

1 AN ORDINANCE TO AMEND CHAPTER 23, ARTICLE II OF
2 THE CITY CODE, PERTAINING TO NOISE

3
4 SECTIONS AMENDED: §§ 23-63, -64, -65, -66, -67, -68, -69, -70,
5 AND -71

6
7 SECTIONS REPEALED: §§ 23-72, AND -73

8
9 WHEREAS, certain noise is a hazard to public health, welfare, peace and safety
10 and the quality of life of the citizens of Virginia Beach; and

11
12 WHEREAS, the residents of and visitors to the City of Virginia Beach are entitled
13 to and should be ensured of an environment free from noise that jeopardizes public
14 health, welfare, peace and safety or degrades the quality of life; and

15
16 WHEREAS, it is the policy of the City of Virginia Beach to protect the health,
17 welfare, peace and safety of its residents and visitors and to promote an environment free
18 from sound and noise disruptive of peace and good order;

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20 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
21 OF VIRGINIA BEACH, VIRGINIA:

22
23 That Sections 23-63, -64, -65, -66, -67, -68, -69, -70, AND -71 of the Code of the
24 City of Virginia Beach, Virginia, are hereby amended and ordained to read as follows:

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27 **Chapter 23. OFFENSES**

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29 **ARTICLE I. MISCELLANEOUS OFFENSES**

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33 **ARTICLE II. NOISE**

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36 **Sec. 23-63. Declaration of findings and policy.**

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38 The city council hereby finds and declares that certain noise is a hazard to public
39 health, welfare, peace and safety and the quality of life of the citizens of Virginia Beach;
40 that the people have a right to and should be ensured of an environment free from noise
41 that jeopardizes public health, welfare, peace and safety or degrades the quality of life;
42 and that it is the public policy of the city council to prevent such noise to the extent such
43 action is not inconsistent with state or federal law or Constitutional rights.

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47 **Sec. 23-64. Definitions.**
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49 The following words, terms and phrases, when used in this article, shall have the
50 meanings ascribed to them in this section, except where the context clearly indicates a
51 different meaning:
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53 *A-weighted sound level* means the sound pressure level in decibels as measured
54 on a sound level meter using the A-weighting network. The level so read is designated
55 dB(A) or dBA.
56

57 *Decibel (dB)* means a unit for measuring the volume of a sound, equal to twenty (20)
58 times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured
59 to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons
60 per square meter).
61

62 *Dwelling unit* means one (1) or more rooms arranged, designed, or intended to be
63 occupied as living quarters, having rigid exterior wall structures.
64

65 *Emergency and public safety work* means any work performed for the purpose of
66 preventing or alleviating physical injury, illness, or property damage, or work performed
67 by public and private service companies constructing, inspecting, and repairing utilities,
68 repairing and maintaining roads, bridges, and highways, providing snow removal, and the
69 operation of public safety and emergency vehicles.
70

71 *Enclosed dwelling unit* means the dwelling unit has its doors and windows closed.
72

73 *Enclosed vehicle* means a vehicle with all operable doors, windows, sunroof, and
74 other openings closed.
75

76 *Medical care facility* is defined as set forth in Section 32.1-102.1 of the Code of
77 Virginia, 1950, as amended.
78

79 *Motor vehicle* means every vehicle defined as a motor vehicle by § 46.2-100 of Code
80 of Virginia (1950), as amended.
81

82 *Noise* means the intensity, frequency, duration, or character of sounds from one or
83 more sources.
84

85 *Noise source* means any equipment, facility, motor vehicle, conduct, activity or
86 operation, whether human, animal, mechanical, electronic or other, and whether
87 continuous, intermittent or sporadic, and whether stationary or ambulatory in nature,
88 which produces or results in an audible sound.
89

90 *Person* means any individual, corporation, cooperative, partnership, firm,
91 association, trust, estate, public or private institution, group, agency, political subdivision
92 of this state or any legal successor, representative, agent or agency of the foregoing.

93 *Plainly audible* means any sound or noise that can be heard by the human ear with
94 or without a medically approved hearing aid or device. Specific words or phrases need
95 not be discernible. The detection of bass reverberations is sufficient to constitute a plainly
96 audible sound. The sound must not be so faint that its source cannot be identified.
97

98 *School* means a public school subject to Title 22.1 of the Code of Virginia, 1950, as
99 amended, a private school serving children in one (1) or more grades between
100 kindergarten and grade twelve (12), a school for students with disabilities as that term is
101 defined in Section 22.1-319 of the Code of Virginia, 1950, as amended, a child day care
102 center as that term is defined in Section 63.2-100 of the Code of Virginia, 1950, as
103 amended, and any public or private institution of higher learning, as those terms are
104 defined in Section 23.1-100 of the Code of Virginia, 1950, as amended.
105

106 *Sound amplifying equipment* means any machine or device for the amplification of
107 the human voice, music or any other sound. This term shall not include warning devices
108 on authorized emergency vehicles, or horns or other warning devices on other vehicles
109 used only for traffic safety purposes.
110

111 *Sound* means an oscillation in pressure, particle displacement, particle velocity or
112 other physical parameter, in a medium with internal forces that causes compression and
113 rarefaction of that medium. The description of sound may include any characteristic of
114 such sound, including duration, intensity and frequency.
115

116 *Sound level* means the weighted sound pressure level obtained by the use of a
117 sound level meter and the A-frequency weighting network, as specified in American
118 National Standards Institute specifications for sound level meters.
119

120 *Sound level meter* means an instrument which includes a microphone, amplifier,
121 RMS detector, integrator or time averager, output meter and weighting networks used to
122 measure sound pressure levels.
123

124 **Sec. 23-65. Administration and enforcement.**

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- 127 (a) The department of police shall be charged with administering and enforcing the
128 provisions of this article and may be assisted by other city departments as directed
129 by the city manager.
- 130 (b) Any person operating, permitting, or controlling a source of noise shall be guilty of
131 any violation caused by that source. If the person operating, permitting, or controlling
132 the noise source cannot be identified, or the noise source is a business entity or
133 premises, any owner, tenant, resident, or manager physically present on the
134 property where the noise source is located may be charged if the circumstances
135 establish their dominion and control over the noise source.
- 136 (c) Whenever an authorized enforcement officer has reason to believe that a violation
137 of any provision of this article has occurred and may re-occur, such officer may give
138 notice of the violation to the person operating, permitting, or controlling a source of

139 noise in violation of this article, ordering the person to take such corrective measures
140 as are necessary to prevent such re-occurrence. If a noise source in violation of this
141 chapter is a business entity or premises, any owner, officer, director, or registered
142 agent may be served with the notice and order. The notice and order shall be in
143 writing and shall be served personally upon the person to whom directed, or if not
144 found, by mailing a copy thereof by certified mail to his or her usual place of abode
145 and conspicuously posting a copy at the premises affected by notice and order, if
146 any.

147 (d) Nothing in this article shall prevent an authorized enforcement officer from making
148 efforts to obtain voluntary compliance through warning, conference or any other
149 appropriate means.

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151

152 **Sec. 23-66. Specific Prohibitions (Civil Violations).**

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154 Subject to the exceptions provided in Section 23-70, any of the following acts, or the
155 causing or permitting thereof, is declared to be a civil violation of this Article without any
156 requirement of scientific measurement of sound levels by a sound level meter or any
157 similar device. This enumeration shall not be construed to limit, in any way, the general
158 prohibitions contained in Section 23-67:

159 (a) *Radios, television sets, musical instruments and similar devices.* Operating, playing
160 or permitting the operation or playing of any radio, audio system in a motor vehicle,
161 television, record, tape or compact disc player, drum, musical instrument, or any
162 device capable of producing or reproducing sound, or similar device in such a
163 manner or with such volume or duration that it is plainly audible (i) inside the confines
164 of another person's enclosed dwelling unit; (ii) at a distance of 100 or more feet in
165 any direction from the operator between the hours of 7:00 a.m. and 10:00 p.m.; or
166 (iii) at a distance of 50 or more feet in any direction from the operator between the
167 hours of 10:00 p.m. and 7:00 a.m.

168 (b) *Loudspeakers, public address systems, amplifiers and similar devices.* Using,
169 operating or permitting the operation of any loudspeaker, public address system,
170 mobile sound vehicle, communication system, amplifier, or similar device capable of
171 amplifying sound, including any such device in a motor vehicle, for any purpose
172 between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to permit sound
173 to be plainly audible (i) inside the confines of another person's enclosed dwelling
174 unit; or (ii) at fifty (50) or more feet from the device.

175 (c) *Vehicle horns, signaling devices and similar devices.* Sounding or permitting the
176 sounding of any horn, whistle, signaling device, or similar device on any automobile,
177 motorcycle or other vehicle on any right-of-way or in any public space continuously
178 or intermittently for more than ten (10) consecutive seconds, except when the
179 sounding of any such device is intended as a danger warning.

180 (d) *Non-emergency signaling devices.* Sounding or permitting the sounding of any
181 amplified signal continuously or intermittently from any bell, chime, siren, whistle or
182 similar device intended primarily for non-emergency purposes from any one location

183 for more than ten (10) consecutive seconds in any hourly period; provided, however,
184 that this subsection shall not apply to the sounding of such devices by religious uses
185 or by public bodies or agencies for testing, traffic control or other public purposes.

186 (e) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or
187 permitting the continuous or intermittent sounding outdoors of any emergency
188 signaling device, or any security, burglar or fire alarm, siren, whistle, or similar
189 device, including without limitation any motor vehicle security alarm, siren, whistle,
190 or similar device, for a period in excess of ten (10) minutes in any residential area
191 and fifteen (15) minutes in any other area, except in response to a burglary,
192 attempted burglary, fire, or other emergency after giving notice and a reasonable
193 opportunity for the owner or person in possession of the premises served by any
194 such alarm to turn off the alarm.

195 (f) *Explosive, fireworks and similar devices.* Using or firing any explosives, fireworks or
196 similar devices which create impulsive sound in such a manner as to be plainly
197 audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) at
198 fifty (50) or more feet from the source. An exception to this subsection may be
199 granted by the City Manager through a fireworks permit.

200 (g) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing between the hours of
201 10:00 p.m. and 7:00 a.m. in such a manner as to permit sound to plainly audible (i)
202 inside the confines of another person's enclosed dwelling unit; or (ii) at fifty (50) or
203 more feet from the source of the sound.

204 (h) *Social gatherings and parties.* Allowing any noise between 10:00 p.m. and 7:00 a.m.
205 generated from a gathering of two (2) or more people that is plainly audible (i) inside
206 the confines of another person's enclosed dwelling unit; or (ii) in a residential area,
207 at fifty (50) or more feet from the gathering.

208 (i) *Schools, public buildings, places of worship, and hospitals.* The creation of any noise
209 on the grounds of or on any street adjacent to any school, court, public building,
210 place of worship, hospital, nursing home, or assisted-living facility while the same is
211 in use in a manner that is plainly audible within such building while it is use and
212 interferes with the operation of the institution.

213 (j) *Vehicles.* Operation of a motor vehicle or operation of a motorcycle within the city
214 with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust in good
215 working order, as provided by Code of Virginia § 46.2-1047.

216 (k) *Construction equipment, pneumatic hammer, chain saw, etc.* The operation of any
217 bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill,
218 pneumatic hammer, chain saw, steam shovel, derrick, steam or electric hoist, or
219 other appliance or other construction equipment between the hours of 10:00 p.m.
220 and 7:00 a.m. except as provided in section 23-70 below, or as specifically deemed
221 necessary and authorized by a written document issued by the city manager or his
222 designee.

223 (l) *Animals.* Allowing any animal or bird to create sound or noise that is plainly audible
224 at least once a minute for twenty (20) consecutive minutes (i) inside the confines of
225 another person's enclosed dwelling unit; or (ii) at a distance of fifty (50) feet or more

226 from the animal or bird. This subsection shall not apply to any bona fide agricultural
227 activity.

228 (m) *Commercial vehicle and trash collection vehicle operation.* The operation of a trash,
229 refuse, waste, or recycling collection vehicle, or other commercial vehicle between
230 the hours of 10:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible
231 inside the confines of another person's enclosed dwelling unit.

232 (n) *Lawn care activities.* Creating any sound or noise plainly audible inside the confines
233 of another person's enclosed dwelling unit between 10:00 p.m. and 7:00 a.m. in
234 connection with lawn care, leaf removal, gardening, tree maintenance or removal or
235 other landscaping, lawn or timbering activities.

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238 **Sec. 23-67. Noise violations measured by sound level meter; maximum permitted**
239 **levels (Criminal Violations).**
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241 In addition to the specific prohibitions of Sections 23-66 above, certain other sounds
242 or noises shall be regulated on a decibel basis as measured by a sound level meter.
243 Subject to the exceptions provided in Section 23-70, any of the following acts, or the
244 causing or permitting thereof, is declared to be a criminal violation of this Article:

245 (a) Operating, permitting, or causing any source of sound or noise to create a sound
246 level inside the confines of another person's enclosed dwelling unit between the
247 hours of 10:00 p.m. and 7:00 a.m. in excess of fifty-five (55) dBA, or between the
248 hours of 7:00 a.m. and 10:00 p.m. in excess of sixty-five (65) dBA, when measured
249 inside the enclosed dwelling unit at least four (4) feet from the wall nearest the
250 source, with doors and windows to the receiving area closed.

251 (b) Operating, permitting, or causing any source of sound or noise to create a sound
252 level that when measured in any public area, including but not limited to any public
253 street or sidewalk, or from other private property, between the hours of 7:00 a.m.
254 and 10:00 p.m. exceeds seventy-five (75) dBA, or between the hours of 10:00 p.m.
255 and 7:00 a.m. exceeds sixty-five (65) dBA; provided, however that the provisions of
256 this subsection shall not apply to any outdoor performance, parade, gathering,
257 dance, concert, show, sporting event, or other event sponsored by the city or for
258 which the city has granted a permit.

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261 **Sec. 23-68. Sound level meter measurement procedures (Criminal Violations).**
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263 (a) The decibel level of any sound or noise regulated on a decibel basis by this article
264 shall be measured by a sound level meter. Such measurements shall be accepted
265 as prima facie evidence of the level of sound or noise at issue in any court or legal
266 proceeding to enforce the provisions of this article.

267 (b) The accuracy of the sound level meter may be tested by a calibrator. Any sworn
268 report of the results of any test of the calibrator for the accuracy of a sound level

269 meter shall be admissible in court in any criminal or civil proceeding, as evidence of
270 the facts therein stated.

271 (c) An individual operating a sound level meter pursuant to the provisions of this article
272 shall issue a certificate to indicate:

273 (1) That the sound level meter used to take the decibel level reading was
274 operated in accordance with the manufacturer's specifications;

275 (2) That the city has on file a sworn report which states that the sound level meter
276 has been tested within the past twelve (12) months and has been found to be
277 accurate;

278 (3) The name of the accused;

279 (4) The location of the sound or noise;

280 (5) The date and time that the reading was made; and

281 (6) The decibel level reading.

282 (d) Such certificate, when attested by the operator taking the decibel level reading, shall
283 be admissible in court in any proceeding as evidence of the facts therein stated and
284 of the decibel level reading. A copy of the certificate shall be delivered to the accused
285 upon request.
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288 **Sec. 23-69. Violations and Penalties.**
289

290 (a) *Civil Violations.* Any person who commits, permits, or assists in any violation of
291 Section 23-66 of this article, whether by act or omission, shall be liable for a civil
292 violation as follows:

293 (1) The first violation by such person shall be punished by a civil penalty in the
294 amount of \$250.

295 (2) The second violation, and any subsequent violation, committed by such
296 person within one year of any previous violation shall be punished by a civil
297 penalty in the amount of \$500.

298 (b) *Procedures for Civil Violations.*

299 (1) If an authorized enforcement officer determines that a civil violation of this
300 article has occurred, the officer may cause a notice of the violation to be
301 served on any or all persons committing, permitting, or assisting in such
302 violation.

303 (2) The notice shall provide that the person charged with a violation may elect to
304 make an appearance in person, or in writing by mail, to the treasurer of the
305 city, and admit liability for or plead no contest to the violation, abate the
306 violation, and pay the civil penalty established for the violation, all within the
307 time period fixed in the notice.

- 308 (3) If a person charged with a civil violation does not elect to admit liability or
309 plead no contest, and abate the violation, the violation shall be tried in the
310 Virginia Beach General District Court upon a warrant in debt or motion for
311 judgment, with the same right of appeal as provided for civil actions at law.
- 312 (i) In the event the violation exceeds the jurisdictional limits of the General
313 District Court, the violation shall be tried in the Virginia Beach Circuit
314 Court.
- 315 (4) A finding or admission of liability or a plea of no contest to a civil violation
316 shall not be deemed evidence of a criminal violation for any purpose.
- 317 (5) A notice of civil violation as provided in this section may be issued or had,
318 notwithstanding that no prior notice of violation and ordering of corrective
319 measures as provided in Section 23-65 has been given.
- 320 (c) *Criminal Violations.*
- 321 (1) Any person who commits, permits, or assists in any violation of Section 23-
322 67 of this article, whether by act or omission, shall be guilty of a misdemeanor
323 as follows:
- 324 (i) The first violation by such person shall constitute a class 2
325 misdemeanor.
- 326 (ii) The second violation, and any subsequent violation, committed by such
327 person within one year of any previous violation shall constitute a class
328 1 misdemeanor.
- 329 (2) Any person who knowingly refuses or neglects to comply with any injunction
330 order issued by a Court of competent jurisdiction or any written order to cease
331 or abate any violation of this article, issued by an authorized enforcement
332 officer pursuant to Section 23-65(c), shall be guilty of a misdemeanor as
333 follows:
- 334 (i) The first violation by such person shall constitute a class 2
335 misdemeanor.
- 336 (ii) The second violation, and any subsequent violation, committed by such
337 person within one year of any previous violation shall constitute a class
338 1 misdemeanor.
- 339 (d) *Injunction.* In addition to and not in lieu of the penalties prescribed in this section,
340 the city may apply to the Virginia Beach Circuit Court for an injunction against the
341 continuing, repeated, or intermittent violation of any of the provisions of this article
342 and may seek any other remedy or relief authorized by law.
- 343 (e) Each hour of a continued, repeated, or intermittent violation shall constitute a
344 separate offense, whether civil or criminal, under this article.
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349 **Sec. 23-70. Exceptions.**

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351 The prohibitions found in Sections 23-66 and 23-67 shall not apply to:

352 (a) Noise created for purposes of alerting persons to the existence of an emergency,
353 provided such noise ceases once any such threat is no longer imminent.

354 (b) Noise created in the performance of emergency and public safety work or law
355 enforcement activities, including radios, sirens, horns, and bells on police, fire, or
356 other emergency response vehicles.

357 (c) Noise created by and as a result of events or activities sponsored by the City.

358 (d) Activities permitted by law for which a specific license or permit has been granted
359 by the city, state or federal government; including, but not limited to, noise generated
360 by and necessary for the conduct of public festivals, parades, special events, and
361 celebrations of recognized federal, state and local holidays.

362 (e) Noise or sound produced by a horn or warning device of a vehicle when used as a
363 warning device, including back-up alarms for trucks and other equipment.

364 (f) Clocks, bells, and carillons between the hours of 7:00 a.m. and 10:00 p.m., provided
365 that any such sounds do not occur for more than five (5) consecutive or non-
366 consecutive minutes in any one (1) hour.

367 (g) Locomotives and other railroad equipment, and aircraft.

368 (h) Military activities of the Commonwealth of Virginia or of the United States of America.

369 (i) Activities for which the regulation of noise has been preempted by federal law.

370 (j) Agricultural activities conducted between the hours of 7:00 a.m. and 10:00 p.m. in
371 an agricultural area.

372 (k) Band performances or practices, athletic contests or practices and other school-
373 sponsored activities on the grounds of public or private schools, colleges, or
374 universities.

375 (l) Normal and customary use of outdoor recreational facilities owned or leased by the
376 city.

377 (m) Normal and customary use of open-air venues for which a conditional use permit
378 has been issued pursuant to the city zoning ordinance.

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381 **Sec. 23-71. Severability.**

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383 A determination of invalidity or unconstitutionality by a court of competent jurisdiction
384 of any clause, sentence, paragraph, section or part of this article shall not affect the
385 validity of the remaining parts thereto.

Adopted by the Council of the City of Virginia Beach, Virginia, on the _____ day of _____, 2021.

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL SUFFICIENCY:

Police Department

City Attorney's Office