

**CITY OF MANASSAS PARK - STAFF REPORT/RECOMMENDATION**

**AGENDA ITEM 3**

**REQUESTING DEPARTMENT** City Attorney

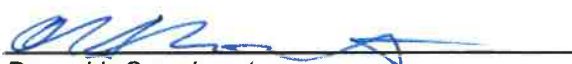
**MEETING DATE:** *March 6, 2018*

**SUBJECT/TOPIC:** Noise Ordinance

<b>FINANCIAL IMPACT:</b> Yes: ___ No: ___	Budgeted:	YES _____	NO <input checked="" type="checkbox"/>
	Amount:		
	Budget Line Item:		

Public Hearing:

Amend Chapter 15, Noise, of the Code of the City of Manassas Park, VA to comply with the Virginia Supreme Court Decision in Tanner v. City of Virginia Beach.

<b>CITY MANAGER APPROVAL:</b> Approved: _____ Not Required: _____	_____ <i>Laszlo A. Palko, City Manager</i>
<b>CITY ATTORNEY APPROVAL:</b> Required: _____ Not Required: _____	 _____ <i>Dean H. Crowhurst</i>

**ATTACHMENTS** Ordinance

ORDINANCE \_\_\_\_\_

AN ORDINANCE  
TO AMEND CHAPTER 15, NOISE, OF THE CODE OF THE CITY OF MANASSAS PARK,  
VIRGINIA, TO COMPLY WITH THE VIRGINIA SUPREME COURT DECISION IN  
TANNER V. CITY OF VIRGINIA BEACH, 277 VA. 432 (2009)

BE IT ORDAINED by the Governing Body of the City of Manassas Park that:

1. Sections 15-3, 15-4, 15-5, 15-6, 15-8, and 15-10 of Chapter 15, Noise, of the Code of the City of Manassas Park, Virginia, are hereby amended to read as follows:

**“Chapter 15 – NOISE**

\* \* \* \* \*

**Sec. 15-3. - Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*A-weighted decibel* means the sound level, in decibels, measured with a sound level meter using the A-weighting network or scale as specified in the ANSI S1.4-1983 (specification for sound level meters). The level so read shall be postscripted dB(A) or dBA.

*ANSI* means the American National Standards Institute, Inc., New York, New York.

*Chief* means the chief of police of Manassas Park or his authorized agents.

*Daytime* means the local time of day between the hours of 7:00 a.m. and 8:00 p.m. weekdays and Saturdays and from 9:00 a.m. to 5:00 p.m. on Sundays and legal holidays observed by city government unless otherwise specified.

*Decibel* means a unit that describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

*Motor vehicle* has the same meaning as found in section 46.2-100 of the Code of Virginia.

*Nighttime* means those times excluded from the definition of daytime.

*Noise* means any steady-state or impulsive sound occurring on either a continuous or intermittent basis ~~that annoys or disturbs humans or that causes or tends to cause an adverse psychological or physiological effect on humans.~~

*Noise disturbance* means any sound which:

- (1) Endangers or injures the safety or health of humans; or
- ~~(2) Annoys or disturbs a reasonable person of normal sensitivities; or~~
- ~~(3)~~ Endangers or injures personal or real property; or
- ~~(4)~~ Exceeds the applicable maximum permissible sound levels as they appear in the table in section 15-4.

*Sound level meter* means an instrument to measure sound pressure levels that meets or exceeds performance standards for a Type 2 meter as specified by the ANSI and approved by the Division of Consolidated Laboratory Services in the Virginia Department of General Services.

*Sound pressure level* means the intensity in decibels (dB) of a sound.

*Zoning district classification* is the scheme of land use classification contained in the Manassas Park Zoning Ordinance chapter 31 of this Code, with zoning districts grouped as follows:

- (1) *Agricultural* – A-1 zoning district.
- (2) *Business* – B-1, B-2, B-3, MU-D, PUD (Commercial) zoning districts.
- (3) *Industrial* – I-1, I-2 zoning districts.
- (4) *Public Facilities* – PF zoning district.
- (5) *Residential* – R-1, R-2, R-3, PUD (Residential) zoning districts.

**Sec. 15-4. - Maximum permissible sound levels generally.**

- (a) Except as otherwise provided, any noise which emanates from any operation, activity or source and which exceeds the maximum permissible sound levels established in this section Table I below is hereby prohibited. Such levels shall be measured at the property boundary of the sound source or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one (1) zoning district classification, the limits of the most restrictive classification shall apply.

**MAXIMUM PERMISSIBLE SOUND PRESSURE LEVELS**

<i>Zoning District Classification</i> <i>Maximum dBA Table I</i>		
<i>Zoning District Classifications</i>	<i>Maximum dBA</i> <i>Daytime</i>	<i>Maximum dBA</i> <i>Nighttime</i>
<i>Agricultural and Residential</i>	60	55
<i>Residential</i>	60	55
<i>Planned Unit Development</i>	60	55
<i>Business and Public Facilities</i>	65	60
<i>Industrial</i>	79	72

- (b) Heating and cooling systems, including but not limited to air conditioners and heat pumps, shall not be subject to the night levels enumerated above.
- (c) Any person, with either a valid building permit issued by the city or a lawfully obtained exemption provided for under section 15-10, who ~~between the hours of 7:00 a.m. and 8:00 p.m. weekdays and Saturdays and between the hours of 9:00 a.m. and 5:00 p.m. on Sundays and legal holidays observed by city government during daytime~~ operates or causes to be operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors in any

residential district within one hundred fifty (150) yards of a lawfully occupied dwelling shall not be subject to the levels enumerated above.

- (d) Persons performing construction of public projects, repair or maintenance work for such projects or persons performing work for private or public utilities for the repair of facilities or restoration of services shall not be subject to the levels enumerated above.
- (e) Normal yard and house maintenance equipment shall not be subject to the maximum daytime levels enumerated above.

**Sec. 15-5. - Prohibitions generally.**

The following acts are violations of this chapter:

- (1a) Sounding a horn or other signaling device on any motor vehicle except as an emergency or danger-warning signal.
- (2b) Operating a motor vehicle, other than an authorized emergency vehicle, ~~or a vehicle moving under special permit, which creates a noise disturbance, or a motor carrier vehicle engaged in interstate commerce, in such a manner that the sound level emitted by the motor vehicle, when measured at a distance of fifty (50) feet or more, exceeds the sound levels established in Table II below.~~

<u>Table II</u>		
<u>Vehicle Class</u>	<u>Maximum dBA Speed limit 35 mph or less</u>	<u>Maximum dBA Speed limit over 35 mph</u>
<u>All motor vehicles of GVWR or GCWR of 6,000 lbs. or more</u>	<u>86</u>	<u>90</u>
<u>Any motorcycle</u>	<u>82</u>	<u>86</u>
<u>Any other motor vehicle or any combination of vehicles towed by any motor vehicle</u>	<u>76</u>	<u>82</u>

- (3c) Operating, loading or unloading any vehicle, including but not limited to trucks, or the opening and destruction of bales, boxes, crates and containers in the outdoors in zones other than industrial zoning districts within one hundred (100) yards of a lawfully occupied dwelling between the hours of 10:00 p.m. and 7:00 a.m.
- (4d) ~~Operating or causing to be operated between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and legal holidays observed by city government during nighttime~~ any equipment used in construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors ~~in any residential district~~ within one hundred fifty (150) yards of a lawfully occupied dwelling located in a residential district. This subsection shall not apply to construction of public projects, repair or maintenance work

performed on ~~public~~such projects or work performed by private or public utility companies for the repair of facilities or restoration of services.

- (5e) Using, operating or causing to be operated mechanical loud speakers or other sound amplification devices on trucks or other moving vehicles or in commercial establishments for the purpose of commercial advertising or attracting the attention of the public during nighttime. The use of such at all other times shall be subject to the following conditions:
- a.(1) The only sounds permitted are music or human speech.
  - b.(2) Sound shall not be issued ~~or~~and sound amplification devices shall not be used within one hundred (100) yards of hospitals, schools, ~~churches~~religious institutions or courthouses.
  - e.(3) The human speech and music amplified shall not be obscene.
- (6f) Operating or permitting to be operated any powered model aircraft in the outdoors during the nighttime. Any person desiring to use city parks or facilities to operate such aircraft at any time must first obtain permission from the city's parks and recreation department.
- (7g) The playing of radio, phonographs, television, tape or disc players, musical instruments or drums, sound amplifiers or similar devices which produce, reproduce or amplify sound in such a manner as to ~~create a noise disturbance~~emit sound audible at a distance of fifty (50) feet outside of a building or audible through partitions common to two (2) or more dwellings within a building.
- (8h) Talking, yelling, shouting, screaming, singing, or any other form of human sounds produced by any person or group of people that creates a noise disturbance at nighttime in such a manner as to be audible across property boundaries or audible through partitions common to two (2) or more dwelling units within a building.
- (9i) Playing, operating or permitting to be operated, any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound, which emits sound within a motor vehicle being operated on a public street~~or~~, alley, parking lot, or city park, and which emits sound audible from outside the motor vehicle at a distance of fifty (50) feet or more. The provisions of this subsection shall not apply to motor vehicle alarms or other security devices, the emission of sound for purposes of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.
- (10j) Operating or permitting to be operated, either on a highway or on public or private property within five hundred (500) feet of any residential district, any motorcycle, moped, motorized bicycle, motorcycle-like device commonly known as a trail bike or mini-bike, or motorized cart commonly known as a go-cart, unless it is equipped with an exhaust system of a type installed as standard equipment, or comparable to that designed for use on that particular vehicle or device as standard factory equipment, in good working order and in constant operation to prevent excessive noise. Violation of this subsection shall be subject to a fine of fifty dollars (\$50.00).

**Sec. 15-6. - Noise from animals.**

~~(a) It shall be unlawful for any person to allow within the city prolonged or intense barking or other harsh or excessive noises to be made by any animal under his ownership or control, at any time, so as to disturb the quiet, comfort or repose of one (1) or more members of the community.~~

~~(b) For time purpose of this section, a harsh or excessive animal noise is one that disturbs the quiet, conduit or repose of a reasonable person with normal sensitivities.~~

~~(c) For the purpose of this section, a person shall be deemed to have "allowed" his animal to bark or create other harsh or excessive noises, if he has once been put on notice by the city police department or the animal warden, upon the complaint that the animal is disturbing one (1) or more members of the community and he thereafter fails to confine such animal inside his dwelling unit or other enclosed structure or take similar action calculated to terminate such disturbance.~~

~~It shall not be necessary for the police department or animal warden to issue a new notice for each repeated occurrence any animal to create noise that is plainly audible at least once a minute for ten (10) consecutive minutes (i) inside the confines of the dwelling unit, house or apartment of another, or (ii) at fifty (50) or more feet from the animal.~~

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#### **Sec. 15-8. - Measurement procedures.**

The measurement of sound or noise pursuant to this section shall be as follows:

~~(1a)~~ The measurement of sound or noise shall be made with sound level meters Type 1 or Type 2 that meet the standards prescribed by the ANSI and approved by the Division of Consolidated Laboratory Services in the Virginia Department of General Services. The instruments shall be maintained in calibration and good working order. A calibration shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. A minimum of three (3) sound level readings will be taken. The geometric mean of these readings will be used as the average sound level. If the background noise is equal to the levels set forth in section 15-4 above, three (3) dB shall be subtracted out of the average sound level.

~~(2b)~~ The slow meter response of the sound level meter shall be used to determine that the average amplitude has not exceeded the dBA readings or the limiting noise spectra set forth in section 15-4 above.

~~(3c)~~ Unless otherwise specified, the measurement shall be made at the property boundary on which such noise is generated, or at any point within the receiving property affected by the noise.

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#### **Sec. 15-10. - Exemptions.**

Exemptions from the provisions of this chapter may be granted in accordance with the requirements below:

(1a) Any person responsible for any noise from the operating of any equipment used in construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto shall either obtain a valid building permit obtained from the city or apply to the ~~police chief~~ city manager for an exemption or partial exemption from the provisions of this chapter. All other requests for exemptions shall be directed to the city manager~~chief~~. The chief city manager may grant such exemption or partial exemption if he finds that:

a. (1) ~~The noise does not endanger the public health, safety or welfare; or detriment to the community due to the noise is outweighed by the benefit to the public interest during the period of the exemption or partial exemption; and~~

b. (2) ~~Compliance~~ Strict compliance with the provisions of this chapter ~~from which an exemption is sought~~ would cause a serious hardship without producing equal or greater benefit to the public.

(2b) In determining whether to grant such exemption, the ~~chief~~ city manager shall consider the following:

a. (1) The time of day the noise will occur;

b. (2) The duration of the noise;

c. (3) The loudness of the noise in relation to the maximum permissible sound levels set forth in section 15-4 of this chapter;

d. (4) Whether the noise is intermittent or continuous; and

e. (5) Such other matters ~~as are reasonably~~ that the city manager determines are related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship that may result from the enforcement of the provisions of this chapter.

(3c) Exemptions or partial exemptions issued pursuant to this section shall be granted for such period as the chief city manager deems ~~reasonable~~ appropriate. Any such exemption shall be reviewed if complaints are received by the chief city manager and may be revoked if, when the foregoing standards are applied, circumstances no longer justify the exemption or partial exemption.

(4d) Any person aggrieved by a decision of the chief city manager made pursuant to this section may ~~obtain review~~ request reconsideration of such decision by the city manager ~~or his authorized agent~~ by delivering a written statement of appeal to the office of the city manager within ten (10) days of the date of the decision. The city manager shall review all statements of grievances and shall, within ten (10) days after receipt of such written statement of grievance, either affirm or set such decision aside, and make any such further determination as may be necessary to effectuate the provisions of this section. The decision of the city manager shall be final and binding.”

2. All sections of the Code of the City of Manassas Park, Virginia that are inconsistent with and/or in conflict with this Ordinance are hereby repealed.

3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

4. This Ordinance shall be effective upon its adoption.

Approved:

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Jeanette Rishell, Mayor

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Lana A. Conner, City Clerk

AYES:

NAYS:

ABSENT:

ABSTAIN: