

MEMORANDUM

TO: Gary Jackson, City Manager
FROM: William J. Anderson, Chief of Police
DATE: October 28, 2013
SUBJECT: Noise Ordinance One Year Review

In November 2012, City Council approved the following revisions to the City Of Asheville's Noise Ordinance:

- 1) Addition of yelling, shouting, parties and the sounding of a security alarm for more than 20 minutes after the owner/responsible party has been notified by law enforcement personnel to the list of enumerated activities that shall not be engaged in so as to cause a noise disturbance on neighboring premises.
- 2) Addition of the following factors to consider in determining whether a noise constitutes a noise disturbance: whether the noise occurred during daytime or nighttime hours; proximity to residential areas; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; and the nature and zoning of the area.
- 3) Definition of residential areas to include any area in the City zoned the following: RS-2, RS-4, RS-8, RM-6, RM-8, and RM-16.
- 4) Definition of daytime hours as 7 a.m. to 11 p.m. and nighttime hours as 11:00 p.m. to 7:00 a.m.
- 5) Addition in the Procedures/Appeals section that the failure of the appellant or at least two complainants who filed the complaint to attend the noise ordinance appeal hearing results in dismissal of the appeal or complaint.
- 6) Revision of refuse collection hours exemption to clarify hours of operation.

In addition to approving the above-stated revisions, City Council requested a one year review of the impact of the modifications.

Below is an annual comparison for the past 3 years of Noise Ordinance related issues, for consistency a 10 month period of December to September is used to collect date for each year.

YEAR	2011 Dec-Sept	2012 Dec-Sept	2013 Dec-Sept
Calls for Service	2103	1954	2037
Verbal Warnings	434	439	325
Citations	35	26	26
Arrests	19	9	13
Compliance/referral	635	564	579
Appeals to Noise	6 – Citations Appeals	7 – Citation Appeals	2 – Citation Appeals

Ordinance Appeal Board – police issued citations	6 – Upheld	5 – Upheld, 2 – Fine dismissed	1 – Upheld 1 – Fine dismissed
Appeals to Noise Ordinance Appeals Board – Citizen Complaints	5 – Citizen Appeals 2 – Mediated issues 3 – Dismissed	1 – Citizen Appeals 1 – Mediated	5 – Citizen Appeals 1 – Upheld 1 – Mediated 1 – Fine Dismissed 2 – Pending

Council specifically wanted to assess the impact of the time of day time/night time modification.

A review of the noise complaints from 2010 to 2013 indicate the peak time period for complaints and enforcement actions to be 11:00PM to 4:00AM. Nearly 50% of the calls for service and over 50% of the enforcement actions take place in this 5-hour window. See the below chart.

Period covered 2010-2013	All hours for 4 Yr period	Total from 11:00PM-4:00AM
Noise Complaints	9360	4032
Verbal Warning	1864	997
Arrests / Citations	229	145

Officers working the Downtown Unit and Charlie District were polled as to the impact of the 2012 Ordinance changes with specific focus given to the Night/Day modifications.

Officers working the day shift saw little impact in their day-to-day response and enforcement. It should also be noted that DTU officers receive complaints directly to their cell phones and don't always build a call for service, so CAD numbers will be low. We use Computer Aided Dispatch (CAD) to review and analyze calls for service, if an officer doesn't report a call in CAD we are not able to capture the call or associated data.

Officers working the night shift report that street performers and bars/clubs as their largest source of calls for service. The main concern raised is that often complaints are made anonymously from residents about a specific club that is not any louder than other clubs located in the area. In addition, officers feel that the "reasonable person" standard is vague which leaves officers to deem that many noise complaints are NOT unreasonable, yet the complainants feel that the noise is unreasonable. As such, officers request that the club lower the volume and/or close windows or doors. Predominantly these requests are complied with and no further action is needed during the same shift. However, officers will routinely respond to the same business on different nights to make the same request to lower the volume.

Despite the above concerns, officers expressed confidence in the establishment of day/night time hours, due to the fact that enforcement of night time violations is easier with such a distinction – particularly in a residential area.

It does not appear that a significant change has occurred in reporting or enforcement of noise complaints. However, it is clear that the problem period is between 11:00PM to 4:00AM. I would suggest continuing this evaluation with specific direction to officers to build calls for service on all noise complaints and using specific clearance codes that will provide more accurate data over the next year.