

**RESOLUTION 15-16
RESOLUTION INTRODUCING AMENDMENTS TO CHAPTER 92 OF
THE ORDINANCES OF THE TOWN OF HOLDEN BEACH
PROVIDING FOR NOISE CONTROL**

WHEREAS, pursuant to the Town's ordinances and pursuant to North Carolina G.S. §160A and other applicable provisions of North Carolina law, the Board of Commissioners is authorized to adopt amendments to the Town's ordinances with respect to Town Government and Officials;

WHEREAS, the Board of Commissioners has previously adopted resolutions with respect to the potential adoption of an objective noise control ordinance based upon the provisions of the Brunswick County noise ordinance that are relevant to the residential neighborhoods of the Town;

WHEREAS, the Board of Commissioners has found that it would benefit the health and safety of the Town and support the Town's stated objective of being a quiet and peaceful, family-oriented beach community to adopt such a noise ordinance providing for mandatory enforcement of objective standards;

NOW, THEREFORE, BE IT RESOLVED, that amendment to Chapter 92 of the Town's ordinances in the forms attached as Exhibit A is each hereby introduced at this meeting; and

NOW, THEREFORE, BE IT RESOLVED, that such amendment shall be separately voted upon for adoption by the Board of Commissioners at its next regular meeting or at any special meeting called for that purpose.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

EXHIBIT A

PROPOSED AMENDMENT TO THE ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO NOISE CONTROL

CHAPTER 92 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED TO AMEND §92.20 IN ITS ENTIRETY TO READ AS FOLLOWS ADD THE FOLLOWING §§92.21 THROUGH 92.27 TO THAT CHAPTER:

NOISE CONTROL

§92.20 Purpose

The town is recognized as a quiet, family-oriented beach community, and houses in the town are situated so that they are in close proximity. Residents and visitors come to the beach community to enjoy the relative peacefulness and serenity of the place, and excessive noise from one location can disturb the peace and become a nuisance to the public.

Furthermore, it is recognized that excessive and unnecessary noise: (i) endangers the physical and emotional health and welfare of people who reside or vacation in the residential neighborhoods and on the beach strand of the town; (ii) interferes with legitimate family and recreational activities; (iii) depresses property and rental values; and (iv) contributes to potentially violent confrontations among persons occupying neighboring properties or enjoying the beach strand; and (v) requires police and public safety resources to respond to such disturbances and confrontations.

§92.21 Intent

Brunswick County, North Carolina has addressed these nuisance, health, welfare and public safety issues by adopting a comprehensive noise ordinance. However, that ordinance does not apply to the town. The intent of this section is to adapt the Brunswick County noise ordinance to the particular circumstances of the town as a quiet, family-oriented beach community, and to construe and enforce these sections in a manner consistent with the Brunswick County noise ordinance.

§92.22 Definitions.

- (a) **“High-Volume Loud Speaker System”** means
- a. any amplified audio device or system capable of generating high volume sound, including, without limitation, commercial sound systems, karaoke systems and free-standing audio speakers,
 - b. but excludes (A) built-in and landscape audio and video systems that have speakers no greater than eight (8) inches in diameter, and (B) battery-operated personal entertainment systems, including, without limitation, portable radios, DVD players and MP3 players, that have speakers no greater than four (4) inches in diameter.
- (b) **“Measured Sound Level”** means a sound level that is
- a. measured average decibels (dBA) over a range of four (4) decibels or more (a slow response setting),

- b. using a sound meter instrument that conforms to the ANSI S1.4 1983 standard or any comparable successor standard that is set to obtain an average value,
 - c. using procedures that conform to the operating instructions included in the operator's manual for such instrument, and
 - d. which instrument is operated by a Noise Enforcement Agent who has been trained in accordance with the minimum training standards for such operations established by the Sheriff of Brunswick County, North Carolina.
- (c) **"Nighttime Hours"** means: (i) during the months of June, July and August, the hours between 10:00 pm and 7:00 am; and (ii) during the rest of the year, the hours between 9:00 pm and 7:00 am; and **"Daytime Hours"** means all other hours of the day.
- (d) **"Noise Disturbance"** means sound generated by:
- a. any radio, television, audio player, amplified microphone or similar device;
 - b. any musical instrument;
 - c. shouting, yelling, singing and other vocalization in excess of a normal conversational level generated by any assembly or gathering of ten (10) or more people that is not completely contained within a dwelling structure, but spills outdoors onto balconies, yards, swimming pools or other outdoors areas, including without limitation, the beach strand; or
 - d. any combination of the forgoing.
- (e) **"Enforcement Authority"** means: (i) any uniformed police officer of the Police Department; and/or (ii) any Noise Enforcement Agent duly appointed pursuant to §92.27.
- (f) **"Plainly Audible"** means
- a. any sound related to a Noise Disturbance,
 - b. other than the sound of unamplified human conversation of either (A) persons assembled or gathered completely inside a dwelling structure, or (B) of any other assembly or gathering of fewer than ten (10) persons,
 - c. which sound can be readily detected by a person using his unaided hearing faculties,
 - d. from the street or beach strand, from across the property line of any property adjacent to property from which the sound emanates or within any neighboring dwelling structure.
- (g) **"Residential District"** means any district of the town classified as R-1 or R-2 residential under Chapter 157 of the town's ordinances, and includes the beach strand adjacent thereto.

§92.23 Request For Immediate Corrective Action By Enforcement Authority

- (a) Any person adversely affected by a Noise Disturbance or by the outdoor use of High-Volume Loud Speakers in any Residential District may notify any Enforcement Authority, orally or by text message, email or other writing, and request immediate corrective action. Failure to promptly comply and maintain compliance with any abatement order issued by any Enforcement Authority shall be considered a violation of this section and shall be subject to civil penalties and/or impoundment, as applicable under this section. No responding Enforcement Authority shall fail to take

any required enforcement action if a proper abatement order is not promptly complied with or if such compliance is not maintained.

- (b) Upon receipt of an oral or written request for corrective action pursuant to this subsection, the responding Enforcement Authority shall:
 - (i) Keep a written record of such request for corrective action or any noise complaint, including date, time and location, any abatement order issued and any other corrective action taken;
 - (ii) If the Enforcement Authority responding to such requests finds a violation of §92.24 (Noise Disturbance), based upon either the Plainly Audible or Measured Sound Level Standard, as applicable, the responding Enforcement Authority shall issue an abatement order, and, if such order is not promptly complied with, shall issue a citation of such violation;
 - (iii) If the responding Enforcement Authority finds a violation of §92.25 (Outdoor High-Volume Loud Speaker), the responding Enforcement Authority shall (A) issue an abatement order and direct the disconnection of the High-Volume Loud Speakers, and, if such order is not promptly complied with, shall issue a citation of such violation and shall impound the High-Volume Loud Speakers and all devices or equipment related thereto pursuant to §92.26;
 - (iv) If a written abatement order is issued pursuant to (ii) or (iii), above, and a subsequent violation of either §92.24 (Noise Disturbance) or §92.25 (Outdoor High-Volume Loud Speaker) or both re-occurs at the same locations or involving the same persons prior to 7:00 am of the next day, the responding Enforcement Authority shall issue a citation pursuant to §92.26 for such violations;
 - (v) In the case of a violation of §92.25 (High-Volume Loud Speaker) involving a commercial operator of such audio devices, (A) compliance with an abatement order shall require complete disconnection of all such High-Volume Loud Speakers, together with all equipment or devices operated in connection therewith, including, without limitation, all amplifiers, mixers, microphones and audio players attached thereto, provided by such operator and the prompt removal thereof from the Residential District, and (B) any such abatement order or citation shall be issued to such operator .

§92.24 Noise Disturbance Violation

A Noise Disturbance shall constitute a violation of this section if:

- (a) The Noise Disturbance occurs within a Residential District;
- (b) One or more persons in that Residential District have made an oral or written request for corrective action with respect the Noise Disturbance as provided for in §92.23, above; and
- (c) Either or both of the following conditions are satisfied:
 - a. The Noise Disturbance (i) occurs or continues during Nighttime Hours, and (ii) is Plainly Audible; or
 - b. The Measured Sound Level of the Noise Disturbance, exceeds the following applicable dB(A) level measured from the street or beach strand or from across the property line of any property adjacent to the property from which the sound emanates:

Nighttime Hours	Non-Nighttime
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	Hours
50 dB(A)	60 dB(A)

§92.25 Outdoor Use of High-Volume Loud Speaker Violation

Operation of a High-Volume Loud Speaker shall constitute a violation of this Section if:

- (a) The operation occurs and the High-Volume Loud Speaker is located outdoors, including the balcony, deck, porch or covered parking area of any structure, within a Residential District; and
- (b) One or more persons in that Residential District have made an oral or written request for corrective action with respect the Noise Disturbance as provided for in §92.23, above.

§92.26 Civil Penalties, Equitable Relief From Nuisance and Impoundment of High-Volume Loud Speakers

- (a) Any person who, individually or in conjunction with others: (1) causes or permits to occur or continue any Noise Disturbance violation under §92.24 or any outdoor use of High-Volume Loud Speaker violation under §92.25; and (2) fails to immediately abate such violation after being directed to do so by any Enforcement Authority or, having abated such violation, causes or permits to occur or continue any subsequent violation under §92.24 or §92.25 prior to 7:00 am following a direction to abate, shall be subject to a civil penalty as provided for in this subsection.
- (b) The civil penalty for the violation of either §92.24 (Noise Disturbance) or §92.25 (Outdoor High-Volume Loud Speaker) shall be assessed in an amount equal to \$300 per violation against each person who causes or permits to occur or continue any violation under §92.24 or §92.25 at a specified location. Concurrent violations of §92.24 and §92.25 shall be assessed as two separate violations. Violations of §92.24 and §92.25 shall be deemed to be committed on each calendar day during which a violation occurs or continues.
- (c) In the event that two (2) or more civil penalties for violations §92.24 and/or §92.25 are assessed within a period of twelve (12) months from the date of the first violation relating to events or activities at a single dwelling unit or other location within a Residential District, the use of such dwelling unit or other location shall be deemed to constitute a nuisance for purposes of any action for appropriate legal and/or equitable relief therefrom by any resident, homeowner or other property owner within such Residential District whose peaceful and quiet enjoyment of his or her property is adversely affect by such repeated violations.
- (d) Any High-Volume Loud Speakers operated in the Residential District in violation of §92.25, together with all equipment or devices operated in connection therewith, including, without limitation, all amplifiers, mixers, microphones and audio players attached thereto, shall be impounded by the Enforcement Authority, and shall be held by the Town (pursuant to policies adopted from-time-to-time by the Town Clerk) until the payment of all civil penalties related to such operation, and any Noise Disturbance resulting therefrom, during regular business hours of the Town; provided, however, that where the Enforcement Authority is a Noise Enforcement Agent, that Noise Enforcement

Agent shall summon a police officer, and the police officer shall impound such High-Volume Loud Speakers and related equipment.

§92.27 Noise Enforcement Authority

- (a) There is hereby established a Noise Enforcement Authority of the Town and a Director of such Noise Enforcement Authority who shall be appointed by and serve at the pleasure of the Board of Commissioners.
- (b) Not later than ninety (90) days after the effective date of this section, the Director shall develop and recommend to the Board of Commissioners for adoption a training protocol for officers of the Police Department and Noise Enforcement Agents with respect to the enforcement of this section, including without limitation, the instrument training referred to in §92.22(b)d, training with respect to the provisions of this section and the mandatory and non-discretionary application of the enforcement provisions thereof, education with respect to the adverse health and safety consequences of noise disturbances and community policing standards for the peaceful and voluntary abatement of Noise Disturbances and High Volume Loud Speaker violations of this section and the resolution of community conflicts related thereto. Not later than 60 days after the adoption of such training protocols by the Board of Commissioner, the Police Chief shall cause all officers of the Police Department to receive such training under the supervision of the Director of the Noise Enforcement Agency.
- (c) Pursuant to procedures to be developed by the Director from time-to-time and approved by resolutions of the Board of Commissioners, the Director shall recruit Noise Enforcement Agents who shall receive training in accordance with the protocols provided for in §92.27(b).
- (d) Upon completion of such training, such Noise Enforcement Agents shall be issued credentials identifying them as civil enforcement agents of the Town with a jurisdiction limited exclusively to issuing abatement orders, issue citations for civil penalties and impound High-Volume Loud Speakers pursuant to to these sections.
- (e) Such Noise Enforcement Agents shall exercise no police powers, but shall be authorized to issue abatement orders, issue citations for civil penalties and direct police officers to impound High-Volume Loud Speakers pursuant to §§92.20 through 92.25 as civil enforcement agents of the town. Such agents shall not be members of the Police Department, shall not exercise police powers, and shall not report to the Chief of Police. Such agents shall not carry firearms or any other weapon, and shall not be authorized to make arrests or otherwise detain any person. In the event of any violence, threats of violence, verbal or physical assault or the refusal of any person to voluntarily comply with any abatement order, the Noise Enforcement Agent shall have no police powers and shall summon the assistance of the Police Department.
- (f) Except as otherwise provide by resolutions adopted from time-to-time by the Board of Commissioners, the Director and all Noise Enforcement Agents shall be volunteers serving without pay, benefits or other compensation. The Director and all Noise Enforcement Agents shall sign and deliver a liability waiver and release for the benefit of the Town releasing the Town from all liability for any injury or damages arising out of the performance of their functions, in a form to be prepared by the Director and approved by the Board of Commissioners. All such Noise Enforcement Agents shall serve at the pleasure of the Director and/or at the pleasure of the Board of Commissioners.
- (g) There is hereby appropriated the amount of \$5,000 per year to be used by the Director for equipment, training, uniforms and other expenses of the Noise Enforcement

Authority. A subordinate police officer (to be designated by the Chief of Police and identified by the Chief of Police in writing to the Board of Commissioners not later than 30 days after the effective date of this section) shall cooperate with the Director of the Noise Enforcement Authority to develop and recommend policies and procedures and communications equipment and protocol to facilitate coordinated communication of and response to requests for corrective action under this section, including any recommendations with respect to resolutions, Town funding or ordinance provisions necessary or appropriate to implement such cooperation.

- (h) It shall be a separate criminal violation of this section subject to a criminal fine of \$500 for any person to assault, verbally assault or abuse or otherwise interfere in any way with any Noise Enforcement Agent in the exercise of his or her functions under this section. Any such violation shall be separate from and in addition to (1) any related civil penalty or impoundment for violation of any provision of these sections, and/or (2) any related assault, battery or other criminal offense under North Carolina criminal statutes.