

ORDINANCE #20-13:

AN ORDINANCE AMENDING CHAPTER 92, NUISANCES; ENVIRONMENTAL PROTECTION.

WHEREAS, the Village Council of the Village of Pinehurst adopted an ordinance dated October 20, 1980, establishing and implementing certain authorized police powers for the purpose of prescribing regulations governing conditions detrimental to the health, safety, and welfare of its citizens; and

WHEREAS, on September 13, 2011 the Village Council of the Village of Pinehurst adopted Ordinance 11-25 which adopted the general ordinances of the Village of Pinehurst as revised, amended, restated, codified, and compiled in book form and declared that these shall constitute the “Village of Pinehurst, North Carolina Municipal Code;” and

WHEREAS, the Municipal Code will be subsequently amended from time to time as conditions warrant; and

WHEREAS, the Village Council has determined that it is in the best interest of the citizens of Pinehurst to amend Chapter 92, Section 92.16 regulating unreasonably loud, disturbing sound levels, in the Pinehurst Municipal Code; and

WHEREAS, the Village Council has determined that it is in the best interest of the citizens of Pinehurst to add Section 92.17, to Chapter 92, which regulates the penalties and enforcement of Section 92.16 of Chapter 92.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Village Council of the Village of Pinehurst, North Carolina in the regular meeting assembled this 13th day of October, 2020 as follows:

SECTION 1. That the following amendments be made to Section 92.16:

§ 92.16 REGULATING UNREASONABLY LOUD, DISTURBING SOUND LEVELS.

(A) Unlawful sound levels. It shall be unlawful for any person, **or business entity (business entity includes but is not limited to a sole proprietorship, limited partnership, limited liability company, and corporation)** ~~firm or corporation~~ to create or assist in creating, **or to permit, continue, or permit the continuance of** any unreasonably loud, disturbing sound levels in the village, taking into consideration volume, duration, frequency, time of day and other characteristics of the sound, unless specifically authorized by the village (see division (C) of this section).

(B) Prohibited activities. The following activities, among others, are hereby declared to be unreasonably loud, disturbing sound levels, but the enumeration shall not be deemed to be exclusive:

(1) The playing of any musical instrument or electronic sound amplification equipment in a manner or with such volume, that a ~~reasonably prudent person would recognize as likely to unreasonably disturb persons on adjacent property or in the vicinity particularly between the hours of 11:00 p.m. and 7:00 a.m.~~ **sustained noise level of 40 dBs or more between the hours of 10:00 p.m. and 7:00 a.m. or 55 dBs or more at other times can be measured from any nearby residential property (sustained is defined as a continuous measurement over the threshold for at least 10 seconds, or at least 15 instances of measurements over the threshold in a 60-second period. When taking measurements, the measuring official will ensure no significant ambient or contributing noise is present, or will measure ambient and contributing noise levels separately when the offending noise is silent so that they can be subtracted);**

(2) The keeping of any animal or bird which makes frequent or long continued sounds, that a reasonably prudent person would recognize as likely to unreasonably disturb persons in the vicinity;

(3) The use of any automobile, motorcycle or vehicle so out of repair, so loaded, or in a manner as to create unreasonably loud, disturbing sounds;

(4) The operating of any **non-construction** business **activity in or near** adjacent to any residential area **in the Village so loud that** ~~so as to cause unreasonably loud, disturbing sounds~~ **a sustained noise level of 40 dBs or more between the hours of 10:00 p.m. and 7:00 a.m. or 55 dBs or more at other times can be measured from any nearby residential property (sustained is defined as a continuous measurement over the threshold for at least 10 seconds, or at least 15 instances of measurements over the threshold in a 60-second period. When taking measurements, the measuring official will ensure no significant ambient or contributing noise is present, or will measure ambient and contributing noise levels separately when the offending noise is silent so that they can be subtracted);**

(5) The creation of unreasonably loud, disturbing sound levels adjacent to any school, educational facility, church or court during their normal operating hours, or within 150 feet of any hospital, which a reasonably prudent person would recognize as likely to unreasonably interfere with the working of the institutions, provided signs are displayed indicating that the area is a school, educational facility, church, court or hospital;

(6) The erection (including excavation), demolition, alteration or repair of any building in any district other than between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Saturday, excluding holidays. This restriction shall not pertain to the following:

(a) Interior work on an occupied dwelling at any time that does not produce noise that a reasonably prudent person would recognize as likely to unreasonably disturb persons on adjacent property or in the vicinity.

(b) Emergency repairs to dwellings or structures that are needed to protect health or property.

(c) On Sundays and holidays, home maintenance and improvement tasks may be performed by home occupants with or without unpaid/un-contracted assistance, between the hours of 10:00 a.m. and 7:00 p.m. using power and hand tools that are generally

available for retail sale from home improvement and hardware stores as long as said work does not produce noise that a reasonably prudent person would recognize as likely to unreasonably disturb persons on adjacent property or in the vicinity.

(d) Upon receipt of prior written approval from the Village Planning and Inspections Department, any construction, demolition, alteration or repair not otherwise allowed by this restriction may be performed. This provision is intended to accommodate work that is in the best interests of the village as a whole, as well as work contracted or paid for by a home occupant that must be done on a Sunday or holiday for valid reasons.

(7) The operation of power equipment including but not limited to lawn and garden maintenance equipment, generators (not including home stand-by power generators in operation during periods of utility power outages and test periods) and landscaping construction and maintenance equipment between the hours of 8:00 p.m. and 7:00 a.m.

(8) The use of any electronic sound amplification equipment for advertising, paging or solicitation purposes, except with an appropriate permit; and

(9) The conduct of, or participation in, any recreational activity in a residential district in the village which creates sound levels so loud that a reasonably prudent person would recognize as likely to unreasonably disturb persons a sustained noise level of 40 dBs or more between the hours of 10:00 p.m. and 7:00 a.m. or 55 dBs or more at other times can be measured from any nearby residential property (sustained is defined as a continuous measurement over the threshold for at least 10 seconds, or at least 15 instances of measurements over the threshold in a 60-second period. When taking measurements, the measuring official will ensure no significant ambient or contributing noise is present, or will measure ambient and contributing noise levels separately when the offending noise is silent so that they can be subtracted); on adjacent property or in the vicinity, particularly between the hours of 10:00 p.m. and 7:00 a.m.

(C) Approval of exceptions.

(1) Persons wishing to engage in activities other than those involving the erection (including excavation), demolition, alteration or repair of any building prohibited by this section may do so when specific written approval is obtained from the village. Written permission shall not be unreasonably withheld, and may contain appropriate conditions and restrictions designed to minimize the disruptive impact. Written permission for activities significantly for religious or political purposes shall be granted, subject only to reasonable time, place and manner restrictions. Written permission issued under this section may specify that the permission granted will continue for a stated period or until revoked after actual notice. Persons shall not be held in violation of this section when acting in conformity with permitted conditions, but any permission may be revoked if it is determined that the authorized activity has resulted in generation of unreasonably loud, disturbing sound levels, or significant complaints from residents.

(2) In case permission is denied, written permission is provided with conditions unacceptable to the application, or permission is revoked, the applicant shall be entitled to a prompt, informal hearing with the Village Manager or his or her designee, upon submission of a written request. Any person aggrieved by a matter regulated by this section may submit to the Village Manager written comments, including requests for appropriate relief.

(1986 Code, § 11-2) (Ord. 96-02, passed 01-22-1996; Ord. 05-18, passed 06-07-2005; Ord. 05-22, passed 08-23-2005; Ord. 13-46, passed 11-12-2013; Ord. 13-48, passed 12-10-2013; Ord. 15-17, passed 12-08-2015) ~~Penalty, see § 10.99~~

SECTION 2. That the following section be added to Chapter 92:

§ 92.17 PENALTIES AND ENFORCEMENT

(A) All provisions of chapter § 92.16 will be enforced by the Chief of Police and the Police Department's assigned officers.

(B) Any person, or business entity (business entity includes but is not limited to a sole proprietorship, limited partnership, limited liability company, and corporation) violating any of the provisions of § 92.16(B)(1), § 92.16(B)(4) and § 92.16(B)(9), or failing or neglecting or refusing to comply with the same, shall be issued a notice of civil infraction subject to a maximum penalty of \$500 and/or shall be guilty of a Class 3 misdemeanor and subject to a fine of \$100 or imprisonment not to exceed 30 days. Civil penalties will start at \$100 for the first infraction within a 24 month period, and will escalate by \$100 for each subsequent infraction within a 24 month period up to the maximum of \$500. For penalty purposes each violation recorded and subsequently abated on any distinct enforcement officer visit shall constitute a separate offense. Statutory references: G.S. § 14-4(a) and G.S. § 160A-175.

(C) In cases where violations of § 92.16(B)(1), § 92.16(B)(4) and § 92.16(B)(9) are committed by a person or persons under contract (rental or otherwise) with the legal owner of the property on which the violation occurs and the legal owner of the property is not present during the offense, the owner is subject to civil penalty under § 92.17. This provision does not prevent additional penalty enforcement against the person or persons under contract or other code violators on the property. Statutory references: G.S. § 14-4(a) and G.S. § 160A-175.

(D) In all other cases under chapter 92, violators are subject to penalty, under § 10.99.

SECTION 3. That this Ordinance amendment shall be and remain in full force and effect from December 1, 2020.

THIS ORDINANCE is passed and adopted this 13th day of October, 2020.



Attest:

Beth Dunn
Beth Dunn, Village Clerk

VILLAGE OF PINEHURST
VILLAGE COUNCIL

By *John C. Strickland*
John C. Strickland, Mayor

Approved as to Form:

Michael J. Newman
Michael J. Newman, Village Attorney