

## Chapter 92A. Noise Control

### Section

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### §92A.01 LOUD, DISTURBING NOISES PROHIBITED, GENERALLY

It shall be unlawful for any person to create, or assist in creating, any unreasonably loud and/or disturbing noise in the Town of Matthews.

### §92A.02 DEFINITIONS

For the purpose of this ordinance, the following words and phrases are defined below unless it shall be apparent from the context that a different meaning is intended.

**“A” Weighting Scale** The sound pressure level, in decibels, as measured with the sound level meter using the “A” weighted network scale. (Denoted ‘dB(A)’)

**Amplified Sound** Any sound created by a sound-magnifying device, whose source is outside or whose source is inside and where the sound propagates to the outside or to other dwellings or interior locations under separate ownership or occupancy.

**‘ANSI’** American National Standards Institute or its successor bodies.

**Certified Confirmation** As it pertains to the required delivery of notice to nearby property owners of requested permits, this shall mean a notarized signature of the applicant upon the Permit Application form.

**Construction** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility, or addition thereto, including all related activities, including, but not limited to, the clearing, moving, blasting or landscaping of land (earth.)

**Daytime Hours** 7:00 am to 9:00 pm

**dB(A)** Sound level in decibels, as determined by the “A” weighting scale of a sound meter having characteristics defined by the American National Standards Institute and conforming to the requirements of ANSI/NCSL Z540-1 IOS.

**Decibel (dB)** A unit of measure, on a logarithmic scale, of the ratio of the magnitude of a particular sound pressure to a standard reference pressure, which for the purposes of §92A.08 shall be 0.0002 microbars.

**Emergency Service Vehicles** Publicly-owned or operated vehicles used for the purposes of responding to public emergencies, to include police, fire and medical rescue vehicles, or vehicles of public utility companies or contracted private companies conducting emergency repairs to the protection of public safety.

**Essential Construction Sound Permit** A permit issued by the town upon finding that the requested construction project aspect is critical and necessary for the safe and industry-proper completion of the construction project.

**Exceptional Permit** An amplified-sound or essential construction sounds permit authorized by the Town Manager upon a finding of 'legal entitlement' of an applicant's request for a permit which is denied by the Noise Control Officer.

**Motor Vehicle or Vehicle** As used herein, shall mean any vehicle propelled on land by a motor, such as, but not limited to, automobiles,, trucks, truck-trailers, semi-trailers, campers, go-carts, motorcycles, mopeds or buses. It shall exclude trains and Emergency Service Vehicles.

**Nighttime Hours** 9:00 pm to 7:00 am

**Noise** As used herein, any unreasonably loud, disturbing sound levels taking into consideration the volume, duration, frequency, and other characteristics of the sound.

**Noise Control Officer** Any police officer or other person so designated by the town manager who is trained in the operation and calibration of the noise measurement equipment. The Noise Control Officer may only operate within his/her territorial jurisdiction and must be authorized to issue a civil summons as required in this ordinance

**Person** Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of the state, any other state or political subdivision or agency thereof or any legal successor, representative, agent or agency of the forgoing.

**Plainly Audible** Any sound that can be detected by a person using his or her unaided faculties.

**Sound** An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and refraction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

**Sound Level** In decibels, a weighted sound pressure level determined by the use of a sound meter whose characteristics and frequency weighting are specified in ANSI standards.

**Sound Level Meter** Any instrument certified to meet or exceed ANSI standards which include an Omni directional microphone, an amplifier, and output meter and frequency weighting network(s) for the measurement of sound level.

**Violator** As described herein, means any person that is in possession of or has control of any noise generating device.

## §92A.03 CERTAIN SOUNDS PROHIBITED

The following acts and activities, among others, are hereby declared to be a source of "unreasonably loud and/or disturbing noise" in violation of §92A.01.

A. Sounds Impacting Residential Areas: It shall be unlawful to carry on the following activities in any residentially-zoned area of the Town, or within three hundred (300) feet of any residentially-occupied structure in any zone of the Town, except in accordance to a permit obtained from the Noise Control Officer:

- (1) The sounding of any horn, car alarm, siren, or other signal device upon any automobile, except when used as a signal of warning or danger, so as to create any unreasonable noise;
- (2) The playing of any sound-magnifying device, radio, television, or musical equipment, within or outside of any structure, in a manner or at a volume so as to annoy or disturb the quiet, comfort or repose of any person in any adjoining dwelling, apartment unit, or hotel/motel room;
- (3) The operation a front-end loader for refuse collection during nighttime hours;
- (4) The operation of construction machinery or performing any construction activities during nighttime hours, except where an *Essential Construction Sounds Permit* has been issued;
- (5) The operation of automotive repairs equipment or garage machinery out-of-doors during nighttime hours;

- (6) The operation of lawn mowers or other domestic power tools, out-of-doors during nighttime hours;
- (7) The creation of any mechanical noise which registers more than 60 dB(A) during nighttime hours at the property line of the source of the noise.

B. Sounds Impacting All Areas: It shall be unlawful to carry on the following activities in any area of the town:

- (1) To operate or allow the operation of any sound amplification equipment so as to create sounds registering fifty-five (55) dB(A) during daytime hours or fifty (50) dB(A) during nighttime hours, as measured at the property line of the from where the sound is being amplified, except in accordance to a permit obtained from the Noise Control Officer;
- (2) To amplify sound produced by a radio, compact disc, or any other electronic device, or sounds produced by any person or musical instrument from within a motor vehicle, so as to create an unreasonable noise such that the sound is plainly audible at a distance of more than fifty (50) feet away from the vehicle. This subsection shall not apply to vehicles used for business or political purposes which, in the normal course of operation, are not within five-hundred (500) feet of any school, child care center, house of worship, personal care facility, or hospital. This subsection does not apply to vehicles operating such equipment during public parades when a valid parade permit, with the sound conditions identified, has been issued;
- (3) To discharge into the open air the exhaust of any internal combustion engine when the muffler system is missing or configured in such condition so as to result in the creation of unreasonable noise;
- (4) The operation of any motor vehicle outside of any structure on private or public property in such a manner as to create unreasonable noises, by actions including, but not limited to racing engines, spinning tires, jackrabbit starts, and off-road operation.

C. This section shall not apply to:

- (1) Emergency operations designed to protect the public health or safety;
- (2) Work performed by State, County, Town or Government-Contracted crews in a right-of-way or utility easement when the department responsible for the work determines that it is necessary to perform the work during nighttime hours, under the following considerations:
  - (a) To avoid unreasonably impacting the flow of traffic; or
  - (b) To avoid unreasonably disrupting the provision of utility service.

#### **§92A.04 PERMITS FOR ESSENTIAL CONSTRUCTION SOUNDS**

This section applies *only* to the continuous-pour of a singular concrete job where industry recommendations or requirements necessitates uninterrupted pours and where such pours must exceed the duration of the *Daytime Hours* otherwise allowing such construction sounds.

A. *Application* - An application for a permit pursuant to this section must be submitted to the Matthews Police Department at least fifteen (15) business days before the earliest requested construction sounds. Emergency requests requiring less than the fifteen-day application period may be considered, however no such permits shall be issued for a period beginning less than forty-eight (48) hours of receipt of application. The application shall specify the responsible person(s) for on-site management of the construction project resulting in the *essential construction sounds*.

B. *Site Review* – The applicant and/or project manager shall meet at the site with a town representative to review and discuss the conditions under which the construction sound may occur to minimize the sound impact upon occupied properties within a 1,000 foot radius of the construction property.

C. *Notice of Tentative Approval* – Upon initial review of the applicant and requested use, if found within the conditions of this section, a *Notice of Tentative Approval* shall be issued. For the permit to be considered ‘valid’ and in effect, the applicant must cause for a notice to be delivered / disseminated to the occupants of all occupied properties located within 1,000 feet of the proposed location of essential construction sounds. The certified confirmation of that delivery of notice shall be returned to the town’s Noise Control Officer at least ninety-six (96) hours prior to the proposed project, except

for *emergency* requests, whereby permit shall be issued upon confirmation of the timely notification of affected property owners as described in this section.

D. *Not Permitted in Residentially-Zoned Areas*— Pursuant to the issuance of a permit, the creation of sounds registering more than seventy (70) dB(A) anywhere within the boundary line of the nearest residentially-occupied property shall be prohibited.

E. *Permit Revocation* – If sound checks taken by a representative of the Town during the construction event determines the sound levels to be in excess of the permit, or should it be determined that any other conditions of this section have not been completed as required or other conditions of the permit have not met or followed, the Town may Revoke the issued permit and require an immediate cessation of the construction sound.

F. *Permit Denial* – If the applicant has been denied the issuance of a permit by the Noise Control Officer, and the applicant believes the denial to be illegal under applicable local, state or federal law, the applicant may appeal the denial to the Town Manager. The appeal shall be delivered in writing, and shall include a copy of the permit and a statement as to the applicant’s belief as to the legal basis for the appeal. The Town Manager shall have the discretion to grant an Essential Permit, waiving the exceptions for location, time of day, and/or decibel restrictions, upon his/her determination that the applicant has made a substantial showing of legal entitlement. Any such Essential Permits shall be promptly reported to the Board of Commissioners.

### §92A.05 AMPLIFIED SOUND

It shall be unlawful to operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 dB(A) or greater during daytime hours, or 50 dB(A) during nighttime hours, unless otherwise authorized in this ordinance.

A. The following Tables shall serve as the sound emission limits of volume and measurement standards for the listed source of amplified sound except in accordance with a permit obtained from the Noise Control Officer:

**Table 1** – Single Family Residential:

Daytime Hours	Nighttime Hours	Measurement
55 dB(A)	50 dB(A)	Property line of nearest occupied residential structure

**Table 2** – Multi-Family/Tenant Structure:

Daytime Hours	Nighttime Hours	Measurement
55 dB(A)	50 dB(A)	From a point within the nearest adjoining unit to the source of the sound, or from the closest ‘common area’ to the source of the sound

**Table 3** – Residential/Institutional and Places of Public Gathering Having a Capacity of 1,000 or Greater (See also §92A.08):

9:00 am – 10:00 pm	10:00 pm – 9:00 am	Measurement
65 dB(A)	50 dB(A)	As measured anywhere at property line of nearest residential property

**Table 4** – Business, Commercial or Industrial, Utilizing Sound to Advertise and/or Attract Customers:

Daytime Hours	Nighttime Hours	Measurement
60 dB(A)	Not Permitted	As measured at nearest public right-of-way

**Table 5** – Business, Commercial or Industrial, Other Amplified Sounds (see also §92A.06):

Daytime Hours	Nighttime Hours	Measurement
60 dB(A)	Not Permitted	As measured at nearest public right-of-way

**Table 6** – Street, Sidewalk, Public Right-of-Way, Public Parking Structure or Park:

Daytime Hours	Nighttime Hours	Measurement
60 dB(A)	50 dB(A)	As measured fifty (50) feet from source of amplified sound
70 dB(A)	60 dB(A)	As measured ten (10) feet from source of amplified sound

**Table 7** – Street, Sidewalk, Public Right-of-Way, Public Parking Structure of Park – Portable Amplification Device (*i.e.* ‘PA System’):

Daytime Hours	Nighttime Hours	Measurement
60 dB(A)	Not Permitted	As measured fifty (50) feet from source of amplified sound
70 dB(A)	Not Permitted	As measured ten (10) feet from source of amplified sound

### §92A.06 PERMITS FOR ADDITIONAL AMPLIFICATION

A. *Application* - An application for a permit pursuant to this section must be submitted to the Matthews Police Department at least fifteen (15) business days before the permit time requested. It shall specify the responsible person(s) for the sound amplification equipment.

B. *Notice of Tentative Approval* – Upon initial review of the applicant and requested use, if found within the conditions of this section, a *Notice of Tentative Approval* shall be issued. For the permit to be considered ‘valid’ and in effect, the applicant must cause for a notice to be delivered / disseminated to all occupied properties located within 1,000 feet of the proposed location of sound amplification. This must be completed within seventy-two (72) hours of the proposed event. The certified confirmation of that delivery of notice shall be returned to the Noise Control Officer prior to the event / use of amplified sound.

C. *Limits on hours* - With the exception of permits issued pursuant to section §92A.09, no permit shall be issued which will have the effect of allowing more than twenty (20) of excess amplification per year at any place of public entertainment having a capacity of one thousand (1,000) or more persons or twelve (12) hours of excess amplification at any other location.

D. *Limit on Permits* - Permits shall be tentatively approved and subsequently granted by the Matthews Police Department in the order of receipt. Subsequent permits shall not be issued for a location within a one thousand (1,000) foot radius of the location of an issued permit.

E. *Not Permitted in Residentially-Zoned Areas*– Pursuant to the issuance of a permit, the creation of sounds registering more than seventy (70) dB(A) anywhere within the boundary line of the nearest residentially-occupied property shall be prohibited.

F. *Sound Check(s)* – The applicant shall notify the Matthews Police Department when the amplification equipment is ready for a sound check by the Noise Control Officer. Using a sound-level meter, the Noise Control Officer may take readings to confirm that the levels have been set at the permitted level.

G. *Permit Revocation* – If sound checks taken by the Noise Control Officer during the event of amplified sound determines the levels to be in excess of the permit, or should it be determined that any other conditions of this section have not been completed as required or other conditions of the permit not met, the Noise Control Officer may Revoke the issued permit and require an immediate cessation of the amplified sound.

H. *Permit Denial* – If the applicant has been denied the issuance of a permit by the Noise Control Officer, and believes the denial to be illegal under applicable local, state or federal law, the applicant may appeal the denial to the Town Manager. The appeal shall be delivered in writing, and shall include a copy of the permit and a statement as to the applicant’s belief as to the legal basis for the appeal. The Town Manager shall have the discretion to grant an Exceptional Permit, waiving the exceptions for location, time of day, and/or decibel restrictions, upon his/her determination that the applicant has made a substantial showing of legal entitlement. Any such Exceptional Permits shall be promptly reported to the Board of Commissioners.

**§92A.07 OUTDOOR AMPLIFICATION & MUSIC at COMMERCIAL ESTABLISHMENTS**

A. Except in accordance to a permit issued pursuant to Section §92A.06, it shall be unlawful for any commercial establishment, including, but not limited to restaurants, bars or nightclubs, to operate or allow the operation of sound amplification equipment out of doors or directed out of doors or to allow live acoustic music out of doors or directed out of doors other than during the times listed below or so as to create sounds registering in excess of:

**Table 1** – Sunday through Thursday

8:00am – 9:00pm	9:00pm – 2:00am
85 dB(A)	60 dB(A)

**Table 2** – Friday through Saturday

8:00am – 11:00pm	11:00pm – 2:00am
85 dB(A)	60 dB(A)

B. The decibel limits prescribed in this section shall be measured at the property line of the commercial property from where the sound is being generated

C. The amplified sound may only be produced during the operational hours of the commercial establishment.

D. An establishment that has been determined to be ‘Non-Cooperative’ pursuant to section §92A.10 (C) shall be subject to enhanced civil penalties and, after two violations of this section within one year of having been deemed ‘Non-Cooperative’, shall not operate or allow the operation of sound amplification or live acoustic music out of doors or directed out of doors for a period of eighteen (18) months after the second violation. The prohibition shall apply to the establishment and the property on which the establishment is located.

**§92A.08 SOUND MEASUREMENT PROCEDURES & TECHNIQUES**

A. For the purpose of determining decibels [dB(A)] as referenced in this ordinance, the noise shall be measured on the “A-weighting scale slow response” on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

B. When the Noise Control Officer determines that insufficient prima facie evidence exists for establishing a noise violation case, the investigating officer will use a sound-level meter to measure the sound level. Sound measurements shall be conducted at that time, day or night, when the suspect noise source is emitting sound.

C. The following procedures shall be utilized in the sound measurement process:

- (1) The sound measurement equipment shall have been calibrated within one hour before use and one hour after use to measure sound level;
- (2) Prior to obtaining the sound sample, the sound level meter shall be set to the “A” weighted network at ‘slow response’;
- (3) The Omni directional microphone shall be set in an approximate 70 degree position, approximately four feet from the ground or floor, facing the noise source while recording the meter’s instantaneous response (reading) observed at consecutive ten-second intervals, taking 10 to 15 sample readings.
- (4) No individual other than the operator of the sound meter shall be within ten feet of the sound level meter during the measurement process.

**§92A.09 PERMITS FOR LARGE OUTDOOR MUSIC FACILITIES**

The purpose of this section is to establish a process by which permits may be issued to manage the musical and/or amplified sound emissions at large outdoor facilities which are designed to accommodate such events.

A. For the purposes of this section, a “Large Outdoor Music Facility” means a facility with a capacity of 1,000 or more persons and that offers musical and/or other amplified sound entertainment events at least five times a year.

B. A Large Outdoor Music Facility may, but is not required to, submit an application for a Large Outdoor Music Facility permit. When issued, the permit authorizes the sound emissions, under the conditions described within the permit, for the calendar year. All permits issued pursuant to this section expire December 31.

C. After consulting with the applicant and investigating the design and layout of the property, its proximity to residentially-zoned property, and the nature of any intervening property, a permit may be issued that contains the restrictions and/or requirements designed to strike an appropriate balance between legitimate use and operation of the facility and the noise impacts on residential life.

D. The restrictions and/or requirements may include, but are not limited to, restrictions on days of week or hours of operation, total number of events, operational requirements, design and/or structural requirements, and self-monitoring and reporting requirements.

E. A facility issued a permit pursuant to this section shall not be subject to the provisions of Section §92A.06.

F. It shall be unlawful for a Large Outdoor Music Facility to violate the terms of a permit issued pursuant to this section

### **§92A.10 CHRONIC NOISE PRODUCER**

The purpose of this section is to establish a collaborative process through which the Town and the owner / manager / occupant of a property that has been identified as a chronic source of objectionable noise will develop and implement a noise mitigation plan intended to bring the noise to acceptable levels. A ‘Chronic Noise Producer’ is a location that, because of the sound generated by or at the location, is an annoyance to adjacent or nearby residences, lodgings, schools, businesses, or other places where people may congregate with a reasonable expectation of undisturbed activity. An establishment may be a Chronic Noise Producer without having violated other provisions of this Ordinance.

A. The Chief of Police (or designee) may designate the owner / manager / occupant of the location as a ‘Chronic Noise Producer.’ In making such a determination, among other factors, the following shall be taken into consideration:

- (1) The number and frequency of valid noise complaints;
- (2) The proximity and physical relationship between the location and the complaining location(s);
- (3) The severity of the sound events, both observed or measured;
- (4) The times and days of the week of sound events;
- (5) The location’s history of cooperation and efforts to alleviate the problem; and
- (6) The history and context of the location, including whether the sound producing activity predates the occupation of the complaining locations and/or whether the sound producing location is located in what is generally recognized as an entertainment area.

B. Upon designation as a Chronic Noise Producer, the Chief of Police shall inform the location owner / manager / occupant of the location and that it has been referred to the Chronic Noise Mitigation Committee.

- (1) The Town’s *Environmental Advisory Committee* shall serve as the Chronic Noise Mitigation Committee (‘Committee’) for the purposes of this section. The Committee may request and consider the input of town staff and/or external experts with expertise in the type of location and/or noise under review.
- (2) The Committee shall schedule a meeting with representatives of the location to review the information that formed the basis for the designation and any additional information concerning the noise produced at the location.
- (3) Following the meeting, the Committee shall determine whether a Mitigation Plan is warranted. If determined warranted, the Committee and the representatives of the location shall together develop and endorse a noise Mitigation Plan. The plan may include, among other things:
  - (a) Restrictions on days of week or hours of noise producing activities;
  - (b) Placement, orientation, and/or operation of sound-producing activity and/or equipment;
  - (c) Structural changes including, but not limited to, sound attenuation and baffling;

- (d) Self-monitoring and reporting requirements;
- (e) A schedule of plan implementation; and
- (f) A schedule for review for possible revisions and or termination of the plan.

C. In the event that a location designated a ‘Chronic Noise Producer’: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan, (ii) refuses to agree to the developed noise mitigation plan, or (iii) fails to implement or comply with an endorsed noise mitigation plan, the business or entity shall be deemed as ‘Non-Cooperative’ and shall not be entitled to the benefits of this section until that designation has been removed. The designation shall only be removed when the reason for such designation has been resolved to the acceptance of the Committee and the Town.

D. In the event that noise enforcement action is taken against a location previously designated as a Chronic Noise producer, evidence of the location owner / manager / occupant’s participation in the development and implementation of and compliance with the noise mitigation plan shall be relevant to any prosecution or administrative or judicial review or appeal of the enforcement action. A location owner/manager/occupant who fails to comply with this subsection shall not be entitled to the benefits of this subsection unless the failure is remedied to the town’s satisfaction.

E. Appeals. The owner / manager / occupant of a location that has been designated as a Chronic Noise Producer or Non-Cooperative may appeal such designation within ten (10) calendar days after receiving notice of such designation. Appeals shall be heard by the town manager or the manager’s designee, who shall not be a member of the police department or a member of the Chronic Noise Mitigation Committee utilized in that investigation. The appellant shall have the right to present evidence at said hearing. A ruling on appeal is subject to review in superior court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within thirty (30) days after notice of the decision has been sent to the appellant.

## §92A.11 ENFORCEMENT & PENALTIES

A. *Enforcement* - When there is a violation of any section of this Chapter, the Town, at its discretion, may take one or more of the following enforcement remedies:

(1) *Civil Penalty* – The Noise Control Officer or any police officer may issue a notice of violation as provided subjecting the violator to a civil penalty of \$100, which penalty may provide for a delinquency charge of \$10 per day upon non-payment, in which penalty and delinquency charge may be recovered by the Town in a civil action. The civil penalty must be paid within 72 hours of the date and hour of issuance, with the delinquency penalty beginning at the 72nd hour.

(2) *Repeated Offenses* - In the event of more than one violation within any 30-day period, the civil penalty shall be increased for each additional violation as follows:

- (a) \$250 Second Offense
- (b) \$500 Third Offense
- (c) \$750 Fourth Offense
- (d) \$1,000 Fifth & Subsequent Offense

(3) The Town may seek an injunction and order of abatement directed toward any person or entity creating or allowing the creation of any unlawful noise, including the owner or person otherwise having legal or actual control of the premises from which it emanates.

B. *Enforcement* - When there are repeated violations of section §92A.07 or §92A.09, the Town, at its discretion, may take following enforcement:

(1) An establishment which has been found in violation of this section more than two times within any twelve-month period may be classified a ‘Chronic Noise Producer’ and have its privileges under this section suspended for a period of up to twelve months. This may be relieved only if a Mitigation Plan is developed, enacted and confirmed that it brings the establishment within compliance of this section.



(2) An establishment having had its privileges under either section §92A.07 or §92A.09 suspended pursuant to such designation shall only legally produce or allow to be produced amplified or live sound pursuant to the restrictions described in section §92A.05, Table 5.

(3) The Town may seek an injunction and order of abatement directed toward any person or entity creating or allowing the creation of any unlawful noise, including the owner or person otherwise having legal or actual control of the premises from which it emanates.

(4) An establishment which has had its privileges under sections §92A.07 or §92A.09 suspended continues to produce or allow to be produced amplified or acoustic sounds in excess of those allowed under §92A.05, Table 5, shall be subject to a civil fine of \$1,000 per violation.

*C. Criminal Penalty* - Violators may be charged with a misdemeanor and be subject to a fine of up to \$500 and/or ordered to thirty (30) days in jail, pursuant to NC GS 14-4.

### **§92A.11 SEVERABILITY**

If any provisions of this subchapter or the application thereof to any person or circumstance is for any reason held invalid, such invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions and subchapter are declared to be severable.