

ORDINANCE AMENDING AND RE-ENACTING

SECTION 15-3-2 and 15-3-3

OF THE CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

Be it ordained by the Council of the City of Harrisonburg, Virginia:

That Section 15-3-2 – Noise Violations; penalties be amended as shown:

Sec. 15-3-2. - Noise violations; penalties.

(a) *Declaration of findings and policy:* The city council hereby finds and declares that excessive noise is a serious hazard to the public health, welfare, peace and safety, and the quality of life. It is, therefore, the policy of the city and the purpose of this section to prevent such excessive noise.

(b) *Definitions:* {The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:}

City manager means the Harrisonburg City Manager or his/her designee.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Dwelling unit means a building or portion thereof designed or intended to be occupied as living quarters by one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Mass outdoor social gathering means a social event conducted outside or in a partially enclosed structure, on public or private land in the city to which one hundred (100) or more people are invited or expected to attend, as licensees, invitees, ~~or~~ trespassers, or as people who happen to show up, or ~~a~~ at which one hundred (100) or more people are actually in attendance. The term may also be referred to as "the event."

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Owner means the person owning, controlling, or possessing land, premises, or personalty.

Person means any individual, firm, owner, sole proprietorship, partnership, limited liability company, corporation, unincorporated association, governmental body, municipal corporation, executor, administrator, trustee, guardian, agent, occupant or other legal entity.

Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties, provided that a sound shall be determined to be audible even if specific words or phrases cannot be distinguished.

Property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one (1) person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

Residential area means any property zoned for residential use, whether or not exclusively.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Sound amplifying equipment means any machine or ~~device~~ device used for the amplification of the human voice, music, or ~~any~~ other sound. This term shall not include warning devices on authorized emergency vehicles, horns or other warning devices on other vehicles used only for traffic safety purposes.

(c) *Specific prohibitions:* It shall be unlawful for any person to cause or permit to be caused any of the following prohibited sounds or noises:

(1) ~~*Social gatherings and parties.* Allowing any noise between 10:00 p.m. and 7:00 a.m. generated from a gathering of ten (10) or more people that is plainly audible:~~

a. ~~Inside the confines of the dwelling unit, house or apartment of another person between 10:00 p.m. and 7:00 a.m.; or~~

b. ~~In a residential area, at 100 or more feet from the gathering, between 10:00 p.m. and 7:00 a.m. Large party nuisance. The creation of plainly audible sound that emanates from a gathering of ten (10) or more people, whether the gathering is completely contained within a structure or spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces, and is plainly audible across a property line, through partitions common to two (2) dwelling units within a building, or at a distance of one hundred (100) feet or more from its source and on property other than that which the sound originates.~~

(2) *Sound-producing and sound-reproducing devices.* Except for commercial establishments located in areas zoned ~~B8-1 or B8-2~~, the use, operation or playing of any radio, phonograph, television, record, compact disc, tape, digital music, MP3 or DVD player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound, regardless of whether such sound-producing or sound-reproducing machine or device is located inside of a structure or outside of or on a structure, in such a manner or with such volume or duration that it is plainly audible between 10:00 p.m. and 7:00 a.m.:

a. Inside the confines of the dwelling unit, house or apartment of another person ~~between 10:00 pm and 7:00 a.m.;~~ or

b. In a residential a areas, at one hundred (100) or more feet from the device, ~~between 10:00 p.m. and 7:00 a.m.~~

(3) *Noisy animals.* Allowing any animal to cause any sound or noise such that it is plainly audible:

a. Inside the confines of the dwelling unit, house or apartment of another person at least once a minute for ten (10) consecutive minutes; or

- b. At one hundred (100) or more feet from the animal at least once a minute for ten (10) consecutive minutes.
- (4) *Peddlers and hawkers.* Yelling, shouting, whistling, screaming or crying for the purpose of attracting attention to a performance, show, sale or display of merchandise between the hours of 10:00 p.m. and 7:00 a.m. on any public street, sidewalk or parking lot or any privately owned street, sidewalk or parking lot open to the public, except to summon aid in an emergency.
- (5) *Amplified sound from vehicles.* Playing, using or operating, or permitting the playing, use or operation of, any radio, stereo, tape player, compact disc player, MP3 player, loudspeaker or other electronic device or mechanical equipment used for the amplification of sound, which is located on or within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of fifty (50) feet or more. The provisions of this subsection shall not apply to the playing of music or jingles by an ice cream truck or similar mobile food service vehicle, provided such vehicle may emit sounds otherwise prohibited by this subsection only between the hours of 7:00 a.m. and 10:00 p.m.
- (6) *Lawn care activities.* Creating any sound or noise plainly audible in residential areas between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal or other landscaping, lawn or timbering activities. The provisions of this subsection shall not apply to sound or noise generated by the maintenance of recreational facilities such as golf courses and ball or playing fields.
- (7) ~~*Large party nuisance.* The creation of plainly audible sound that emanates from a gathering of ten (10) or more people where the gathering is not completely contained within a structure, but spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces and is plainly audible across a property line, or through partitions common to two (2) dwelling units within a building, or at a distance of one hundred (100) feet or more from its source and on property other than that which the sound originates.~~
- (7) ~~*Mass outdoor social gatherings.* Using or causing to be used sound amplifying equipment for the purpose of producing music or entertainment for a mass outdoor social gathering, in conjunction with a mass outdoor social gathering, unless such use is registered with the city manager, as provided in section 15-3-3.~~

Multi-family structures: In determining whether noise is plainly audible in subsections (c)(1), (c)(2), and (c)(3) above, in a structure used as a multi-family dwelling, the police department shall make such determination of noise from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession. Such determinations shall be made at a point at least four (4) feet from the wall, ceiling, or floor nearest to the noise source, with doors to the receiving area closed and windows in the normal position for the season.

- (d) *Maximum sound levels:* In addition to, and not in limitation of the specific prohibitions of section (c) above, no person shall operate or permit to be operated any noise source which generates a sound level exceeding the limits set forth in this subsection.
 - (1) *Nighttime.* No person shall permit, operate or cause any source of sound to create a sound level in excess of fifty-five (55) dBA when measured at or outside the property boundary between the hours 10:00 p.m. and 7:00 a.m.

- (2) *Daytime*. No person shall permit, operate or cause any source of sound to create a sound level in excess of sixty-five (65) dBA when measured at or outside the property boundary between the hours 7:00 a.m. and 10:00 p.m.
- (3) *Measurements in multifamily structures*. In a structure used as a multifamily dwelling the police department may take measurements to determine sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows in the normal position for the season.
- (4) *Exemptions*. The following activities or sources of noise shall be exempt from the prohibitions set forth in this chapter:
 - a. Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools.
 - b. Athletic contests and other officially sanctioned activities in city parks.
 - c. Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, including road construction and maintenance.
 - d. ~~Church bells~~ Bells or carillons.
 - e. ~~Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.~~
 - f. Activities for which the regulation of noise has been preempted by federal law.
 - g. Public and private transportation, refuse collection and sanitation services.
 - h. A special event that is conducted in accordance with a valid permit issued by the city in accordance with the city's special events regulations.
- (e) *Sound levels; restaurants*. No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during ~~the hours between 7:00 a.m. and 2:00 a.m.~~ operating in excess of ~~sixty-five~~ seventy-five (~~675~~) dBA when measured at or outside the property boundary.
- (f) *Sound level measurement*:
 - (1) The decibel level of any noise regulated by this section may be measured by the use of a sound level meter which measures sound pressure levels. Such measurements shall be accepted as prima facie evidence of the level of noise at issue in any court or legal proceeding to enforce the provisions of this chapter.
 - (2) The accuracy of the sound level meter may be tested by a calibrator. Any sworn report of the results of any test of the calibrator for the accuracy of a sound level meter shall be admissible in court in any criminal or civil proceeding, as evidence of the facts therein stated.
 - (3) An individual operating a sound level meter pursuant to the provisions of this section shall issue a certificate to indicate:
 - a. That the sound level meter used to take the decibel level reading was operated in accordance with the manufacturer's specifications;

- b. That the city has on file a sworn report which states that the sound level meter has been tested within the past twelve (12) months and has been found to be accurate;
- c. The name of the accused;
- d. The location of the noise;
- e. The date and time that the reading was made; and
- f. The decibel level reading.

Such certificate, when attested by the operator taking the decibel level reading, shall be admissible in court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading. A copy of the certificate shall be delivered to the accused upon request.

- (g) *Exceptions.* No provisions of this chapter shall apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work, including snow removal from roadways, or to any activities by governmental employees or agents related to public safety activities.
- (h) *Punishment.* Where no conviction under this section has occurred within the preceding three (3) years of the date of the offense, the defendant shall be convicted of a Class 4 misdemeanor. Any person convicted of violating this section twice within three (3) years shall be guilty of a Class 3 misdemeanor. Any person convicted of a violation of this section three (3) or more times within three (3) years shall be guilty of a Class 2 misdemeanor.
- (i) Each day a violation continues unabated shall count as a separate offense.

That Section 15-3-3 - Noise permit for use for mass outdoor social gathering be amended as shown:

Sec. 15-3-3. -~~Noise permit for use for mass outdoor social gathering.~~ Permit for use of sound amplifying equipment in connection with a mass outdoor social gathering.

- (a) No person shall operate, cause to be operated, or permit the operation on any land of which that person is an owner or on any land of which that person is in control, of any sound amplifying equipment in the city in connection with a mass outdoor social gathering; and no person shall sponsor a mass outdoor social gathering at which sound amplifying equipment is proposed to be used, or is used, unless a permit has first been obtained from the city for such use of sound amplifying equipment as provided in this section.
- (b) Persons applying for a permit under this section at least fifteen (15) days prior to the event shall file with the city manager an application, in writing, giving the following information, hereby ordained as substantive requirements of this section:
 - (1) Evidence of plans to mitigate and limit the sound from the mass outdoor social gathering, so that the effects of the excessive noise are minimized or eliminated;
 - (2) The name, address, and telephone number of the owner or owners of the site for the event;
 - (3) The name, local address, and telephone number of the sponsor or sponsors. ~~-and a copy of a form of identification issued by a government agency to the sponsor;~~

- (4) The name, local address, and telephone number of each contact person representing the sponsor or owner, or both, and a copy of a form of identification issued by a government agency of each contact person. Each contact person shall ~~who shall~~ be responsible for the event's compliance with this ordinance and the permit issued for the event, shall be physically present at the event, ~~and readily~~ available at the provided telephone number during the event and authorized to address problems related to the event that affect private citizens. If the event takes place at a residential property, at least one contact person shall be a resident of that property.;
 - (5) The proposed location of the event; the boundaries of the event site; a general description of the sound equipment to be used; and the land use characteristics of the area surrounding the site;
 - (6) The expected number of persons to attend the event;
 - (7) The date and beginning and ending times for the use of amplified sound, and the beginning and ending times of the event, which in both cases shall not precede 10:30 a.m. or exceed 10:00 p.m. of any day;
 - (8) Evidence that plans and provisions for the following have been addressed: Provision of at least one (1) toilet facility per fifty (50) people; sufficient refuse containers; and provision of ample, designated parking areas, or arrangement for transporting attendees to and from a remote parking area, or both, including if applicable, copies of written permission to use private property, not that of the owner of the site of the event or sponsor, for parking;
 - (9) Evidence that all city and state parking laws, and all city noise control laws, will be complied with;
 - (10) Evidence of plans to clean up the event site and surrounding area after the event no later than 11 a.m. on the date following the event;
 - (11) Evidence that notice of the event and names, telephone numbers, and addresses of the owner, sponsor and contact person have been given to representatives of any residential area that might be impacted by the mass outdoor social gathering.
 - (12) Evidence that the owner or sponsor has arranged for the presence of at least one monitor per fifty (50) people during the mass outdoor social gathering ~~of a sufficient (as determined by the city manager) number of monitors~~. The monitors shall aid the owner or sponsor in the resolution of any problems created by the event, including the conduct of objectionable activities by participants, and may report to the city police any violations of the law that may take place during the event. Nothing in this subparagraph shall afford the monitors city or other police powers or create an agency relationship between the city and the monitors. Monitors shall be acting for the owner or sponsor of the mass outdoor social gathering.
 - (13) Evidence that the sponsor and contact person have ~~has not been convicted of more than two (2) or more violations of this section or section 15-3-2, or a combination thereof, in the preceding twelve (12) months~~ ~~two (2) years~~, and that the site of the event has not been the subject of ~~more than two or more violations of this section or section 15-3-2, or a combination thereof, in the preceding twelve (12) months.~~
- (c) Upon receipt of a substantially completed registration form, as determined by the city manager, using the standards of this section, the city manager shall immediately accept in writing the application.

- (d) The city manager may review the application with the applicant to lessen, adjust, or accommodate to the peculiarities of the situation, but not increase, the requirements of this chapter, in order to achieve the goals and meet the standards of public safety, comfort, convenience, and welfare, by reducing or limiting excessive noise and other adverse effects from the mass outdoor social gathering. To this end, with the city manager's permission, the applicant may amend the applicant's application up to three (3) days prior to the event.
- (e) Upon the city manager's satisfaction that the applicant for the permit has met the standards of this section, the city manager on behalf of the city shall issue a written permit called for under this section to the applicant and shall send a copy of the permit to the city clerk for filing.
- (f) The applicant shall comply with the permit and with the terms of this chapter in the conduct of the mass outdoor social gathering and in the use of amplified sound for a mass outdoor social gathering. The permittee shall keep the permit in the permittee's possession during the mass outdoor social gathering and shall promptly display it to any police officer on request.
- (g) In case of emergency, or other circumstance calling for the immediate conduct of a mass outdoor social gathering, so that the fifteen-day deadline set out in subsection (b) cannot be met, the city manager may waive the deadline using the following standards, as applicable: the intensity or immediacy of the emergency or circumstance; lack of alternate means of applicants accomplishing these same goals by complying with the deadline; and avoidance of nullifying the deadline by a repeated course of conduct. The waiver shall be in writing, shall address these standards as applicable, and shall be filed in the office of the city clerk.
- (h) Penalties for violations of this section shall be set forth in section 15-3-2(h).

This ordinance shall be effective on the _____ day of _____, 2017

ADOPTED AND APPROVED this _____ day of _____, 2017.

MAYOR

ATTEST:

Deputy City Clerk

