

**TOWN OF HOLDEN BEACH  
ORDINANCE 16-09**

**AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES,  
CHAPTER 92: NUISANCES (§92.20 - §92.27)**

**BE IT ORDAINED BY** the Town BOC of Holden Beach, North Carolina that the Holden Beach Code of Ordinances, Chapter 92: Nuisances, be amended as follows:

**Section One:** Amend Section 92.20 in its entirety and add Sections 92.21 through 92.27 as follows:

**§ Sec. 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; (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.

**§ Sec. 92-21. - Unreasonably loud noises prohibited.**

(a) It shall be unlawful for any person to create or assist in creating, permit, continue or permit the continuance of any unreasonably loud, disturbing noise in the town. Noises of such character, intensity, and duration as to be detrimental to the life or health of any individual are prohibited. Unreasonably loud and disturbing noise is limited to noise that is loud, raucous and disturbing and heard upon the public streets, in any public park, in any 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 public 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. Factors to consider in determining whether a violation exists include, but are not limited to:

- i. The volume of the noise;
- ii. The intensity of the noise;
- iii. Whether the nature of the noise is usual or unusual;
- iv. Whether the origin of the noise is natural or unnatural;
- v. The volume and intensity of the background noise, if any;

- vi. The proximity of the noise to residential sleeping facilities;
- vii. The nature and zoning of the area within which the noise emanates;
- viii. The density of the inhabitation of the area within which the noise emanates;
- ix. The time of the day or night the noise occurs;
- x. The duration of the noise; and
- xi. Whether the noise is recurrent, intermittent, or constant.

(b) Scope. This article shall apply to all sound, vibration, and noise originating within the corporate limits of the Town. 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.

### § Sec. 92-22. – Definitions

In addition to the common meanings of words, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

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

*Decibel (dB)* means a unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to base ten (10) of the ratio of pressure of the sound measured to the reference pressure, which is twenty (20) micronewtons per square meter.

*Mobile sound vehicle* means any motorized vehicle fitted with external loudspeakers or so designed or modified as to project electronically amplified sound outside of the passenger area of the vehicle.

*Motorized vehicles* means any vehicle as defined in G.S. 20-4.01(49), including but not limited to:

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

*Nighttime Hours* means the hours between 10:00 pm and 7:00 am

*Noise* means any sound or combination of sounds which, because of its volume or quality, tends to disturb reasonable persons of normal sensitivity or to interfere with normal human activity.

*Noise disturbance* means any unreasonably loud and raucous sound or noise which:

- (1) Endangers or injures the health or safety of humans or animals; or
- (2) Endangers or injures personal or real property; or
- (3) Disturbs a reasonable person of normal sensitivity; or
- (4) Exceeds the Maximum Sound Pressure Levels as stated in Section 92-24(b).

*Person* means any individual, association, firm, partnership or corporation.

*Person responsible* means an owner, occupant, employee, agent, or any other person who is or who appears to be responsible for a premises, dwelling, or a noise-producing machine or device.

*Sound* means any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by persons of normal sensitivity.

*Sound level:* The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, as specified by the American National Standards Institute (ANSI) standards for sound level meters. If the frequency weighting employed is not specified, the A-weighting shall apply.

*Sound level meter also decibel meter:* An instrument that includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and averaging network used to measure sound level. Such instrument shall be certified to meet or exceed the current standards of the American National Standards Institute.

#### **§ Sec. 92-23- PRESUMPTION IN PROSECUTION FOR NOISE VIOLATION.**

The complaints of two (2) or more persons, at least one (1) of whom resides in a different home from the other complaining person or persons, or the complaint of one or more persons, when combined with the complaint of a duly authorized investigating person, shall be prima facie evidence that such sound is a *noise disturbance*.

#### **§ Sec. 92-24. – Prohibited Noise.**

(a) The following activities are recognized as tending to produce unreasonably loud noises and as tending to constitute a noise disturbance. No person shall engage in any of the enumerated activities so as to cause a noise disturbance on neighboring premises:

- (1) Operation of radios, televisions, or sound reproduction devices;
- (2) Playing of any amplified or non-amplified musical instrument; and

(3) Keeping of any animal or bird that frequently or for long periods of time makes noises that tend to annoy or unreasonably disturb others.

(b) In addition to and not in limitation to the specific prohibitions outlined in §92-24 (a), no person shall operate or permit to be operated any noise source which generates a sound pressure level exceeding the limits set forth in the following tables when measured at or outside the property boundary of the noise source or at any point within any other property affected by the noise.

Maximum Sound Pressure Levels:

<b>Zoning Districts</b>	<b>Non-Nighttime Hours</b>	<b>Nighttime Hours</b>
Residential	60 dB(A)	50 dB(A)
All other Zoning Districts	65 dB(A)	60 dB(A)

**§ Sec. 92-25. - Measurement of sound level.**

In determining sound levels pursuant to this article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified herein; and all terminology not defined herein or in §92-22 shall be in conformance with the American National Standards Institute (ANSI).

- (a) Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on slow response.
- (b) Sound level meters shall be serviced, calibrated and operated as recommended by the manufacturer and in accordance with regulations prescribed by the police department. Persons using the sound level meter shall be trained in sound level measurement and the operation of sound level measuring equipment.
- (c) Except as otherwise specified, sound level measurements shall be made from within the boundary line of any improved and occupied property; where this is impracticable, the measurement shall be taken at the exterior wall of the principal structure on such property. In the case of an elevated or directional sound, compliance with the prescribed limits shall be required at any elevation on the property.

- (d) Except as specified in (g) below, the sound measurement shall be averaged over a period of at least one (1) minute for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than three (3) decibels at any time during the measurement period.
- (e) During measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen shall be used when appropriate.
- (f) Traffic noise and noise from other sources not connected with the sound being measured shall not be considered in taking measurements.
- (g) In the case of noise that is impulsive or is not continuous, the measurement shall be taken over a period of time of at least one (1) minute. Any such sound or noise that exceeds the prescribed level more than two (2) times in a minute shall be deemed to exceed the prescribed sound levels.
- (h) In zoning districts other than residential and only in the case of outdoor entertainment, including live or recorded speech, music, or other sound, sound level measurements shall be measured at a point one hundred (100) feet away from the source of the sound.

**§ Sec. 92-26. - Exceptions.**

The following are exceptions from the application of this article:

- (1) Construction activity performed by an agency of government or equipment operated by an agency of government, provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- (2) Sound or noise emanating from street fairs, festivals, or celebrations conducted by or with the town;
- (3) 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;
- (4) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
- (5) Lawnmowers and agricultural equipment operated between the hours of 7:00 a.m. and 6:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise-reducing equipment in place and in proper condition;
- (6) Musical accompaniment to parades or military ceremonies;
- (7) Sound emanating from regularly scheduled athletic events at town parks and athletic facilities;
- (8) Emergency vehicles in the course of performing their official duties;
- (9) Noncommercial speeches made from a fixed location; and
- (10) Construction, construction preparation, and building activity between the hours of 7:00 a.m. and 6:00 p.m., and any such work certified by the building inspector or town manager to be necessary to address an emergency situation.

**§ Sec. 92-27.- Owner and occupant responsibility.**

Penalties for violations of this article may be assessed against persons responsible for the premises or device producing or causing the noise disturbance.

(a) A violation of any of the provisions of this article shall constitute a Class 3 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days, unless otherwise provided herein.

(b) Any person violating any provision of the sections in this Article shall be subject to a civil penalty in the amount of three hundred dollars (\$300.00) for each offense. Any subsequent violation within a 12 month period of a first violation shall subject the violator to a civil penalty of five hundred dollars (\$500.00) for each subsequent violation. For purposes of determining subsequent violations within a 12 month period the date of the first violation shall be the anniversary date from which a new 12-month period shall begin.

(c) An owner of any premises subject to this article 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 article; provided, that no absentee owner shall be liable unless notified of first or previous violations of the article, and further provided that such first violation or previous violation shall have occurred within the previous twelve-month period. Notice of any first or previous violations pursuant to this paragraph shall be effected by registered or certified mail. No absentee owner may be subjected to criminal liability under this section, but shall be subject to all civil penalties and equitable relief.

(d) This section shall in no way relieve any other person from responsibility for violations of this article.

**Section Two:** The Town Clerk is directed to forward this ordinance to American Legal Publishing for inclusion in the next published supplement to the Holden Beach Code of Ordinances.

**Section Three:** This ordinance shall be effective on the 18<sup>th</sup> day of May, 2016.

This the 17<sup>th</sup> day of May, 2016.

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk

