

Chapter 5

GENERAL OFFENSES

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Section 5-1 Noise Generally.

No person may authorize or cause to be emitted from any property or source under his control any unreasonably loud noise or any noise that is unreasonably disturbing to persons who (i) if the noise emanates from a source located on private property, are located on other property, or (ii) if the noise emanates from a street or other public property, is located on private property or the street or other public property.

Section 5-2 Particular Noise.

The following are declared to be illustrations of noise prohibited under the foregoing section, and are hereby declared to be unlawful, but this list shall not be exhaustive:

- 1) The blowing of a horn on any motor vehicle (as defined in Section 6-1 of this code) except when the horn is used as a warning device.
- 2) The operation of any motor vehicle (as defined in Section 6-1 of this code) without a muffler or with a muffler that is so defective or so designed that the vehicle emits an unusually and unreasonably loud noise.
- 3) The operation of a motor vehicle (as defined in Section 6-1 of this code) so as to create unusually and unreasonably loud noise through the screeching of tires or racing of engines.
- 4) The playing of any radio, television, tape recorder, phonograph or similar electronic devise or any musical instrument so as to disturb substantially

the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theatre, library, or other similar place of assembly.

Section 5-3 Discharge of Firearms and Air Rifles.

- a) Subject to subsection (b), no person may discharge within the town any firearms, air rifles, air pistol, B-B gun, pellet gun, pump gun or similar weapon.
- b) Subsection (a) shall not apply to private citizens acting in justifiable self defense or pursuant to the lawful directions of a police officer nor to police officers acting in a lawful performance of their duties.

Section 5.4 Juvenile Protection (Amended 3/11/14)

(A) PURPOSE

The purpose of this ordinance is to:

- (1) protect juveniles from improper influences that prevail after the restricted hour.
- (2) protect juveniles from criminal activity that occurs after the restricted hour.
- (3) protect the public from the illegal acts of juveniles committed after the restricted hour.
- (4) help parents control their children.

(B) DEFINITIONS

For the purposes of this ordinance, the following words and phrases shall have the following meanings:

- (1) DIRECT ROUTE: The shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.
- (2) EMERGENCY: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, and automobile accident or any situation requiring immediate action to prevent serious bodily injury or death. This term shall also include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile regardless of whether the juvenile's action is taken in order to prevent death or serious bodily injury.
- (3) ESTABLISHMENT: Any privately owned place of business operated for profit to which the public has access or is invited including but not limited to any place of amusement or entertainment.

- (4) GUARDIAN: A person who is court-appointed to be the caregiver of a juvenile.
- (5) JUVENILE: Any person under the age of 18 years.
- (6) OWNER / OPERATOR: Any individual, firm, association, partnership or corporation, operating, managing or conducting any establishment, including the employees, members, partners of an association or partnership and the officers of a corporation.
- (7) PARENT: A person who is a natural parent, adoptive parent, foster parent or step-parent of another person, or a person to whom legal custody has been given by court order.
- (8) PUBLIC PLACE: Any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including but not limited to, streets, sidewalks, highways, alleys, rights of way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.
- (9) REMAIN: To linger or stay in a public place, or fail to leave the premises when requested to do so by a police officer, or fail to leave the premises of an establishment when requested to do so by the owner / operator or employee of the premises.
- (10) RESTRICTED HOURS: The time of night referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed at that hour by the public in the Town of McAdenville, North Carolina. Restricted hours shall mean:
  - (a) 11:00 P.M. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00A.M. of the following day; and
  - (b) 12:00 A.M. until 6:00 A.M. on any Friday or Saturday.

(C) OFFENSES

Except as provided by subsection (d), the following offenses constitute a violation of this ordinance:

- (1) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the Town during the restricted hours.

- (2) A parent or guardian of a juvenile commits an offense if he/she knowingly permits, or by insufficient control, allows the juvenile to remain in any public place or on the premises of any establishment within the Town during the restricted hours. The term “knowingly” includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent/guardian’s legal custody. This requirement is intended to hold a neglectful or careless parent/guardian up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- (3) The owner / operator or employee of an establishment commits an offense if he/she knowingly allows a juvenile to remain upon the premises of the establishment during the restricted hours. The term “knowingly” includes knowledge that an owner / operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for “knowingly” shall be applied through an objective test: whether a reasonable person in the owner / operator’s or employee’s position should have known that the patron was a juvenile in violation of this ordinance.
- (4) It shall be a violation of this ordinance for any person 16 years of age or older to aid or Abet a juvenile in the violation of subsection (C) (1).
- (5) It shall be a violation of this ordinance for a parent or guardian to refuse to take custody, during the restricted hours, of a juvenile for whom the parent or guardian is responsible.

(D) EXCEPTIONS

A juvenile who is in a public place or establishment during the restricted hours shall not be in Violation of this ordinance if:

- (1) accompanied by his parent or guardian.
- (2) accompanied by an adult of age 18 or older authorized by the parent or guardian of such juvenile to take the parent or guardian’s place in accompanying the juvenile for a designated period of time and purpose within a specified area.
- (3) on an errand, using a direct route, at the direction of the juvenile’s parent or guardian until the hour of 12:30 A.M.
- (4) in a motor vehicle with parental consent engaged in interstate travel through the Town or originating or terminating in the Town.
- (5) traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult 18 years of age or older authorized by the parent or

guardian of such juvenile to take parent or guardian's place in accompanying the juvenile for a designated period of time and purpose with a specified area.

- (6) engaged in a lawful employment activity, or using a direct route to or from a place of employment.
- (7) reacting or responding to an emergency.
- (8) attending or traveling to or from, by direct route, an official school, religious or recreational activity that is supervised by adults and sponsored by a public or private school, the Town of McAdenville or other government entity, a civic organization or another similar entity that accepts responsibility for the juvenile.
- (9) exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly.
- (10) married or emancipated.
- (11) when authorized, by special permit from the Chief of Police or his designee carried on the person of the juvenile thus authorized, as follows. When other provisions of this ordinance may inadequately provide for necessary nighttime activities of a juvenile, then the parent(s) or guardian(s) of the juvenile(s) shall contact the Chief of Police, or his designee, either for a regulation as provided in subsection (d) (12) or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile, and the parent or guardian of the juvenile, if feasible, stating (1) the name, age and address of the juvenile; (2) the name, address and telephone number of the parent or guardian of the juvenile thereof; (3) the height, weight, sex, color of eyes and hair and other physical characteristics of the juvenile; (4) the necessity that requires the juvenile to remain upon a public place during the restricted hours unless otherwise applicable; (5) the public place; and (6) the beginning and ending of the period of time involved by date and hour, the Chief of Police or his designee may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the Chief of Police, or his designee, may be necessary and consistent with the purposes of this ordinance.
- (12) when authorized, by regulation issued by the Chief of Police or his designee in other similar cases of reasonable necessity, similarly handled as set forth in subsection (d) (11) but adapted to reasonably necessary nighttime activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police or his designee permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through agencies such as the schools. The regulation shall define the activity, the scope of the use of the

public places permitted, the period of time involved not to extend more than one (1) hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this ordinance.

**(E) DEFENSE**

It is a defense to prosecution under subsection (c) (3) that the owner / operator or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

**(F) ENFORCEMENT**

(1) Before taking any enforcement action under this ordinance, a police officer shall ask the apparent offender's age and/or date of birth and reason for being in the public place or establishment during the restricted hours.

(2)The officer shall not prepare a juvenile contact report, issue a citation, or make an arrest under this ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no exception or defense in subsection (d) or (e) is present.

**(G) PENALTIES**

(1) A juvenile who violates any provision of this ordinance is subject to being adjudicated delinquent. The Court may, in its discretion, impose any dispositional alternative(s) that are provided in the North Carolina Juvenile Code for any juvenile who is delinquent.

(2) Any person other than a juvenile who violates any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100.00, and imprisonment in the discretion of the court in accordance with N.C.G.S. 14-4.

**(H) SEVERABILITY**

If any section, subsection, sentence, term, or exception of this ordinance, or any application thereof to any person or circumstances is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of any remaining portion of this ordinance or its application to any other person or circumstance. The Town Council does not intend a result through the enforcement of this ordinance that is absurd, impossible of execution or unreasonable. The Town Council intends that the ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of North Carolina or under the Constitution of the United States of America.

Section 5-5 Reserved

Section 5-6 Peddlers, Solicitors and Vendors.

a) Definitions. For the purpose of this ordinance the following terms shall have the meanings respectively ascribed:

(1) Peddler – Any person who transports goods from place to place and sells or offers for sale such goods, or who, without traveling from place to place, sells or offers for sale any goods from any vehicle or device, provided, that any person who separates the acts of sale and delivery for the purpose of evading the provisions of this ordinance shall be deemed a peddler.

(2) Solicitor – Any person who travels from place to place taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future whether or not samples are displayed or money is collected in advance, and any person who uses or occupies any building or premises for the sole purpose of taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advanced.

(3) Transient Vendor – Any person who engages in a temporary business of selling and delivering goods and who, for this purpose, uses or occupies any building or premises; provided, that no person shall be relieved from complying with the provisions of this section merely by conducting a transient business in association with any permanently established merchant.

b) In order to protect the public health, safety and welfare, it shall be unlawful for a peddler, solicitor, or transient vendor, as defined by Section 5-6 subsection (a) of this ordinance, to engage in such business within the Town of McAdenville without first obtaining a permit therefore in compliance with the provisions of this ordinance.

This ordinance does not apply to any McAdenville community oriented, non-profit organization that may sell or offer to sell goods in the Town of McAdenville.

c) Each and every person doing business in the Town of McAdenville as a peddler, solicitor or transient vendor shall file with the town clerk, on a form to be provided for this purpose an application for a permit, which shall contain the following information:

- 1) Name and address of individual filing application;

- 2) Name and address of principal or employer if applicant is an agent or employee;
- 3) Credentials showing relationship of agent or employee;
- 4) Description of applicant including height, weight, sex, age, race and distinguishing characteristics, if any;
- 5) The goods to be sold or offered for sale, or the type of services to be rendered;
- 6) The period of time during which the business will be carried on in the town;
- 7) Description of automobile or other vehicle to be used in the business, including the make, model, body style, color and license number;
- 8) Whether or not the applicant, his principal or employer, or any other person having management or supervision or the applicant's business has been convicted of a crime, the nature of the offense, and the punishment assessed therefore; and
- 9) Such other information as to the identity of the applicant or the nature of his business as the town clerk may deem proper to protect the public health, safety and welfare.

d) Upon receipt of an application, the town clerk shall cause to be made such investigation of the applicant's moral character and business responsibility as is necessary to protect the public health, safety and welfare. If as a result of this investigation, the character and responsibility of the applicant appear to be unsatisfactory, the application shall be denied. If, as a result of this investigation, the character and responsibility of the applicant appear to be satisfactory, the town clerk shall issue a permit providing that the applicant complies with subsection (e) and (g) of this ordinance.

e) Before any permit is issued under this ordinance, the applicant must file with the town clerk a bond, executed in favor of the town by a corporate surety licensed under the laws of North Carolina to execute such bonds, in the amount of \$1,000.00, conditioned that the applicant will for a period of twelve (12) months refund all money paid to the applicant by a purchaser of goods or services if the goods or services are not delivered or provided in accordance with the terms of the contract of purchase, whether such contract be oral or written; and refund all money paid to the applicant by purchaser if the goods or services purchased are not of the kind and quality promised by the applicant in the contract of purchase, whether such contract be oral or written.



f) The town clerk shall, in addition to the permit issued under subsection (e) issue to each successful applicant a badge which shall be substantially in the following form:

Town of McAdenville, N. C.	No. _____
<b>SOLICITOR'S BADGE</b>	
_____ (name) has registered with the town clerk as required by ordinance.	
_____ (date)	_____
	Town Clerk

During the time the applicant is engaged in the business of a peddler, solicitor, or transient vendor, this badge shall be worn on the front of his outer garment in such manner as to be conspicuous.

g) The town clerk shall charge and collect a fee of twenty-five (\$25.00) dollars in order to recover the administrative costs of processing each application for a permit.

Section 5-7 Posting of Signs on Municipal Property Prohibiting the Carrying of Concealed Weapons.

Chapter 398 of the 1995 Session Laws made changes to the law governing concealed weapons by establishing a system that will allow private citizens to obtain permits to carry concealed handguns. This change will significantly increase the number of individuals who may legally carry concealed handguns. It is necessary to restrict the carrying of concealed handguns on certain town property in order to protect the health and safety of municipal employees and the community at large. N.C.G.S. 14-415.23 authorizes municipalities to adopt ordinances to permit the posting of a prohibition against carrying a concealed handgun, in accordance with N.C.G.S. 14-415.11(c), on local government buildings, their appurtenant premises and parks; and it is the intent of this ordinance to direct the posting of municipal property such that, pursuant to N.C.G.S. 14-415.11(c), the carrying of concealed handguns on the posted premises will constitute a violation of N.C.G.S. Chapter 14, Article 54B. Therefore, be it ordained by the Town of Council of the Town of McAdenville, North Carolina, that:

- 1) Posting of Signs Required.  
The Town Clerk is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within the following municipal

property, indicating that carrying a concealed handgun is prohibited therein:

- a) Town Hall at 129 Main Street, McAdenville
- b) Municipal Building at Wesleyan Drive, McAdenville

2) Location of Signs.

Signs on buildings shall be visibly posted on the exterior or each entrance by which the general public can access the building. The Clerk shall exercise discretion in determining the number and appropriate location of signs to be placed on or within appurtenant premises.

3) Severability; Conflicts of Laws.

If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to that end the provisions of this ordinance are declared to be severable. All ordinances or parts or ordinances in conflict with this ordinance are hereby repealed.

4) Effective Date.

This ordinance shall be effective on and after December 1, 1995 and adopted this 14<sup>th</sup> day of November, 1995.

Section 5-8 Smoking and Use of Tobacco Products in Municipal Buildings and Vehicles.

1) Definitions.

- a) "Smoking" shall mean the inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette or other combustible tobacco product.
- b) "Using Tobacco Products" shall mean using any form of tobacco that is not combustible, including chewing tobacco, dipping snuff, and inhaling snuff.

2) Smoking and Using Tobacco Products Prohibited in Municipal Buildings.

It shall be unlawful for any person to smoke or use tobacco products in any building or facility or portion of a building or facility now or hereafter owned, leased, operated, occupied, managed or controlled by the Town of McAdenville.

3) Smoking and Use of Tobacco Prohibited in Municipal Vehicles.

It shall be unlawful for any person to smoke or use tobacco products in any vehicle now or hereafter owned or leased by the Town of McAdenville.

- 4) Penalty.  
Violation of this ordinance shall subject the offender to a civil penalty in the amount of \$50.00 to be recovered by the Town. Violators shall be issued a written citation which must be paid to the Town of McAdenville within 48 hours. Violation of this ordinance shall not constitute a misdemeanor or infraction punishable under N.C.G.S. 14-4.
- 5) Conflict of Laws.  
If any portion of this ordinance or the enforcement there of is found to be preempted by state or federal law, such preemption shall not operate to invalidate the rest of the ordinance and the same shall remain in full force and effect. All ordinances or parts of the ordinance in conflict with this ordinance are hereby repealed.
- 6) Effective Date.  
This ordinance shall be effective October 1, 1993.

Section 5-9 Consumption of Alcoholic Beverages.

- 1) Drinking in Public Places.  
No person shall consume, serve, or drink wine, beer, whiskey, or other alcoholic beverages of any kind in the public streets, boulevards, alleys, parks, sidewalks, or public buildings within the Town of McAdenville.
2. Penalty.  
Violation of this ordinance shall be a misdemeanor punishable on conviction by cost of Court and a fine not exceeding fifty dollars (\$50.00) or by imprisonment not exceeding thirty (30) days.
- 3) Effective Date.  
This ordinance shall be in full force and effect from and after its adoption.

Sections 5-10 through 5-18 Reserved.

Section 5-19 Operation of Unmanned Aircraft (Drone)

No person may, during the month of December, launch, land or operate any unmanned aircraft system (UAS) from within the Town Limits of McAdenville.

Section 5-20 Penalties and Remedies.

A violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable as provided in N.C.G.S. 14-4.

a) A violation of any of the provisions of this chapter shall also subject the offender to a civil penalty of twenty-five (\$25.00) dollars. If a person fails to pay this penalty within ten days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt.

b) The town may seek to enforce this chapter through any appropriate equitable action.

c) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.

d) The town may seek to enforce this chapter by using anyone or a combination of the foregoing remedies.