

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7 SECTIONS REPEALED: §§ 23-72, AND -73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

19
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:

25
26
27 **Chapter 23. OFFENSES**

28
29
30 **ARTICLE I. MISCELLANEOUS OFFENSES**

31
32

33
34 **ARTICLE II. NOISE**

35
36
37 **Sec. 23-63. Declaration of findings and policy.**

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

48 **Sec. 23-64. Definitions.**

49

50 The following words, terms and phrases, when used in this article, shall have the
51 meanings ascribed to them in this section, except where the context clearly indicates a
52 different meaning:

53

54 *A-weighted sound level* means the sound pressure level in decibels as measured
55 on a sound level meter using the A-weighting network. The level so read is designated
56 dB(A) or dBA.

57

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

62

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

66

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

72

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

74

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

77

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

80

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

83

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

86

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

91

92 *Person* means any individual, corporation, cooperative, partnership, firm,
93 association, trust, estate, public or private institution, group, agency, political subdivision
94 of this state or any legal successor, representative, agent or agency of the foregoing.
95

96 *Plainly audible* means any sound or noise that can be heard by the human ear with
97 or without a medically approved hearing aid or device. Specific words or phrases need
98 not be discernible. The detection of bass reverberations is sufficient to constitute a plainly
99 audible sound. The sound must not be so faint that its source cannot be identified.
100

101 *Private property of another* means any privately owned property other than the
102 property where the noise source is located.
103

104 *School* means a public school subject to Title 22.1 of the Code of Virginia, 1950, as
105 amended, a private school serving children in one (1) or more grades between
106 kindergarten and grade twelve (12), a school for students with disabilities as that term is
107 defined in Section 22.1-319 of the Code of Virginia, 1950, as amended, a child day care
108 center as that term is defined in Section 63.2-100 of the Code of Virginia, 1950, as
109 amended, and any public or private institution of higher learning, as those terms are
110 defined in Section 23.1-100 of the Code of Virginia, 1950, as amended.
111

112 *Sound amplifying equipment* means any machine or device for the amplification of
113 the human voice, music or any other sound. This term shall not include warning devices
114 on authorized emergency vehicles, or horns or other warning devices on other vehicles
115 used only for traffic safety purposes.
116

117 *Sound* means an oscillation in pressure, particle displacement, particle velocity or
118 other physical parameter, in a medium with internal forces that causes compression and
119 rarefaction of that medium. The description of sound may include any characteristic of
120 such sound, including duration, intensity and frequency.
121

122 *Sound level* means the weighted sound pressure level obtained by the use of a
123 sound level meter and the A-frequency weighting network, as specified in American
124 National Standards Institute specifications for sound level meters.
125

126 *Sound level meter* means an instrument which includes a microphone, amplifier,
127 RMS detector, integrator or time averager, output meter and weighting networks used to
128 measure sound pressure levels.
129

130
131 **Sec. 23-65. Administration and enforcement.**
132

133 (a) The department of police shall be charged with administering and enforcing the
134 provisions of this article and may be assisted by other city departments as directed
135 by the city manager.

136 (b) Any person operating, permitting, or controlling a source of noise shall be guilty of
137 any violation caused by that source. If the person operating, permitting, or controlling

138 the noise source cannot be identified, or the noise source is a business entity or
139 premises, any owner, tenant, resident, or manager physically present on the
140 property where the noise source is located may be charged if the circumstances
141 establish their dominion and control over the noise source. In instances where
142 businesses offer live entertainment that is the source of noise in violation of this
143 chapter, the owner, manager, officer, director, or registered agent of such business
144 shall be rebuttably presumed to be the person operating, permitting, or controlling
145 the noise source. This presumption shall apply only in cases where the charge is
146 brought pursuant to the provisions of §23-66.

- 147 (c) Whenever an authorized enforcement officer has reason to believe that a violation
148 of any provision of this article has occurred and may re-occur, such officer may give
149 notice of the violation to the person operating, permitting, or controlling a source of
150 noise in violation of this article, ordering the person to take such corrective measures
151 as are necessary to immediately remedy the offending noise and to prevent such re-
152 occurrence. If a noise source in violation of this chapter is a business entity or
153 premises, the notice of violation may be directed to any owner, manager, officer,
154 director, or registered agent of such business. The notice and order shall be in
155 writing and shall be hand-delivered to the person to whom directed, or if not found,
156 by mailing a copy thereof by certified mail to his or her usual place of abode and
157 conspicuously posting a copy at the premises affected by notice and order, if any.
- 158 (d) Nothing in this article shall prevent an authorized enforcement officer from making
159 efforts to obtain voluntary compliance through warning, conference or any other
160 appropriate means.

161
162 **Sec. 23-66. Specific Prohibitions (Civil Violations).**
163

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

- 169 (a) Radios, television sets, musical instruments, loudspeakers, amplifiers and similar
170 devices. Using, operating, playing or permitting the operation or playing of any radio,
171 audio system in a motor vehicle, television, record, tape or compact disc player,
172 drum, musical instrument, loudspeaker, communication system, amplifier, or any
173 device capable of producing, reproducing or amplifying sound, or similar device in
174 such a manner or with such volume or duration that it is plainly audible (i) inside the
175 confines of another person's enclosed dwelling unit; or (ii) on private property of
176 another or on any public property at a distance of 100 or more feet in any direction
177 from the noise source between the hours of 7:00 a.m. and ~~4~~11:00 p.m.; or (iii) on
178 private property of another or on any public property at a distance of 50 or more feet
179 in any direction from the noise source between the hours of ~~4~~11:00 p.m. and 7:00
180 a.m.

- 181 (b) Vehicle horns, signaling devices and similar devices. Sounding or permitting the
182 sounding of any horn, whistle, signaling device, or similar device on any automobile,
183 motorcycle or other vehicle on any right-of-way or in any public space continuously
184 or intermittently for more than ten (10) consecutive seconds, except when the
185 sounding of any such device is intended as a danger warning.
- 186 (c) Non-emergency signaling devices. Sounding or permitting the sounding of any
187 amplified signal continuously or intermittently from any bell, chime, siren, whistle or
188 similar device intended primarily for non-emergency purposes from any one location
189 for more than ten (10) consecutive seconds in any hourly period; provided, however,
190 that this subsection shall not apply to the sounding of such devices by religious uses
191 or by public bodies or agencies for testing, traffic control or other public purposes.
- 192 (d) Emergency signaling devices, security, burglar and fire alarms, etc. Sounding or
193 permitting the continuous or intermittent sounding outdoors of any emergency
194 signaling device, or any security, burglar or fire alarm, siren, whistle, or similar
195 device, including without limitation any motor vehicle security alarm, siren, whistle,
196 or similar device, for a period in excess of ten (10) minutes in any residential area
197 and fifteen (15) minutes in any other area, except in response to a burglary,
198 attempted burglary, fire, or other emergency after giving notice and a reasonable
199 opportunity for the owner or person in possession of the premises served by any
200 such alarm to turn off the alarm.
- 201 (e) Explosive, fireworks and similar devices. Using or firing any explosives, fireworks or
202 similar devices which create impulsive sound in such a manner as to be plainly
203 audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) on
204 private property of another or on any public property at fifty (50) or more feet from
205 the noise source. An exception to this subsection may be granted by the City
206 Manager through a fireworks permit.
- 207 (f) Yelling, shouting, etc. Yelling, shouting, whistling or singing between the hours of
208 ~~4~~11:00 p.m. and 7:00 a.m. in such a manner as to permit sound to plainly audible
209 (i) inside the confines of another person's enclosed dwelling unit; or (ii) on private
210 property of another or on any public property at fifty (50) or more feet from the noise
211 source.
- 212 (g) Social gatherings and parties. Allowing any noise between ~~4~~11:00 p.m. and 7:00
213 a.m. generated from a gathering of two (2) or more people that is plainly audible (i)
214 inside the confines of another person's enclosed dwelling unit; or (ii) on private
215 property of another or on any public property, at fifty (50) or more feet from the
216 gathering.
- 217 (h) Schools, public buildings, places of worship, and hospitals. The creation of any noise
218 on the grounds of or on any street adjacent to any school, court, public building,
219 place of worship, hospital, nursing home, or assisted-living facility while the same is
220 in use in a manner that is plainly audible within such building while it is use and
221 interferes with the operation of the institution.

- 222 (i) Vehicles. Operation of a motor vehicle or operation of a motorcycle within the city
223 with a gutted muffler, muffler cutout, straight exhaust, or without an exhaust system
224 in good working order, as provided by Code of Virginia, §§ 46.2-1047 and 46.2-1049.
- 225 (j) Construction equipment, pneumatic hammer, chain saw, etc. The operation of any
226 bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill,
227 pneumatic hammer, chain saw, steam shovel, derrick, steam or electric hoist, or
228 other appliance or other construction equipment between the hours of 4:00 p.m.
229 and 7:00 a.m. except as provided in section 23-70 below, or as specifically deemed
230 necessary and authorized by a written document issued by the city manager or his
231 designee.
- 232 (k) Animals. Allowing any animal or bird to create sound or noise that is plainly audible
233 at least once a minute for twenty (20) consecutive minutes (i) inside the confines of
234 another person's enclosed dwelling unit; or (ii) on private property of another or on
235 any public property at a distance of fifty (50) feet or more from the animal or bird.
236 This subsection shall not apply to any bona fide agricultural activity.
- 237 (l) Commercial vehicle and trash collection vehicle operation. The operation of a trash,
238 refuse, waste, or recycling collection vehicle, or other commercial vehicle between
239 the hours of 4:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible
240 inside the confines of another person's enclosed dwelling unit.
- 241 (m) Lawn care activities. Creating any sound or noise plainly audible inside the confines
242 of another person's enclosed dwelling unit between 4:00 p.m. and 7:00 a.m. in
243 connection with lawn care, leaf removal, gardening, tree maintenance or removal or
244 other landscaping, lawn or timbering activities.

245
246 **Sec. 23-67. Noise violations measured by sound level meter; maximum permitted**
247 **levels (Criminal Violations).**
248

249 In addition to the specific prohibitions of Sections 23-66 above, certain other sounds
250 or noises shall be regulated on a decibel basis as measured by a sound level meter.
251 Subject to the exceptions provided in Section 23-70, any of the following acts, or the
252 causing or permitting thereof, is declared to be a criminal violation of this Article:

- 253 (a) Operating, permitting, or causing any source of sound or noise to create a sound
254 level inside the confines of another person's enclosed dwelling unit between the
255 hours of 4:00 p.m. and 7:00 a.m. in excess of fifty-five (55) dBA, or between the
256 hours of 7:00 a.m. and 4:00 p.m. in excess of sixty-five (65) dBA, when
257 measured inside the enclosed dwelling unit at least four (4) feet from the wall nearest
258 the source, with doors and windows to the receiving area closed.
- 259 (b) Operating, permitting, or causing any source of sound or noise to create a sound
260 level that when measured in any public area, including but not limited to any public
261 street or sidewalk, or from other private property, between the hours of 7:00 a.m.
262 and 4:00 p.m. exceeds eighty (80) seventy-five (75) dBA, or between the hours
263 of 4:00 p.m. and 7:00 a.m. exceeds seventy-five (75) sixty-five (65) dBA;
264 provided, however that the provisions of this subsection shall not apply to any

265 outdoor performance, parade, gathering, dance, concert, show, sporting event, or
266 other event sponsored by the city or for which the city has granted a permit.

267
268
269

Sec. 23-68. Sound level meter measurement procedures (Criminal Violations).

270 (a) The decibel level of any sound or noise regulated on a decibel basis by this article
271 shall be measured by a sound level meter. Such measurements shall be accepted
272 as prima facie evidence of the level of sound or noise at issue in any court or legal
273 proceeding to enforce the provisions of this article. The accuracy of the sound level
274 meter may be tested by a calibrator. Any sworn report of the results of any test of
275 the calibrator for the accuracy of a sound level meter shall be admissible in court in
276 any criminal or civil proceeding, as evidence of the facts therein stated.

277 (b) An individual operating a sound level meter pursuant to the provisions of this article
278 shall issue a certificate to indicate:

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

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

284 (3) The name of the accused;

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

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

287 (6) The decibel level reading.

288 (c) Such certificate, when attested by the operator taking the decibel level reading, shall
289 be admissible in court in any proceeding as evidence of the facts therein stated and
290 of the decibel level reading. A copy of the certificate shall be delivered to the accused
291 upon request.

292
293

Sec. 23-69. Violations and Penalties.

294

295
296 (a) *Civil Violations.* Any person who commits, permits, or assists in any violation of
297 Section 23-66 of this article, whether by act or omission, shall be liable for a civil
298 violation as follows:

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

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

304 (b) *Procedures for Civil Violations.*

- 305 (1) If an authorized enforcement officer determines that a civil violation of this
306 article has occurred, the officer may cause a notice of the violation to be hand-
307 delivered to any or all persons committing, permitting, or assisting in such
308 violation, or if not found, by mailing a copy thereof by certified mail to his or
309 her usual place of abode and conspicuously posting a copy at the premises
310 which is the source of the noise, if any.
- 311 (2) The notice shall provide that the person charged with a violation may elect to
312 make an appearance in person, or in writing by mail, to the treasurer of the
313 city, and admit liability for or plead no contest to the violation, abate the
314 violation, and pay the civil penalty established for the violation, all within the
315 time period fixed in the notice.
- 316 (3) If a person charged with a civil violation does not elect to admit liability or
317 plead no contest, and abate the violation, the violation shall be tried in the
318 Virginia Beach General District Court upon a warrant in debt or motion for
319 judgment, with the same right of appeal as provided for civil actions at law.
- 320 (i) In the event the violation exceeds the jurisdictional limits of the General
321 District Court, the violation shall be tried in the Virginia Beach Circuit
322 Court.
- 323 (4) A finding or admission of liability or a plea of no contest to a civil violation
324 shall not be deemed evidence of a criminal violation for any purpose.
- 325 (5) A notice of civil violation as provided in this section may be issued or had,
326 notwithstanding that no prior notice of violation and ordering of corrective
327 measures as provided in Section 23-65 has been given.

§28

§29

330

331 (c) *Criminal Violations.*

- 332 (1) Any person who commits, permits, or assists in any violation of Section 23-
333 67 of this article, whether by act or omission, shall be guilty of a misdemeanor
334 as follows:
- 335 (i) The first violation by such person shall constitute a class 2
336 misdemeanor.
- 337 (ii) The second violation, and any subsequent violation, committed by such
338 person within one year of any previous violation shall constitute a class
339 1 misdemeanor.
- 340 (2) Any person who knowingly refuses or neglects to comply with any injunction
341 order issued by a Court of competent jurisdiction or any written order to cease
342 or abate any violation of this article, issued by an authorized enforcement
343 officer pursuant to Section 23-65(c), shall be guilty of a misdemeanor as
344 follows:

345 (i) The first violation by such person shall constitute a class 2
346 misdemeanor.

347 (ii) The second violation, and any subsequent violation, committed by such
348 person within one year of any previous violation shall constitute a class
349 1 misdemeanor.

350 (d) *Injunction.* In addition to and not in lieu of the penalties prescribed in this section,
351 the city may apply to the Virginia Beach Circuit Court for an injunction against the
352 continuing, repeated, or intermittent violation of any of the provisions of this article
353 and may seek any other remedy or relief authorized by law.

354 (e) Each hour of a continued, repeated, or intermittent violation shall constitute a
355 separate offense, whether civil or criminal, under this article.

356

357 **Sec. 23-70. Exceptions.**

358

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

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

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

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

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

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

§72 (f) Clocks, bells, and carillons between the hours of 7:00 a.m. and ~~10~~11:00 p.m.,
373 provided that any such sounds do not occur for more than five (5) consecutive or
374 non-consecutive minutes in any one (1) hour.

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

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

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

§78 (j) Agricultural activities conducted between the hours of 7:00 a.m. and ~~10~~11:00 p.m.
379 in an agricultural area.

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

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

385 (m) Normal and customary use of open-air venues for which a conditional use permit
386 ~~has been issued pursuant to the city zoning ordinance.~~ or a special exception
387 pursuant to the Alternative Compliance Provisions has been issued pursuant to the
388 City Zoning Ordinance.

389
390 **Sec. 23-71. Severability.**

391
392 A determination of invalidity or unconstitutionality by a court of competent jurisdiction
393 of any clause, sentence, paragraph, section or part of this article shall not affect the
394 validity of the remaining parts thereto.
395