

ORDINANCE NO. 11-11-15

AN ORDINANCE TO AMEND CHAPTER 84A OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE LURE PERTAINING TO THE REGULATION OF NOISE

WHEREAS, N.C.G.S. 160A-174 authorizes municipalities to enact ordinances protecting the public health, safety and welfare; and

WHEREAS, N.C.G.S. 160A-184 authorizes municipalities to regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the Lake Lure Town Council finds that the existing noise ordinance (84A) does not fully conform to the Society of Automotive Engineers (SAE) J2825 Surface Vehicle Recommended Practice, Measurement of Exhaust Sound Pressure Levels of Stationary On-Highway Motorcycles; and

WHEREAS, the American Motorcyclist Association (AMA) strongly endorses the use of the SAE J2825 testing procedures (without modification); and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 15th day of November, 2011, upon the question of amending the Town Code in this respect.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:

SECTION ONE. Chapter 84A of the Code of Ordinances of the Town of Lake Lure, entitled “Noise Regulation”, is hereby amended to read as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE STRUCK THROUGH.]

CHAPTER 84A: NOISE REGULATION

§ 84A.01 SCOPE.

This chapter shall apply to all sound, sound vibration, and noise originating within the corporate limits of the Town of Lake Lure. Nothing in this chapter 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.

§ 84A.02 DEFINITIONS.

The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:

Amplified sound. Any sound or noise, including the human voice, that is increased in volume or intensity by means of mechanical and / or electrical power.

Construction. The erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

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

Motorized vehicle. 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 in G.S. 20-4.01(11).

Noise disturbance. Any sound or noise which:

- (1) Endangers or injures the health or safety of humans or animals;
- (2) Endangers or injures personal or real property; or
- (3) Disturbs a reasonable person of normal sensitivity or interferes with normal human activity.

Except as otherwise provided herein, for purposes of this ordinance, a sound will be considered a noise disturbance if it exceeds the decibel level thresholds established by zoning district and time of day.

Person. Any individual, association, firm, partnership, corporation, or business entity.

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

Sound level meter. An ANSI standard S1.4 Type 0, I or II class instrument which includes a microphone, amplifier, RMS detector, integrator or time average (LEQ as defined below), output meter, and weighting network used to measure sound pressure levels.

§ 84A.03 GENERAL REGULATION.

Except as allowed in this article, no person shall willfully engage in any activity within the Town, whether on private or public property, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area.

§ 84A.04 EXCEPTIONS.

Sound or noise associated with the following are excepted from the application of this article:

- (1) Construction activity performed 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) Construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission;
- (3) Construction activities associated with home improvements between the hours of 7:00 a.m. and 9:00 p.m. Monday through Sunday.
- (4) Lawnmowers and turf management equipment operated between the hours of 6:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;
- (5) Refuse collection vehicles operating during daylight hours.
- (6) Safety signals, warning devices, emergency pressure relief valves, and church bells.
- (7) Outdoor entertainment events only to the extent authorized in a special event permit issued by the Town.
- (8) Regularly scheduled athletic events at Town parks, athletic facilities, and public or private schools;
- (9) Film and video production activities for which permits have been issued by the Town; provided all equipment such as generators are properly muffled;

- (10) Lawful fireworks;
- (11) Properly equipped aircraft operated in accordance with applicable federal rules and regulations; and
- (12) Governmental emergency vehicles and firearms in the course of the performance of official duties.

§ 84A.05 DECIBEL STANDARDS.

It shall be presumed that a noise disturbance in violation of this Article has occurred whenever any noise or sound is projected from one property in the Town onto another or onto a public area if such sound, measured in accordance with §84.06, below, exceeds the following decibel standards. The zoning classification of the property where the sound originates will be used to determine which standards apply.

- (1) Residential Districts - R-2, R-4, L-1, M-1, S-1 and the various R-1 districts:
 - (a) 7:00 a.m. to 11:00 p.m. – 65 dBA.
 - (b) 11:00 p.m. to 7:00 a.m. – 55 dBA.
- (2) Resort, Commercial and all other zoning districts:
 - (a) 7:00 a.m. to 11:00 p.m. – 65 dBA..
 - (b) 11:00 p.m. to 7:00 a.m. – 55 dBA.

§ 84A.06 METHOD OF MEASURING DECIBEL STANDARDS.

Except as qualified by §84.08, below, when measuring vehicular noise, this section describes acceptable methods and techniques for the measurement and reporting of noise for the purpose of determining compliance with the allowable noise levels listed above.

- (1) *Measurement location.* Measurement of sound shall be made at any point beyond (outside) the property line of the property where the noise originates; provided, however, when sound is measured on Town property, the point of measurement shall be at least 50 yards from the property line of the property where the sound originates.
- (2) *Calibration.* All sound level measuring devices shall be calibrated by a certified agency, at a minimum once each year.

- (3) *Sound level meter.* Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on "slow" response.
- (4) *Use of sound level meters.* Sound level meters shall be at least Type II meeting American National Standard Institute (ANSI S1.4-1983) requirements. Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measurement equipment.
- (5) *Measurement procedures.* The following procedures shall be followed to obtain representative sound level measurements:
 - (a) Measurement location shall be at least three feet above the ground and not more than ten feet above ground.
 - (b) Measurement shall be taken with line of sight to the noise source if possible.
 - (c) Measurements shall be made with the sound level meter set for "A" weighting and "slow" response.
- (6) *Data documentation.* A record of all sound level measurements shall be completed and signed by the person making the measurements. The record sheet should include the following:
 - (a) Date.
 - (b) Time of measurement.
 - (c) Location (street address if possible).
 - (d) Noise source.
 - (e) Make, model and serial number of sound level meter, date of last certification/calibration.
 - (f) Field calibration results.
 - (g) Name of complainant (if provided).

§ 84A.07 QUIET HOUR PROHIBITIONS

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In addition to the general prohibition set forth above, the following quiet hours are established that further restrict noise-generating activities in order to support the community's expectation of a quiet sleeping period.

The following activities are prohibited:

- (1) Construction activities associated with home improvements between the hours of 9:00 p.m. and 7:00 a.m. Monday through Sunday.
- (2) Lawnmowers and turf management equipment operated between the hours of 9:00 p.m. and 6:00 a.m.
- (3) With the exception of construction activities associated with home improvements, which are addressed in paragraph (1), above, the excavation, grading and/or the erection demolition, alteration or repair of any building or other structure within 500 feet of a residential district as established pursuant to the Town zoning ordinance, between the hours of 7:00 p.m. and 7:00 a.m. Monday through Saturday, except by permit from the Town Manager when, in his opinion, such work will not adversely affect other persons. Following the issuance of such a permit, if the Town Manager shall determine that the building operations are adversely affecting others, he shall be authorized to modify or revoke the permit. The Town Manager may permit emergency work in the preservation of public health or safety at any time.
- (4) Operation of outdoor amplified music or public address systems between the hours of 11:00 p.m. and 7:00 a.m.

§ 84A.08 VEHICULAR NOISE

The following shall be prohibited as a public nuisance under this chapter:

- (1) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily.
- ~~(2) Operation within the Town limits a motorcycle manufactured after 31 December 1982 that is not equipped with an exhaust muffler bearing the Federal EPA required labeling compliance applicable to the motorcycle's model year, as set out in the Code of Federal Regulations.~~
- (3) Operation within the Town limits any type of motor vehicle that exceeds a measured noise level of ~~89~~ 92 decibels on the sound meter when measured 20 inches from the exhaust pipe at a 45-degree angle while the engine is operating at idle.

- (4) Operation of any motor vehicle of any size and regardless of the year of manufacture that meets one or more of the following criteria:
- (a) It is not equipped with an adequate muffler in constant operation, free of defects and modifications, that prevents the escape of any excessive or unusual noise;
 - (b) It has a muffler system that is equipped with a straight pipe exhaust system (regardless of the presence of baffles);
 - (c) It has a hollow core muffler;
 - (d) It has a muffler that is labeled for off-road course competition use;
 - (e) It has a muffler system that has a cut-out, bypass, or similar device designed or so installed so that it can be used continually or intermittently to bypass or otherwise reduce or eliminate the effectiveness of a muffler or muffler system;
 - (f) It has a muffler system that has been modified in a manner which will amplify or increase the noise emitted by the exhaust.
- (5) Operation of any motor vehicle within the city limits so as to make any loud or unnecessary noise that results from any one or more of the following actions by the operator:
- (a) Misuse of acceleration or braking power that exceeds tire traction limits, sometimes known as "burn-outs", "burning rubber", "laying down rubber" or "peeling rubber".
 - (b) Excessive acceleration or deceleration while in motion where there is no emergency need.
 - (c) Racing or revving of engines by manipulation of the accelerator, gas pedal, or carburetor in applying fuel to the engine in a greater amount than is necessary whether the vehicle is either in motion or standing still.
 - (d) Use of an engine braking system which is in any way activated or operated by the compression of the engine of any motor vehicle or any part thereof, except in cases of emergency for the protection of persons and / or property. Such braking systems are commonly referred as "compression brakes" or "jake brakes".

84A.09 ANIMAL NOISES

Animal noises, may constitute a noise disturbance even though they do not exceed the decibel levels established in §84.05, above. Accordingly, the keeping of any dog which by prolonged or habitual barking, howling or whining or any other animal that frequently or for long periods of time makes noises which disturb the comfort or repose of any persons in the vicinity shall constitute a noise disturbance.

§ 84A.10 NON-EXCLUSIVITY.

Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this chapter, or from pursuing said remedy simultaneously with proceedings under this chapter, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

§84A.11 ENFORCEMENT.

(A) Violations of the provisions of this article shall be subject to the criminal and civil penalties set forth in § 10.99 of this Code. In addition to the penalties set forth therein, second or subsequent violations of the provisions of this article by the same person for the same activity occurring within one year of the first such violation shall be subject to civil penalties as follows:

First violation (per Town Code § 10.99).	\$50.00.
Second violation	100.00.
Third violation	200.00.
Fourth or subsequent violation, per offense	300.00.

(B) In addition to the penalties provided for above, the Town may enforce the provisions of this Chapter by appropriate equitable remedies.

(C) This article may be enforced by the Town of Lake Lure Police Department and by other employees of the Town as designated by the Town Manager. Employees of an animal control agency working under contract with the Town for the enforcement of animal control ordinances and who have been designated by the Chief of Police may enforce the provisions of this article relating to animals and animal noises.

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SECTION TWO. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION THREE. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION FOUR. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

SECTION FIVE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 15th day of November, 2011.

ATTEST:

Andi Calvert
Town Clerk

Bob Keith
Mayor

Approved as to content and form:

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J. Christopher Callahan
Town Attorney