ORDINANCE AMENDING SECTION

15-3-2

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 modified by amending subsections as shown:

(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:*

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 or more persons including permanent provisions for living, slepping, eating, cooking and sanitation.

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

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.

(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 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 am.

(2) Sound-producing and sound-reproducing devices. Except for commercial establishments located in areas zoned B-1 or B-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 residential areas, at 100 or more feet from the device between 10:00 p.m. and 7 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 consecutive minutes; or

b. At 100 or more feet from the animal at least once a minute for ten 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 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 between the hours of 10:00 p.m. and 7:00 a.m. that continues unabated for thirty (30) minutes or more, and emanates from a gathering of 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 feet (100') or more from its source and on property other than that which the sound originates.

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 section:

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. Gardening, lawn care, tree maintenance or removal and other landscaping activities.

e. Church bells or carillons.

f. Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.

g. Activities for which the regulation of noise has been preempted by federal law.

h. Public and private transportation, refuse collection and sanitation services.

i. 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. in excess of seventy-five (75) 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 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.

Adopted and approved this 12 day of August, 2014.

Ed Byrd
MAYOR

ATTESTE:

Erica S. Karn
CITY CLERK