

**GATES COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
JANUARY 19, 2011**

The Gates County Board of Commissioners met in Regular Session on Wednesday, January 19, 2011 at 7:00 p.m. in the main court room, 202 Court Street, Gatesville. Commissioners Twine, Jernigan, Hora, Owens and Jordan were present. Also present was County Manager, Toby Chappell.

A prayer was led by Rev. William Wiggins. Commissioner Twine led the pledge of allegiance.

Commissioner Twine called the meeting to order.

Approval of Agenda

Chairman Twine stated the following needed to be added to the Agenda: A New Business section will be added with the discussion of appointments to the Board of Adjustment and the ABC Board.

Commissioner Jordan made a motion to accept the Agenda with additions. Commissioner Jernigan seconded the motion, motion carried without opposition.

Old Business

Commissioner Jordan discussed the changes to the Proposed Noise Ordinance.

Commissioner Jordan made a motion open the Public Hearing on the Proposed Noise Ordinance. Commissioner Owens seconded the motion, motion carried without opposition.

Linda Warren, Gates, spoke in support of having a strong noise ordinance in force to aid in the support against OLF.

J. E. Harrell, Gates, supported having a strong noise ordinance in the County.

Wade Askew, Eure, questioned if agriculture and forest equipment have been removed from the noise ordinance.

Commissioner Jordan replied that agriculture and forest equipment would be exempt.

Danny Byrum, Gates, stated the County as we know it will never be the same if there is an outlying landing field nearby.

Joe Greene, Eure, stated he previously in Virginia near Oceana and had experienced jets on a daily and nightly basis; an outlying landing field will change your way of life.

Commissioner Jernigan made a motion to close the Public Hearing. Commissioner Owens seconded the motion, motion carried without opposition.

Mr. Chappell stated the County's attorney had a concern with Section 7.5.b. Violations: Officer provides intermediate noise protection/abatement when necessary and intermediate inclusiveness/identification of the types of prohibited noises observed; and Section 7.(b)(2) Penalties: The County Commissioner, or his or her designee,...

Commissioner Jordan made a motion to strike a portion of Section 7.5.b in the Proposed Noise Ordinance as discussed. Commissioner Hora seconded the motion, motion carried without opposition.

Commissioner Jordan made a motion to change the text in Section 7.(b)(2) to read: The County Commissioners, or their designee,... . Commissioner Jernigan seconded the motion, motion carried without opposition.

Sheriff Webb stated he was in support of the Proposed Noise Ordinance.

Commissioner Jordan made a motion to accept the Proposed Noise Ordinance as modified. Commissioner Jernigan seconded the motion, motion carried without opposition.

The Noise Ordinance reads as follows:

AN ORDINANCE TO REGULATE LOUD, DISTURBING NOISE IN GATES COUNTY

Be it ordained by the Board of Commissioners of the County of Gates by authority of the North Carolina General Statutes 153A-122 and 153A-133, that on and after January 19, 2011, this Ordinance as set forth herein shall be in full force and effect according to the authority granted under the North Carolina General Statutes aforementioned within any unincorporated part of Gates County and within any incorporated city which adopts this Ordinance pursuant to the authority granted under North Carolina General Statute 153A-122.

Section 1. Definitions

In addition to the common meaning of words, the following definitions shall be used in interpreting this article.

ANSI standards: American National Standards Institute (ANSI) Publication ANSI, S1.4-1997 or the latest approved version thereof.

"A" weighting scale: The sound pressure level in decibels as measured with a sound level meter using the "A" weighted network (abbreviated as "dB(A)"), as defined by the ANSI Standards. "A" weighting de-emphasizes the very low and very high frequency components of sound in a manner similar to the response of the human ear.

Community Noise Equivalent Level (CNEL) measurements: CNEL measurement are a weighted average of sound levels gathered throughout a 24-hour period.

dB(A): Sound level in decibels determined by the "A" weighting scale.

Decibel: A unit of or level used to measure sound intensity, equal to the logarithm of the ratio of the intensity of the sound to a reference pressure.

Impact sound: Sound that occurs intermittently rather than continuously.

Motor vehicle: Any motor vehicle as defined by G.S. 20-4.01(23), or its successor statute.

Noise: Includes any sound or source of sound prohibited by Section 4 of this article, or any unreasonably loud and disturbing noise as defined herein and prohibited by Section 3(a), or any sound that exceeds the maximum permissible sound levels set by Section 3(b) of this article and measured as set forth in Section 2 of this article.

Person: Any individual, association, firm, partnership, corporation or business entity.

Receiving land: Property that receives the transmission of noise or other sound that is generated on other property.

Amplified: Any increase of sound by the use of mechanical or electronic equipment.

Sound level: In decibels, a weighted sound pressure level on the "A" weighting scale determined by the use of a sound level meter whose characteristics and frequency weightings are specified in the ANSI standards.

Sound level meter: Any type three instrument certified to meet or exceed ANSI standards, which includes an omni-directional microphone, an output meter and frequency weighting network(s), and other mechanisms for the measurement of sound level.

Unreasonably loud and disturbing noise: Any sound which is substantially incompatible with the time and location where created, and which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the receiving land. The following factors incident to unreasonably loud and disturbing noise shall be considered: time of day; proximity to residential structures; whether the sound is recurrent, intermittent or constant; the volume and intensity; whether the sound has been amplified in volume or range; the character and zoning of the area, including the receiving land; whether the sound is related to recreational or utilitarian activities normally associated with the use of property or the normal operation of a business or other labor activity; whether the sound is subject to being controlled without unreasonable effort or expense to the creation thereof.

Section 2. Sound measurement standards

- (a) Daily noise levels will be evaluated using the Community Noise Equivalent (CNEL) noise measurement, a cumulative weighted sound level averaged over a 24 hours period. Under this measurement, a 10 dB penalty is added for events from 10:00 PM to 7:00 AM and a 5 dB is added for events from 7:00 PM to 10:00 PM. Single noise events will be evaluated using the Sound Exposure Level (SEL) noise measurement, which represents both intensity and duration of the event.
- (b) Standards, instrumentation, and measurement procedures to be used in the measurement of sound as provided for in this article are as follows:
- (1) Sound level measurement shall be made with a sound level meter using the "A" weighting scale set on "slow response," except for measurements of impact sound, which shall be measured using the fast response of the sound level meter.
 - (2) The entire sound measurement system shall be serviced and operated as recommended by the manufacturer. Any officer authorized to enforce this ordinance shall be trained in the use of sound level measurement and the operation of sound level meters.
 - (3) Except in cases where noises are emanating from within multi-family structures and the complainant is a resident of the same multi-family structure, noise measurements shall be taken at the corner of the primary structure of the complainant nearest the noise source but when this location is not practical noise measurements shall be made at the boundary of the public or private right-of-way which adjoins the complainants' property.
 - (4) In the case of noises emanating from within a multi-family structure and where a complainant is a resident of the same multi-family structure, noise measurements shall be made in the unit of complainant at a height of at least four feet above the floor and at a point approximately equidistant from all walls.
 - (5) No individual other than the officer operating the meter shall be within ten feet of the meter during the sample period.
 - (6) The meter shall be calibrated immediately before use and recalibrated after use.
 - (7) The officer operating the meter shall face the noise source and record the meter's instantaneous response observed at consecutive ten second periods. The sound meter operator may cease taking readings as soon as the readings already taken show a violation of this article. Readings above the allowed decibel limits attributed to the sound source or sources shall constitute prima facie evidence of a violation of the maximum permissible sound levels set in this article.
- (c) Sound measurement standards will be implemented when authorized by the Gates County Board of County Commissioners at a later date.

Section 3. Maximum permissible standards

- (a) It shall be unlawful for any person to make, create, permit, or to continue any source of unreasonably loud and disturbing noise in Gates County, that is not excluded in Section 5., as determined by the Gates County Sheriff's Department, based on physical sense perceptions and observations at the time of such occurring.
- (b) Any continuous, regular, frequent, or intermittent source of sound produced by any activity shall be limited to the following maximum permissible sound levels:
- (1) The maximum noise level associated with any single daytime event shall not exceed 100 db SEL.
 - (2) The maximum noise level associated with any single nighttime event shall not exceed 70 dB SEL.

Section 4. Specific prohibitions

It shall be unlawful to carry on the following activities in any part of the unincorporated areas of Gates County that is zoned for residential use, or within 300 feet of any structure used as a residence (other than the residence of a person involved in the activity) in an unincorporated area of Gates County regardless of its zoning classification:

- (1) Any unreasonably loud disturbance occurring during regular church service hours.
- (2) Operate or permit the operation of any recreational motorized vehicle between the hours of 10:00 p.m. and 7:00 a.m., if the vehicle is being driven off-road for racing. This section shall apply to all noncommercial off-road racing of

recreational motorized vehicles, whether or not self-propelled or duly licensed or registered, including racing vehicles, motorcycles, go-carts, snowmobiles and motor boats except when any of the foregoing is operated in association with hunting or fishing, or at permitted commercial racetracks or other permitted commercial use of property.

(3) Using the compression release engine or transmission breaking system of motor vehicles between the hours of 9:00 p.m. and 8:00 a.m. in nonemergency circumstances.

(4) Airspace activity exceeding a daily average noise level of 65 dB CNEL. Safe aircraft takeoff and landing shall only include takeoff and landing operations in the normal course of commercial or private flights, and shall not include any noise associated with Field Carrier Landing Practice.

Section 5. Exceptions

The following are exempt from the provisions of this article:

(1) Construction operations from 7:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends for which any required building permits have been issued, provided all equipment is operated according to the manufacturers' specifications and with all standard equipment, manufacturers' mufflers and noise reducing equipment are in use and in proper operating condition.

(2) Noises of safety signals, warning devices, emergency pressure relief valves and church bells or chimes.

(3) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.

(4) Non-amplified noises at street activity (such as fairs or parades) where the participants have a permit, if a permit is required by law for such activity.

(5) Agricultural and forestry operations and the like shall not constitute a nuisance, and thus shall not be subject to the requirements of this ordinance, except when a nuisance results from negligence or improper operation of any agricultural or forestry equipment or its appurtenances.

(6) All noises coming from normal operation of motor vehicles, in good working order and in constant operation, including noises coming from compression release engine or transmission breaking systems when used in emergency circumstances.

(7) Noise from lawful fireworks and noisemakers on holidays.

(8) Lawn mowers, chainsaws and other landscaping equipment used between 7:00 a.m. and 11:00 p.m. when operated with all the manufacturers' standard noise reducing mufflers in use and in proper operating condition, or at any time when used under emergency circumstances.

(9) Non-amplified crowd noise at regularly scheduled athletic events at county parks, and public or private schools.

(10) Non-amplified speeches made from a fixed location in nonresidential property.

(11) Trains and associated rolling stock.

(12) Sound or noise emanating from construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission.

(13) Blasting, but only as permitted by state law and county regulations.

(14) Commercial race tracks, as permitted by state law and county regulations.

(15) Discharge of firearms, but only as permitted by state law and county regulations.

(16) Refuse and recycling collection vehicles when operated between the hours of 6:00 a.m. and 9:00 p.m. according to the manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition.

(17) All noises coming from the aerial application of pesticides for purposes of agriculture.

(18) All noises coming from the use of private electrical generators.

Section 6. Burden of proof regarding exceptions

In any proceeding based upon this article, if an exception stated in this article would limit obligation, limit liability, or eliminate either an obligation or liability, the person whom would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

Section 7. Violations and penalties

(a) *Violations.*

(1) The Gates County Sheriff shall be responsible for the enforcement of this article, including responding to complaints concerning possible noise, such as specifically prohibited noise and unreasonably loud and disturbing noise, determining noise level violations of this article and issuing of warnings or notices as provided for in this article.

(2) Upon his or her determination that there is probable cause to believe that a violation of this article has occurred, the Gates County Sheriff shall determine the source of the noise and the person responsible for it and promptly notify the person responsible for the noise of the fact that a violation has occurred.

(3) Any person or persons violating this article shall be first warned of the unlawfulness of such noise activity and be given a reasonable opportunity to peacefully disperse, discontinue or to abate such noise condition prior to being subject to further enforcement action.

(4) Failure on the part of the person or persons responsible to timely comply with the sheriff's directive to eliminate the violation or to otherwise abate the violation, after notification, shall constitute a violation of this article.

(5) An arrest, citation or complaint for the violation of any part of this article must be based on probable cause arising from objective evidence of the following:

a. A specifically prohibited noise identified in Section 4; and/or

b. Physical sense perceptions and observations of unreasonably loud and disturbing noise as defined in, and proscribed in Section 3(a), at the time and place such is occurring; (Officer provides intermediate noise protection/abatement when necessary and intermediate inclusiveness/identification of the types of prohibited noises observed) and/or

c. Noise that exceeds the maximum permissible sound levels prescribed in Section 3(b) of this article; and/or

d. Noise that violates any combination of the foregoing.

(6) For purposes of this article the "Gates County Sheriff" shall include the Sheriff and any Deputy Sheriff of Gates County.

(b) *Penalties.*

(1) Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than fifty dollars (\$50.00) or imprisonment of not more than thirty (30) days, as provided by General Statute 14-4. *The County may as a first remedy issue a civil fine of \$50.00 for a noise nuisance violation.*

(2) The County Commissioners, or their designee, shall be authorized to assess civil penalties under this article and shall make written demand for payment upon the person responsible for the violation and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 60 days after demand for payment is made, the matter shall be referred to the county attorney for institution of a civil action in the name of the county in the appropriate division of the General Court of Justice of Gates County for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this article.

(3) No provisions of this Ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, or any person, for injury or damage to person or property, arising from violation of this Ordinance, or arising from sound crossing a property boundary which does not violate this Ordinance.

(4) If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or in any circumstance shall be held to be invalid, such invalidity shall not affect the validity of the other provisions or applications of this Ordinance as a whole or of any part, sub-part, sentence, or clause thereof not held to be invalid, and to this end the provisions of this Ordinance are hereby declared to severable.

(c) *Injunction.* Any person or entity who violates any provision of this article shall be subject to a temporary or permanent injunction until such time as the person or entity is no longer in violation of this article.

This Revised Noise Ordinance shall be in full force and affect, as provided therein, from this the 19th day of January 2011.

This is to certify that this is a true and accurate copy as such appears in the Gates County Register of Deeds Book _____ Page _____.

This the 19th day of January, 2011.

(ATTEST)
Commissioners

Graham L. Twine, Chairman
Gates County Board of

Diane R. Hendrix, Clerk

Colleen Turner, DSS Director, in the absence of Debra Sheard, Albemarle Commission Area Agency on Aging Ombudsman Program, recommended to appoint Mildred Hawkins and Ricky Perry, Jr. to the Gates County Nursing Home Community Advisory Committee.

Commissioner Jordan made a motion to open the nominations to the Nursing Home Community Advisory Committee. Commissioner Jernigan seconded the motion, motion carried without opposition.

Commissioner Jordan nominated Mildred Hawkins and Ricky Perry, Jr. to serve on the Nursing Home Advisory Committee.

Commissioner Owens made a motion to close the nominations. Commissioner Hora seconded the motion, motion carried without opposition.

The Board voted unanimously to appoint Mildred Hawkins and Ricky Perry, Jr. to the Gates County Nursing Home Community Advisory Committee to fill the unexpired terms of Gwen Lassiter and Mary Love Lilley. The new appointees' terms will expire September 30, 2011.

New Business

Chairman Twine stated there was a vacancy on the Board of Adjustments created by the resignation of Paulette Wester.

Commissioner Jernigan made a motion to open the nominations for the Board of Adjustments vacancy. Commissioner Jordan seconded the motion, motion carried without opposition.

Commissioner Hora nominated Lawrence Riddick. Commissioner Twine nominated David Boyce.

Commissioner Owens made a motion to close the nominations for the Board of Adjustments vacancy. Commissioner Jernigan seconded the motion, motion carried without opposition.

Commissioners Jernigan, Hora and Jordan voted for Lawrence Riddick. Chairman Twine and Commissioner Owens voted for David Boyce. Lawrence Riddick was appointed to the Board of Adjustments by a majority vote.

Chairman Twine discussed the ABC Board members and lapsed terms. Mr. Chappell will research the appointment issue and report at the next Commissioners' Meeting.

Citizen Comments

J. E. Harrell, Gates, voiced his concerns: lack of information/updates on economic development, library project, repair of the courthouse roof, status of the old courthouse/library and the placement of items on the Commissioners' Meeting Agenda

Commissioner Comments

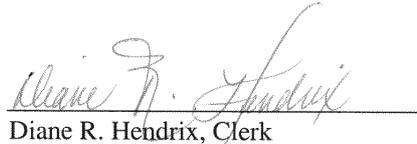
Commissioner Hora discussed: an analysis he has performed on the tax receivable file; he would like to empower the Tax Collector to more astringently pursue delinquent taxes; tax office computer server concerns, the proposed Hwy 13/158 Widening Project, economic development and pension for County employees.

Chairman Twine read a letter from the Gates County Republic Committee supporting freedom of speech and the right to appear before the Commissioners. He stated at the next Commissioners' Meeting and thereafter the Citizen Comments section will be placed at the beginning of the agenda and a more detailed agenda will be available to the public. He is working on the policy of how to be placed on the agenda and will have something more definite by the next meeting. He also would like to have a Commissioner liaison to the Planning Board.

Commissioner Jordan made a motion to adjourn. Commissioner Jernigan seconded the motion, motion carried without opposition.



Graham L. Twine, Chairman



Diane R. Hendrix, Clerk

GATES COUNTY BOARD OF COMMISSIONERS

