



MEMORANDUM

TO: Kathleen Dooley, City Attorney
FROM: Rob Eckstrom, Assistant City Attorney
DATE: September 16, 2015
RE: Noise ordinance revisions

ISSUE:

What changes should City Council make to the noise ordinance to make it clearer and more effective?

RECOMMENDATION:

Council should delete the general prohibition on “unreasonable noise” and revise the prohibitions on specific types of sound, to:

1. Specifically prohibit yelling, shouting, and similar noise in the streets and on the sidewalks between 11 pm and 7 am.
2. Specifically prohibit noise generated by a person or group of people that is plainly audible at 100 feet from the boundary of the noise-generating property.
3. Expand the prohibition on stereos, TVs, musical instruments, loudspeakers, and similar devices plainly audible at 50 feet to apply 24 hours a day (except downtown, where it would apply from 11pm to 7 am on weekdays and 1 am to 7 am on weekends), and raise the distance to 100 feet.

The proposed noise ordinance is different in form from the ordinance presented to Council at its last work session. It deletes the current ordinance in its entirety and replaces it. The only substantive changes to the ordinance are those listed above. The rest of the change is to reorganize and clarify the existing content.

UPDATE:

The ordinance now retains the definition of ‘downtown business district’ (for noise ordinance purposes only) in the current ordinance, rather than the expanded definition presented for first read.

The ordinance also clarifies the terms ‘weekday’ and ‘weekend’ in §§ 38-36(A), (C1a), and (G).

Finally, the effective date of the ordinance has been changed from ‘immediately’ to October 15, to allow the Police Department to train officers on the changes.

BACKGROUND:

The City has recently heard a variety of complaints about the noise ordinance. Council directed staff to review the ordinance and recommend possible improvements. Fredericksburg Police Captain Brian Layton and I have reviewed the current ordinance, the complaints, recent citations and court

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dispositions of cases, the ordinances and practices of other localities, and possible revisions to the ordinance.

Current ordinance:

The current noise ordinance contains two types of prohibitions. The first is a general prohibition on “unreasonable noise.” It lists factors to consider when deciding whether noise is unreasonable, including the proximity of the sound to sleeping quarters, the land use/zoning of the area, ambient noise, the time of day or night, repetitiveness of the sound, and the duration, volume, and intensity of the sound.

The second is a list of prohibitions on specific loud noises. Some of these prohibitions only apply at certain times or if the noise is plainly audible at certain distances (50 feet, 100 feet, across residential property boundaries, etc.). The list includes noise from stereos, loudspeakers, musical instruments, motor vehicles (horns, engine noise, screeching tires), animals, construction, and refuse collection.

Complaints about the current ordinance:

Complaints about the current ordinance include:

- The general prohibition is too vague. What one person believes is reasonable differs from what another person believes is reasonable.
- The current ordinance is ineffective at addressing noise created by people at/leaving restaurants late at night.
- The current ordinance is ineffective at addressing loud motorcycles.
- The current ordinance is ineffective at addressing barking dogs.

Statistics (as of August 4):

Between January 1, 2013 and June 7, 2015, the Fredericksburg Police Department issued 64 citations for violations of the noise ordinance. Of those 64, the Fredericksburg General District Court found 5 guilty and 5 guilty in absentia, 3 defendants prepaid for the offense, 17 cases were deferred (the cases will be dismissed if the defendants don't violate again for a period of time), 3 were dismissed, and 7 were *nol prosequi*. 9 were found not guilty. 15 of the cases are still pending.

Of the 2015 charges, 7 were for loud music/people in residential areas (usually charged under the general prohibition). Four were charges for loud music at commercial establishments (specific prohibition). One was for a motorcycle revving its engine (specific prohibition). The FPD reports that the most common complaints are about parties in the College Heights area and loud music from restaurants at night, with less frequent complaints about barking dogs and motorcycles.

Recommended amendments:

The FPD reports that the current ordinance is effective at addressing motorcycles and barking dogs. Patrol officers have recently been made aware of complaints about motorcycles revving engines and playing amplified music (especially downtown) and will take appropriate action when they observe violations.

The recommended revisions to the ordinance focus on the general prohibition and the complaints about people at/leaving restaurants late at night.

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The Virginia Supreme Court ruled in 2009 that a noise ordinance based on a “reasonableness” standard is unconstitutionally vague.¹ The Supreme Court conceded that legislative bodies are “condemned to the use of words,” and that courts cannot require mathematical certainty in the drafting of legislation. Still, it concluded that an ordinance that prohibits “any unreasonably loud, disturbing, and unnecessary noise,” or noise that “disturbs or annoys the quiet, comfort, or repose of reasonable persons,” is impermissibly vague.

In response, Virginia local governments developed two alternative ways to regulate noise. One is the use of a decibel-based ordinance. The other is an ordinance based on a “plainly audible” standard. Nearly all localities in Virginia have since adopted noise ordinances based on one of these standards, or a combination of the two. In 2010, Fredericksburg adopted specific prohibitions on noise using the “plainly audible” standard or some other appropriate objective standard such as a duration limit on barking dogs or non-emergency alarms. The general prohibition continued, with the parameters as described.

Staff recommends that Council repeal the general prohibition and add additional specific prohibitions. The current list should be expanded to include offenses now covered only by the general prohibition. The FPD often issues noise violations based on specific prohibitions, and finds the specific prohibitions to be effective and easy to administer. To address complaints about the current ordinance, staff recommend two additions to the list.

One additional prohibition would be a ban on yelling and shouting in the streets or on the sidewalks. Staff recommends that this prohibition apply between 11 pm and 7 am, but it is within Council’s discretion to determine when the prohibition would apply. This would address the complaints about people at/leaving restaurants late at night.

The other prohibition would be on noise generated by a person or group of people on private property that is plainly audible at a certain distance. Staff recommends that the “plainly audible” distance be 100 feet from the boundary of the property on which the sound is located. This would help with the problem of late-night restaurant noise, and also help with enforcement of noise levels from loud parties. These specific recommendations are based on a survey of the ordinances of other localities—it is within Council’s discretion to modify them.

Staff also recommends modifying the current prohibition on stereos and other audio devices plainly audible at 50 feet between 11 pm and 7 am. The proposed ordinance has no time limitation (except for downtown). This change is to address loud parties during the day that are currently cited under the general prohibition. Because of the expansion of this prohibition, 50 feet should be increased to 100 feet. This also brings the distance into line with the distances listed in other specific prohibitions.

For reference, 50 feet is the distance from the Mayor’s seat to the back wall of Council Chambers.

FISCAL IMPACT:

None.

¹ *Tanner v. City of Virginia Beach*, 277 Va. 432 (2009).



September 22, 2015
Regular Meeting
Ordinance No. 15-__
Amended

MOTION:

SECOND:

RE: NOISE ORDINANCE:

- 1. REMOVING THE GENERAL PROHIBITION ON UNREASONABLE NOISE;**
- 2. ADDING A SPECIFIC PROHIBITION ON SHOUTING IN THE STREETS AND SIDEWALKS AT NIGHT;**
- 3. ADDING A SPECIFIC PROHIBITION ON NOISE GENERATED BY A PERSON OR GROUP THAT IS PLAINLY AUDIBLE AT 100 FEET; AND**
- 4. REMOVING HOUR-OF-DAY LIMITATIONS ON THE SPECIFIC PROHIBITION OF AUDIO DEVICES (EXCEPT FOR THE DOWNTOWN BUSINESS DISTRICT) AND INCREASING THE PLAINLY AUDIBLE STANDARD ON THAT PROHIBITION FROM 50 FEET TO 100 FEET.**

ACTION: APPROVED; Ayes: 0; Nays: 0

IT IS HEREBY ORDAINED by the Fredericksburg City Council that Chapter 38 of the City Code is amended as follows:

SEC. I. City Code Amendment.

1. Chapter 38. Environment, Article II. Noise, consisting of Sections

38-31. Short title and application of article generally.

38-32. Definitions.

38-33. Administration and enforcement of article.

38-34. Violations of article.

38-35. General prohibition.

38-36. Specific acts prohibited.

38-37. Exemptions from article.

38-38. Issuance of permits.

38-39 through 38-70. (Reserved)

is hereby repealed and replaced with the following:

§ 38-31. Short title and application of article generally.

This article is the "Noise Control Ordinance of the City of Fredericksburg." It is applicable to noise originating within the City and from City-owned lands located outside the City limits.

§ 38-32. Definitions.

Downtown business district. The area bounded by the Rappahannock River, Amelia Street, Prince Edward Street, and Lafayette Boulevard.

Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Motorcycle and motor vehicle. As defined in Code of Virginia § 46.2-100.

Plainly audible. Any sound that can be heard clearly by a person using his or her unaided hearing faculties, including understandable speech, comprehensible musical rhythms, melody, or instrumentation, and detectable rhythmic bass tones.

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

§ 38-33. Administration and enforcement of article.

A. This article shall be enforced by any law enforcement officer, as that term is defined in Code of Virginia § 9.1-101, with jurisdiction within the City limits.

B. If conduct which would otherwise constitute a violation of this article consists of speech or the communication of persons gathered to hear or observe speech or communication or to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious issues, then the violator must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or issuance of a citation under this article.

§ 38-34. Violations of article.

A. Any person who violates any provision of this article shall be guilty of a Class 3 misdemeanor.

B. The person operating or controlling a noise source shall be guilty of any violation caused by that source. If such person cannot be determined, then any owner, *manager*, tenant, or resident physically present on the property where the violation occurs shall be presumed guilty of the violation.

§ 38-36. Specific acts prohibited.

The following are per se violations of this article:

- A. Noise generated by a person or group of people that is plainly audible at 100 or more feet from the boundary of the property on which the source of the sound is located.

- a. In the downtown business district, this prohibition only *applies*:

Sunday	1 a.m. to 7 a.m. and 11 p.m. to midnight
Monday	Midnight to 7 a.m. and 11 p.m. to midnight
Tuesday	Midnight to 7 a.m. and 11 p.m. to midnight
Wednesday	Midnight to 7 a.m. and 11 p.m. to midnight
Thursday	Midnight to 7 a.m. and 11 p.m. to midnight
Friday	Midnight to 7 a.m.
Saturday	1 a.m. to 7 a.m.

- B. Yelling, shouting, screaming, or shrieking on the public streets or sidewalks that is plainly audible at 100 feet between 11:00 p.m. and 7:00 a.m.

- C. Musical instruments and electronic audio devices that are plainly audible:

1. 100 or more feet from the boundary of the property on which the sound source is located.

- a. In the downtown business district, this prohibition only *applies*:

Sunday	1 a.m. to 7 a.m. and 11 p.m. to midnight
Monday	Midnight to 7 a.m. and 11 p.m. to midnight
Tuesday	Midnight to 7 a.m. and 11 p.m. to midnight
Wednesday	Midnight to 7 a.m. and 11 p.m. to midnight
Thursday	Midnight to 7 a.m. and 11 p.m. to midnight
Friday	Midnight to 7 a.m.
Saturday	1 a.m. to 7 a.m.

2. 100 or more feet from the source of the sound when the source is located on a public street or sidewalk in the downtown business district.

- D. Motor vehicles.

1. Unnecessarily accelerating or decelerating quickly, revving the engine, or screeching tires.
2. Discharging exhaust except through an exhaust system in good working order and in constant operation to prevent excessive or unusual levels of noise. An exhaust system does not prevent excessive or unusual noise if it permits noise in excess of that

- permitted by the standard factory equipment exhaust system of private passenger motor vehicles of standard make.
3. Playing any audio device located within or on a motor vehicle, if the audio device is plainly audible at 100 or more feet from the vehicle. This prohibition does not apply to security alarms.
 4. Sounding a motor vehicle horn or similar signaling device for more than ten consecutive seconds, except as a safety measure.
- E. Any amplified sound, intended primarily for a non-emergency purpose, from a bell, chime, whistle, siren, or similar device, for more than ten consecutive seconds. This prohibition does not include reasonable sounding of those devices by houses of religious worship, ice cream trucks, or seasonal contribution solicitors
- F. Barking, howling, meowing, squawking, or other vocalizations of an animal that are plainly audible across a property boundary for 15 minutes between 7:00 a.m. and 11:00 p.m. or 10 minutes between 11:00 p.m. and 7:00 a.m.
- G. Construction, demolition, alteration, or repair of any building, excavation of any street, or unloading of construction materials that is plainly audible across a property boundary, except this noise is permitted from 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 9 p.m. on Saturdays, Sundays, and holidays.
- H. Refuse and recycling collection activities between 10:00 p.m. and 6:00 a.m.

§ 38-37. Exemptions from article.

The following noise is exempt from the provisions of this article:

- A. Sounds made in an emergency and sounds made in the performance of emergency or other public safety work (including sirens, loudspeakers, and communications radios in public safety vehicles);
- B. Sounds made in the course of repairing utility structures, bridges, streets, or highways that pose a clear and imminent danger to life, health, or property;
- C. Sounds emanating from reasonable recreational, cultural, or leisure activities conducted on public playgrounds and stadiums, and on public or private school grounds, including school athletic and entertainment events;
- D. Sounds from activities duly authorized under §§ [38-38](#) and [66-47 through 66-54](#); and
- E. Sounds from the operation of locomotives, aircraft, and related equipment under normal operating conditions.

§ 38-38. Issuance of permits.

The City Manager may issue permits to persons allowing the production of noise that might otherwise be prohibited under this article. Those permits shall be limited to a specific event, time period, or activity. The permits shall be issued in accordance with regulations promulgated by the City Manager and published in the City administrative manual.

§ 38-39. through § 38-70. (Reserved).

SEC. II. Effective Date.

This ordinance is effective *October 15*.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 15- duly adopted at a meeting of the City Council meeting held Date, 2015 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

