

# VILLAGE OF MISENHEIMER NOISE ORDINANCE

**Adopted and Effective August 13, 2012**

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**State law reference**—Village may regulate noise, N.C.G.S. § 160A-184.

## **Sec. 1-1. - General prohibition.**

The creation and continuance of any loud, disturbing and unreasonable noise in the village is prohibited. It shall be unlawful for any person to cause, make or contribute to creating any loud or disturbing noise of such character, intensity or duration as to be detrimental to the life or health of any individual or such noises as to disturb the quiet and peace of any citizen of the village.

The term "loud, disturbing and unreasonable noise" is limited to noise which is clearly audible at a distance of more than fifty (50) feet from the source of the noise, measured in a straight line from the source of the noise. The term "loud, disturbing and unreasonable noise" includes, but is not limited to, the kinds of noise generated by the activities enumerated in sections 1-2, 1-3, and 1-4, except as provided in section 1-5.

## **Sec. 1-2. - Enumeration of acts, etc.**

The following acts, among others, are declared to be loud, disturbing, annoying and unreasonable noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

(1) *Horns or warning devices.* The sounding or blowing of any horn or signal device on any automobile, motorcycle, motorbus or other vehicles except as a danger signal, particularly to blowing or sounding any signal device on a motor vehicle for the purpose of attracting the attention of any person on the streets or in a building except that such person is in danger; or in compliance with the laws of the state.

(2) *Animals or birds.* The keeping or harboring of any animal or bird which by causing frequent or long continuous noises by howling, yelping, barking, or in any way causing frequent or long continued noise or in any way disturbing the comfort or repose of any

person in the vicinity.

(3) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler except to give notice of time to begin or stop work or as a warning of danger.

(4) *Blowing train whistles or horns.* Blowing of any horn or whistle attached to any part of any railroad steam engine, or diesel engine except as a danger signal.

(5) *Noises in streets adjacent to schools, hospitals, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, sanatorium, hospital or church during services, which interferes with the work or worship in any such place or institution.

(6) *Loudspeakers, sound amplifying equipment.* The operation or use of any machine or device, commonly known as a loudspeaker or sound amplifying equipment, for the amplification of music, the human voice, or any other noise or sound upon the public streets or sidewalks.

### **Sec. 1-3. - Commercial broadcasting devices in businesses located in certain areas.**

It shall be unlawful for any person owning, maintaining, operating or conducting a place of business in any part of the village principally used as a residential community to operate in or about such place of business, as an advertisement thereof, or for any other purpose not within itself an essential and necessary part of such business, any sound or noise producing, reproducing or broadcasting device by whatever name known, in such a manner and with such volume or noise as to disturb the quiet of such residential community, or the inhabitants and residents thereof.

### **Sec. 1-4. - Specific prohibitions.**

Using or operating a loudspeaker or other sound amplification device in a fixed or movable position exterior to any building, or mounted upon any motor vehicle, for the purpose of commercial advertising, giving instructions, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property, between the hours of 11:00 p.m. and 7:00 a.m. the following day is hereby prohibited.

### **Sec. 1-5. - Exemptions.**

The following acts or activities are exempt from the provisions of this chapter:

(1) The use of a permanently installed loudspeaker or public address system at railroad and bus stations to announce the arrival and departure of trains and buses.

(2) The use of a permanently installed loudspeaker or public address system at athletic stadiums to announce athletic contests.

(3) Musical chimes or the sounding of bells emanating from a public or religious institution or facility provided the sound is less than fifteen (15) minutes in duration and

occurs not more than three (3) times within any twenty-four (24) hour period.

(4) Sounds emanating from any authorized emergency vehicle responding to an emergency or acting in the time of emergency.

(5) Sounds emanating from any authorized law enforcement vehicle responding to a law enforcement matter or an emergency.

(6) Noise sources associated with or created by construction, repair, remodeling, demolition, or grading of any real property, provided such activities do not take place between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and Saturdays, or at any time on Sunday.

(7) Noise sources associated with the maintenance of real property, provided such activities take place between the hours of 7:00 a.m. and 10:00 p.m. on any day.

(8) Noise emanating from any burglar alarm or security device on any building, dwelling or vehicle provided such noise terminates within twenty (20) minutes of being activated.

(9) Special public events or activities authorized or organized by the village council of the Village of Misenheimer.

(10) Any activity to the extent regulation thereof has been pre-empted by state or federal law.

(11) The use of a sound producing or sound amplifying device, instrument, or apparatus for nonadvertising purposes when a permit has been issued for such use pursuant to section 1-6, provided such activity is conducted in conformity with the permit.

#### **Sec. 1-6. - Permit for mechanical sound producing device.**

(a) *Application.* Each applicant for a permit to use or operate a sound producing device, instrument or apparatus within the village limits shall complete and sign an application on a form supplied by the village and file the same with the chief of police at least seven (7) days prior to the date upon which the sound producing equipment is to be used or operated. Where good cause is shown, or in the judgment of the chief of police the activity would involve significant political or religious features and therefore be entitled to enhanced deference or protection under the state or federal constitutions, the chief of police shall consider applications filed after the deadline. The application shall describe the sound producing equipment, state the specific location at which sound producing equipment is to be used or operated, the day and hour or hours during which it is proposed to be used or operated, and such other pertinent information as is necessary for the chief of police to carry out his duties under this section. If the sound producing equipment is to be used or operated on private property the owner of such property must consent in writing.

(b) *Issuance of permit.* The chief of police shall issue a permit for the use of the requested sound producing instrument, device or apparatus to any applicant who complies with the provision of this section unless he finds in writing that one (1) or more of the restrictions specified in subsection (c) hereof apply, or unless the issuance of a permit for the time and location requested would overlap a previously applied for permit. Each permit issued pursuant to this section shall describe the specific location or locations at which such sound producing

equipment may be used or operated thereunder, the period of time for which the sound producing equipment may be operated in such location, and shall specify such other terms and conditions as are essential to secure and protect the public safety. The person signing the application shall be required to be present at the time and place the sound producing equipment is operated or used and the permit shall be invalid unless in his possession.

(c) *Special restrictions.* The chief of police shall not issue any permit for the use of a sound producing instrument, device or apparatus:

(1) At any location within five hundred (500) feet of a school, courthouse, synagogue, or other place of worship, respectively, or within five hundred (500) feet of any hospital, nursing home, or other institution caring for the sick, aged or infirmed;

(2) At any location where the chief of police, upon investigation, shall determine that the conditions of vehicular or pedestrian traffic or both are such that the use of a sound producing instrument, device or apparatus will constitute a threat to the safety of pedestrians or vehicle operators; provided, however, that before such determination is made the chief of police shall find that it is more likely than not that the traffic count at such location on the date and time requested will exceed two hundred fifty (250) vehicles per hour, or two hundred fifty (250) pedestrians per hour, or both;

(3) At any location where the chief of police, upon investigation, shall determine that the conditions of street repair or other physical conditions are such that the use of a sound producing instrument, device or apparatus will deprive the public of the reasonable right of safe and peaceful enjoyment of any public street, park, or other public place, nor shall the chief of police issue a permit for any location when some other event has been scheduled with the village for the same street, park or other public place at a location within earshot of the sound producing equipment described in the application; provided, however, that before a permit is denied under this subsection because of street repair the chief of police shall find that it is more likely that not that on the date and time requested that at least one (1) lane of travel on the street will be blocked due to such repair, or if denied because of the physical condition of a street, park, or other public place that construction work has commenced or will commence near the location requested and will not be completed by the date requested;

(4) For a period of continued use exceeding two (2) hours without a thirty (30) minute break, unless the chief of police, upon investigation, determines that a longer period of time will not annoy or disturb reasonable persons of ordinary sensibilities residing in the area;

(5) In or on any vehicle or other device while it is in motion; or

(6) Between the hours of 10:00 p.m. and 9:00 a.m.

(d) *Alternate permit.* If the chief of police denies any application as submitted under this section he shall grant a permit for a date, time and place different from that requested by applicant, or subject to different requirements or conditions than requested by an applicant. An applicant desiring to accept an alternate permit shall, within twenty-four (24) hours after notice of the action of the chief of police, file a written notice of acceptance with the chief of police on a form supplied by the village.

(e) *Processing time; notice; right of appeal.* Applications for permits to use a sound producing instrument, device or apparatus shall be processed and decisions made as expeditiously as

possible, and in any event before 5:00 p.m. on the fifth (5<sup>th</sup>) business day following the day of receipt. If the application was submitted more than ten (10) days in advance of the event, the permit, alternate permit, or written notice of denial shall be mailed to the applicant. If the application was submitted less than ten (10) days in advance of the event, the police department shall exercise reasonable diligence in attempting to notify by telephone or other means. Any person aggrieved by action taken on a permit application may file a written notice of appeal, first with the village clerk and then with the village council. The notice of appeal must be filed within seven (7) days from date notice of the action, regardless of the means used to convey such notice, is received by the applicant. The village clerk shall act on the appeal as expeditiously as possible. The village council shall hear any appeal taken from the decision of the village clerk at its next regularly scheduled meeting. In hearing any appeal the village clerk or the village council may reverse or affirm, wholly or in part, the action of the chief of police, or may grant an alternate permit for a date, time or place different from that requested by the applicant or subject to different requirements or conditions than requested by an applicant. An alternate permit must be accepted in writing within twenty-four (24) hours after notice that it is available.

(f) *Revocation of permit.* The chief of police may revoke any permit issued hereunder for the following reasons or causes:

- (1) The substantial violation of this chapter or the terms and conditions of a permit; or
- (2) A material misstatement of any fact on the application for a permit.

#### **Sec. 1-7. - Duty to cause investigation of possible noise violation.**

The chief of police or designee, upon notice from any person of the existence of any of the conditions described in this article, shall make such investigation as may be necessary to determine whether in fact such condition exists as to constitute a public noise violation.

#### **Sec. 1-8 - Duty to give notice of existence of noise violation.**

(a) Upon a determination that a public noise violation as described in this article exists, the chief of police or designee shall notify in writing the owner or person in possession of the premises in question of the condition constituting the public noise violation and shall order the prompt abatement thereof upon the receipt of such written notice.

(b) Within the ten (10) day period in subsection (a) of this section, the owner or person in possession of the premises in question may appeal the findings of the chief of police or designee made pursuant to this section to the village council by giving written notice of appeal to the village clerk.

(c) The village council, in the event an appeal is taken as provided in this section and after hearing all interested persons and reviewing the finding of the chief of police or designee, may reverse the findings made pursuant to subsection (a) of this section.

(d) If any of the above-defined noise violations are found to exist, the responsibility for abatement shall rest with the owner, occupant or person in possession of the property or their agent, notwithstanding that the noise violation is found to exist, wholly or in part, within a village

easement which crosses private property.

(e) Appeal from an order of abatement issued by the village council shall be made to superior court in Stanly County within thirty (30) days following the issuance of such order.

**Sec. 1-9. - Cost of noise violation abatement to be charged to owner of premises.**

It shall be the duty of the village clerk to mail a statement of such charges to the owner or other person in possession of such premises with instruction that such charges are due and payable within thirty (30) days from the receipt thereof. In the event the occupant who is not the owner does not pay the fine for a public noise violation within thirty (30) days, the owner of such lot or parcel of land shall have final responsibility.

The first noise violation will result in a warning provided the violation is addressed immediately. A second violation within twelve (12) months will result in a civil fine of one hundred dollars (\$100.00). A third violation within twelve (12) months will result in a civil fine of three hundred dollars (\$300.00). Subsequent violations within twelve (12) months will result in a civil fine of five hundred dollars (\$500.00).

**Sec. 1-10. – Criminal penalties.**

Pursuant to N.C.G.S. Sec. 14-4. any person, firm or corporation who violates any provision of this noise ordinance shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or subject to imprisonment for a period not exceeding thirty (30) days, except that any person who violates any provision of this ordinance as it relates to regulating the operation or parking of a vehicle shall be guilty of an infraction and shall pay a penalty of not more than fifty dollars (\$50.00).