

What's That Noise?  
Legal Question of the Week  
Vol. 1, Number 2  
July 3, 2008

Brian Beasley  
Patriot and  
Current Legal Adviser, HPPD

Welcome to the "Legal Question of the Week<sup>1</sup>" bulletin – Independence Day Edition. Each week, I choose the best legal question I've been asked and share my advice on it. This week's bulletin comes with a bonus! Stay tuned to the end for an update on the very complex world of "pyrotechnics law."

Here's this week's question:

**Brian, How Do You Interpret The Noise Ordinance?**

**The Sarcastic Answers:** "Just like its written..." or "With my secret decoder ring..."

**The Ignorant Answer:** "Uh, loud noises bad....quiet good. Must stop loud noise."

**The Real Answer:**

High Point's Noise Ordinance gives you TWO possible "avenues" of enforcement. First, it prohibits noise that is "unreasonably loud, disturbing, or unnecessary" based on several factors. Second, it prohibits certain noise producing activities that specifically are deemed illegal in the ordinance.

The first avenue is the prohibition on noises that are unreasonably loud, disturbing, or unnecessary. This is what they teach us in law school to call the murky, muddy water of a standard. In other words, you – the heroic officer – must decide whether the noise you have been called out to investigate is in violation of the ordinance by considering various factors. Which would be fine except for one thing – your decision on whether the sound is unreasonable is going to be reviewed by a District Court Judge. As former DA Stuart Albright was fond of saying, "I love all judges....but" their view of reasonable and your view of reasonable may not often coincide, as anyone who has spent the day in a District Courtroom knows all too well.

---

<sup>1</sup> Management reserves the right to change the name to "Legal Question of the Month" or "Legal Question of the Year" or "Legal Question of the Decade" as general busyness and time constraints require.

Having said that, if you have probable cause to believe that this particular heinous noise is unreasonably loud (incompatible with time and location so as to create interference with peace or good order), disturbing (perceived by a person of ordinary sensibilities as interrupting the normal peace and calm), or unnecessary (loud noise that could be lessened or otherwise controlled without unduly restricting the noisemakers conduct) – and you have taken into account the following factors:

1. Time of day
2. Proximity to residential structures
3. Whether the noise is recurrent, intermittent, or constant
4. The volume and intensity
5. Whether enhanced by electronic or mechanical means
6. Character and zoning of the area
7. Whether noise is related to the normal operation of a business or other labor activity AND
8. Whether the noise could be controlled without unreasonable effort or expense to the noisemaker;

then you may in good conscience issue a citation for violating the noise ordinance. In court, you should be prepared to carefully testify to these factors. These will still be very hard cases to prove to a District Court Judge's satisfaction.

But wait – there's some stuff in here to help you! Some specific situations are addressed...

The following are per se “unreasonably loud, disturbing, or unnecessary” according to the ordinance:

1. Blowing a vehicle horn except as a danger signal or as required by law.<sup>2</sup>
2. Stereos and the like on premises of dwelling, hotel or motel: if the sound generated is audible at a distance of 30 feet or more from the property line or the hotel unit's most outer boundary wall.
3. Stereos in a vehicle: if sound or vibration can be heard or felt at a distance of 30 feet or more from the radio.
4. Pets causing frequent or long continued noise
5. Vehicles so out of repair or loaded down as to create loud grating, grinding, rattling, or screeching of tires.
6. Blowing of a steam whistle except as a warning of danger.
7. Use of a compressed air device unless noise is muffled and reduced.
8. Construction/Excavation in a residential district between 6:00pm and 7:00am or in a non-residential district between 10:00pm and 7:00am unless there is an emergency situation and a permit from the city manager or his designee.
9. Commercial use of loudspeakers: if the sound may be heard at a distance of 30 feet or more from property line between 2:00am and 7:00am.
10. Non-commercial free speech use of loudspeakers: if the sound may be heard at a distance of 150 feet from person speaking (except in a city park).

---

<sup>2</sup> Added note to gentlemen: when courting, do not blow the horn when picking your lady friend up. Go to the door. And don't go empty-handed. I speak from experience.)

For these categories, you may issue a citation and will probably have more success in court. Keep in mind that if the sound doesn't fit into one of these categories, you might still obtain probable cause by considering the factors set out above to determine if the noise is unreasonably loud, disturbing, or unnecessary. For example, if citizens complain about the loudspeakers at a bar being too loud but it is only 11:00pm, it might still be a noise violation even though it doesn't fall squarely into #10 above. There are other categories listed, but they still require some subjective evaluation by you as to whether the noise is unreasonable.

**FINAL THOUGHT ON THE NOISE ORDINANCE:** Remember that when estimating distances and testifying in court, nothing makes you sound more like a seasoned police officer than being able to state that a Crown Vic is 17 feet long.

#### **COME ON BABY LIGHT MY FIREWORKS – N.C.G.S. 14-414**

Every Independence Day, people everywhere decide to avoid the long traffic lines that accompany a professional show and simply make things explode in their own yard, while drinking their adult beverage of choice. As we all know, Wild Turkey plus lawn chairs plus an explosive charge is a recipe for disaster. So what pyrotechnics are legal?

1. Caps suitable for cap guns (now that's exciting.)
2. Snake and glow worms that produce a large, snake-like ash when burning.
3. Smoke devices consisting of tube or sphere that produces smoke.
4. Party poppers that expel paper streamers (better than cap guns.)
5. String poppers with strings at both ends that are pulled (yippee.)
6. Snapper or Drop Pop – the small paper item you throw on the ground.
7. Sparklers – those wire things that someone gets burned with every year.
8. Other devices that emit showers of sparks and sometimes a whistling or crackling effect but do not detonate or explode or spin or propel themselves through the air or anything else fun or exciting.

Violations are Class 2 Misdemeanors unless done indoors where it is a Class 1 Misdemeanor.

#### **IS IT ILLEGAL? TWO RULES OF THUMB:**

1. If it is actually entertaining to someone over the age of 10, it's probably illegal.
2. Or, as our own Lt. Steve Myers so poignantly stated to the High Point Enterprise this week: "I guess the rule of thumb is, if they explode, they're illegal." Don't believe me – see for yourself at <http://hpe.southernheadlines.com/index.cfm?section=6&story=2332>

Have a great Independence Day!

**Brian T. Beasley**

Police Attorney

High Point Police Department