound speakers shall be set up more than ten feet above the ground;
  - b. That the permit holders change the arrangement of loudspeakers or sound instruments so as to minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically caused dispersal of sound beyond the property lines.
5. Permit holders shall agree to cooperate with the Police Department in enforcing the Noise Control Ordinance by having signers of the permit available at the site of the event during the entire time for which a permit has been issued and capable of assisting the police in enforcing the noise control ordinance. Failure of the permittee or designees to be present or to assist the police in compliance with this article will result in revocation of the permit.
6. Should any provision of this ordinance be declared invalid or unconstitutional by any court of any competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.
7. That this ordinance shall be effective upon its adoption.

This the 14<sup>th</sup> day of July, 2022.

T. Russell Fox  
T. Russell Fox, Mayor

ATTEST:

J. Chad Fox  
Town Clerk, J. Chad Fox

Approved as to form:

Heather Herzog  
Town Attorney