

INTRODUCED: June 13, 2011

AN ORDINANCE No. 2011-119 - **140**

As Amended

To repeal ch. 38, art. II of the City Code, concerning noise, and to amend and reordain ch. 38 of the City Code by adding therein a new art. II, concerning sound control, consisting of sections numbered 38-31 through 38-43.

Patron: Mr. Samuels

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: June 27, 2011 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 38, Article II of the Code of the City of Richmond (2004) be and hereby is **repealed** as follows:

ARTICLE II

NOISE

DIVISION 1

GENERALLY

Sec. 38-31. Excessive noise prohibited.

(a) It shall be unlawful for any person:

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JUL 25 2011 REJECTED: _____ STRICKEN: _____

(1) To use, operate or play between the hours of 7:00 a.m. and 11:00 p.m. any radio, phonograph, television, record, compact disc player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible (i) inside the confines of the dwelling unit, house or apartment of another person or (ii) at fifty (50) or more feet from the device, except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events. Between the hours of 11:00 p.m. and 7:00 a.m., sound from such equipment shall not be plainly audible to any person other than the operator.

(2) To allow noise between the hours of 12:01 a.m. and 7:00 a.m. that is plainly audible inside the confines of the dwelling unit, house or apartment of another person.

(3) To allow any animal or bird to create noise such that it is plainly audible at least once a minute for 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 or bird.

(4) To play or permit the playing of any radio, stereo, tape player, compact disc player, loud speaker or other electronic device or mechanical equipment used for the amplification of sound, which is located within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of 50 feet or more from the vehicle.

(5) To operate a motor vehicle including a motorcycle that creates mechanical or exhaust noise that is plainly audible at a distance of three hundred fifty (350) feet or more from the vehicle.

(6) To sound or permit the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public property, except as a warning of danger.

(7) To create plainly audible noise in residential areas between 10:00 p.m. and 5:00 a.m. in connection with the loading or unloading of refuse, waste or recycling collection vehicles.

(8) To create plainly audible noise 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 and other landscaping, lawn or timbering activities.

(9) To create plainly audible noise in connection with the erection, including excavation, demolition, alteration, or repair of any building or improvement between the hours of 7:00 p.m. and 7:00 a.m., except for emergency repairs to rectify an unsafe condition.

(10) To operate any chain saw, pile driver, mechanical shovel, pneumatic hammer, derrick, or mechanical hoist between the hours of 7:00 p.m. and 7:00 a.m., except for emergency repairs to rectify an unsafe condition.

(b) Any person convicted of a violation of this section shall be guilty of a class 2 misdemeanor.

Sec. 38-32. Exceptions.

Section 38-31 of this Code shall have no application to any sound generated by any of the following:

(1) Public speaking and public assembly activities conducted on any public right-of-way or public property provided, however, that the terms of any special events permit issued

under Article X, Chapter 102 of the City Code regarding assemblies, permits and parades shall apply.

(2) Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.

(3) Activities on or in school athletic facilities, or on or in publicly owned property and facilities.

(4) Radios, loud speakers, sirens, horns, and bells on or other noise caused by police, fire, or other emergency response vehicles.

(5) Motor vehicle alarms or other motor vehicle security devices.

(6) Parades, fireworks displays, school-related activities, and other such public special events or public activities; subject, however, to the terms of any permit issued under Article V, Chapter 46.1 of the City Code regarding fireworks and pyrotechnics permits or under Article X, Chapter 102 of the City Code regarding assemblies, demonstrations and parades shall apply.

(7) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm.

(8) Locomotives and other railroad equipment, and aircraft.

DIVISION 2

SOUND TRUCKS AND SOUND AMPLIFYING EQUIPMENT

Sec. 38-56. Definitions.

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

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or any other sound. However, such term shall not be construed to include such machine or device when used exclusively for and heard primarily by occupants of buildings or vehicles in which they are installed and operated and warning devices on authorized emergency vehicles and horns or other warning devices on other vehicles used only for traffic safety purposes.

Sound truck means any motor vehicle, horse-drawn vehicle or airplane having mounted thereon or attached thereto any sound amplifying equipment.

Sec. 38-57. Restrictions on operation generally.

(a) No person shall operate or cause to be operated any sound truck for commercial sound advertising purposes or for any purposes connected with commercial advertising or incident thereto in the city with sound amplifying equipment in operation.

(b) No person shall operate or cause to be operated any sound amplifying equipment for commercial sound advertising purposes or for any purposes connected with commercial advertising or incident thereto in the city so that the amplification of the human voice, music or any other sound emitted therefrom for such purposes is audible on or in any street, alley, road, park, playground or any other public way or place. However, the use of sound amplifying equipment where the music or speech amplified pertains exclusively to religious subjects or other subjects of general educational interest to the public shall be deemed to be a

noncommercial use of sound amplifying equipment and subject only to the regulations prescribed by section 38-58.

Sec. 38-58. Noncommercial use.

Noncommercial use of sound amplifying equipment and sound trucks in the city shall be subject to the following regulations:

- (1) The only sounds permitted are music or human speech.
- (2) The operation of sound trucks is permitted between the hours of 10:00 a.m. and 4:30 p.m., and the operation of stationary sound amplifying equipment is permitted between the hours of 10:00 a.m. and 11:00 p.m.
- (3) The human speech and music amplified shall not be slanderous.
- (4) The volume of sound shall be controlled so that it will not be audible above the level of conversation speech at a distance in excess of 200 feet from the property on which the amplified sound originates.

Sec. 38-59. Exceptions.

This division shall not apply to the operation of sound amplifying equipment at sporting or athletic exhibitions, entertainments, performances, religious gatherings or other public gatherings.

Sec. 38-60. Licenses.

Nothing contained in this division shall be construed to relieve any person operating or causing a sound truck to be operated in the city of obtaining the license and paying the license tax prescribed by section 98-701.

§ 2. That Chapter 38 of the Code of the City of Richmond (2004) be and hereby is amended and reordained by **adding therein** a new Article II consisting of sections numbered 38-31 through 38-43 as follows:

ARTICLE II
SOUND CONTROL

Sec. 38-31. Title and application of article generally.

This article may be cited as the "Sound Control Ordinance of the City of Richmond." It shall be applicable to the control of sound originating within the corporate limits of the City of Richmond, Virginia.

Sec. 38-32. Definitions.

The following terms, when used in this article, shall have the meanings hereinafter ascribed to them, unless otherwise clearly provided or indicated by the context:

(1) "*dBA*" means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. For purposes of this article, sound pressure levels shall be measured at the place where sound is perceived to constitute a violation of this article and not at the place where it originates.

(2) "*ANSI*" means the American National Standards Institute and any successor or successors.

(3) "*Daytime hours*" means the period each day beginning at 7:00 a.m. and ending at ~~9:00 p.m.~~ ~~[10:00 p.m.]~~ 11:00 p.m., local time.

(3a) "*Daytime extended hours*" means the period beginning at 11:00 p.m. of each day and ending at 7:00 a.m. of the next day, local time, for which the Chief Administrative Officer or the designee thereof has expressly authorized the relevant activity in writing for reasons related

to the health or safety of persons engaged in the activity or for reasons related to federal or state funding requirements.

(4) "*Decibel*" means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

(5) "*Emergency*" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate curative or corrective action.

(6) "*Emergency work*" means any curative or corrective work performed for the purpose of preventing or alleviating the physical trauma or property damage caused by an emergency.

(7) "*Excessive sound*" means sound that exceeds 55 dBA during nighttime hours and sound that exceeds 65 dBA during daytime hours when measured inside a structure, or sound that exceeds 65 dBA during nighttime hours and sound that exceeds 75 dBA during daytime hours when measured outside a structure, or both.

(8) "*GVWR*" means gross vehicle weight rating.

(9) "*Gross vehicle weight rating*" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle.

(10) "*GCWR*" means gross combination weight rating.

(11) "*Gross combination weight rating*" means, in cases where trailers and tractors are separable, the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle.

(12) "*Motor carrier vehicle engaged in interstate commerce*" means any vehicle for which noise emissions regulations apply pursuant to Section 18 of the Noise Control Act of 1972 (P.L. 92-574), as amended, codified at 42 U.S.C. § 4917.

(13) "*Motor vehicle*" means any device that is self-propelled or that is designed for self-propulsion, in, on or by which any person or property is or may be transported or drawn on a street, except devices moved by human power or used exclusively on stationary rails or tracks.

(14) "*Motorcycle*" means any motor vehicle designed to travel on not more than three wheels in contact with the ground and any four-wheeled vehicle weighing less than 500 pounds and equipped with an engine of less than six horsepower, excepting farm tractors.

(15) "*Multifamily dwelling or mixed use structure*" means a structure whose principal use is as a two-family dwelling or a multifamily dwelling, and includes any dwelling unit contained within the same building as other permitted principal uses, as those terms are defined by section 114-1220 of this Code. It does not include hotels and motels or lodgohouses, as those terms are defined by section 114-1220 of this Code.

(16) "*Nighttime hours*" means the period beginning at [9:00 p.m.] [~~10:00 p.m.~~] 11:00 p.m. of each day and ending at 7:00 a.m. of the next day, local time.

(17) "*Residential zone*" means any location within any area zoned residential or residential-office pursuant to the City's zoning ordinance, and designated as such by the R- or RO- prefix in Chapter 114 of this Code.

(18) "*School*" means a public or private school for elementary, middle or high school grades or an institution of higher education offering postsecondary degrees as a college or university.

(19) "*Sound*" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The definition of sound may include any characteristic of such sound, including duration, intensity and frequency.

(20) "*Sound level*" means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency-weighting network, as specified in ANSI specifications for sound level meters.

(21) "*Sound level meter*" means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

Sec. 38-33. Declaration of findings and policy.

The City Council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the city to prevent such excessive sound.

Sec. 38-34. Administration and enforcement of article generally.

The sound control program established by this article shall be enforced and administered by the Chief Administrative Officer with the assistance of other City departments as required.

Sec. 38-35. Testing of metering devices used to enforce article

In order to implement and enforce this article effectively, the Chief of Police shall develop and promulgate standards and procedures for testing and validating sound level meters used in the enforcement of this article.

Sec. 38-36. Exemptions from article.

No provisions of this article shall apply to:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency;
- (2) The emission of sound in the performance of emergency work;
- (3) The emission of sound by an emergency vehicle, as defined by Code of Virginia, § 46.2-920(C), for the purpose of alerting persons to the presence of the emergency vehicle;
- (4) Activities authorized by a permit issued pursuant to section 38-41 of this Code.
- (5) Activities for which the regulation of sound has been preempted by federal law.
- (6) Performances or practices by marching bands, school orchestras or ensembles and similar groups, athletic contests or practices, and other school-funded activities, taking place on the grounds of a school.
- (7) Bells and carillons.
- (8) Activities related to the construction, repair, maintenance, remodeling, demolition, grading or other improvements of or to real property and any structures thereon during daytime hours or during daytime extended hours.
- (9) Gardening, lawn care, tree maintenance or removal, and other landscaping activities during daytime hours.
- (10) Refuse collection and sanitation services during daytime hours or during daytime extended hours.

(11) Sound resulting from lawfully permitted fireworks displays occurring during daytime hours.

Sec. 38-37. Violations of article.

- (a) A violation of this article shall constitute a Class 4 misdemeanor.
- (b) A second violation of this article within any twelve-month period shall constitute a Class 3 misdemeanor.
- (c) A third violation and every additional violation of this article within any twelve-month period shall constitute a Class 2 misdemeanor.
- (d) Any person operating or controlling a source of sound shall be guilty of any violation caused by that source. If that person or persons cannot be identified by direct evidence, a court may infer that any owner, tenant, resident or manager physically present on the property where the violation is occurring was operating or controlling the sound source. Such inference may be rebutted by any person so charged.
- (e) In addition to and not in lieu of the penalties prescribed in this section, the City may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article and may seek any other remedy or relief authorized by law.

Sec. 38-38. Maximum sound levels in residential zones.

Except as provided or permitted by or pursuant to section 38-40 and 38-41 of this Code, no person shall operate a device in such a manner as to create, or otherwise cause any source of sound to create, excessive sound at any point on the land of another person which is located in a residential zone.

Sec. 38-39. Maximum sound levels in multifamily dwellings or mixed use structures.

Except as provided or permitted by or pursuant to section 38-40 and 38-41 of this Code, no person shall operate a device in such a manner as to create, or otherwise cause any source of sound to create, excessive sound in the residence of another person which is located in a multifamily dwelling or mixed use structure when measured at a point at least four feet from the wall, ceiling or floor nearest the sound source, regardless of whether the residence is located in a residential zone.

Sec. 38-40. Maximum level of sound emitted by motor vehicles.

(a) No person shall operate or cause to be operated a motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the level of sound emitted by the motor vehicle or motorcycle, when measured at a distance of at least 50 feet, exceeds the level set forth in the following table:

Vehicle Class	Sound Level in dBA	
	Speed Limit 35 MPH or Less	Speed Limit over 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86	90
Any motorcycle	82	86
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

This subsection shall not apply to any motor carrier vehicle engaged in interstate commerce.

(b) It shall be unlawful for any person to play, use or operate, or permit the playing, use or operation of, any electronic device or horn used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the city, including any public or private street or alley, in such a manner as to be plainly audible to the human ear at a distance of at least 50 feet from the vehicle in which it is located.

Sec. 38-41. Permit for use of loudspeakers on vehicles or mercantile establishments.

(a) No person shall use any mechanical loudspeaker or amplifier on any motor vehicle or other moving vehicle or on the exterior of any mercantile establishment, for advertising or other purposes, such that it is plainly audible on the property of another person, without first obtaining a permit from the Chief Administrative Officer or the designee thereof.

(b) Whenever the Chief Administrative Officer or the designee thereof determines that the use of mechanical loudspeakers or amplifiers on motor vehicles or other moving vehicles or on the exterior of any mercantile establishment, for advertising or other purposes, will not create excessive sound on the property of another person, the Chief Administrative Officer or the designee thereof shall grant a permit.

(c) Nothing contained in this article shall be construed to relieve any person operating or causing a motor vehicle or other moving vehicle on which is situated any mechanical loudspeaker or amplifier to be operated in the city of obtaining the license and paying the license tax prescribed by section 98-701 of this Code.

Sec. 38-42. Noisy animals and birds.

No person shall allow any animal or bird to create sound such that it is plainly audible at least once a minute for ten consecutive minutes:

- (1) inside the confines of the dwelling unit, house or apartment of another; or
- (2) at least 50 feet from the animal or bird.

Sec. 38-43. Severability.

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

§ 3. That section 98-701 of the Code of the City of Richmond (2004) be and hereby is amended and reordained as follows:

Sec. 98-701. Advertising—Vehicles carrying sound devices on streets.

(a) No person shall operate or cause to be operated on the city streets a ~~[sound truck]~~ a motor vehicle or other moving vehicle on which is situated any mechanical loudspeaker or amplifier as [defined] described in section [38-56] 38-41 without obtaining a license and paying a license tax therefor. For each such vehicle owned by any person whose bona fide residence or place of business is located in the city, the annual license tax shall be \$300.00.

(b) For each such vehicle owned by any person whose bona fide residence or place of business is not located in the city, the license tax shall be \$15.00 for each day such vehicle is so operated on the city streets.

(c) Every person whose bona fide residence or place of business is in the city shall have the privilege of procuring a license on a daily basis, as often as such person may desire, and upon the exercise of that privilege the person shall pay a license tax of \$15.00 for each day such vehicle is so operated on the city streets.

(d) This section shall not be construed to permit the operation of such vehicles upon the city streets without the payment of the license tax on such vehicles provided for elsewhere in this chapter, nor shall this section be construed to permit the operation of such vehicles upon the city streets for commercial purposes or in any manner contrary to any other law.

§ 4. This ordinance shall be in force and effect upon adoption, provided that (i) the provisions contained in section 38-41(a) as adopted by section 2 of this ordinance shall be in force and effect 60 days after the date on which this ordinance is adopted and (ii) during the period commencing on the date on which this ordinance is adopted and ending 60 days after the

date on which this ordinance is adopted, "daytime extended hours," for purposes of the provisions adopted by section 2 of this ordinance, means the period beginning at 11:00 p.m. of each day and ending at 7:00 a.m. of the next day, local time.

A TRUE COPY:
TESTE:

Josephine Ali
City Clerk



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

Daisy E. Weaver
Council Chief of Staff

Ordinance/Resolution Request

TO Allen Jackson, Richmond City Attorney
Haskell Brown, Asst. City Attorney
Corona Barrow, Executive Assistant

THROUGH Daisy E. Weaver, Council Chief of Staff *D. E. Weaver*

FROM Steven Taylor, Council Policy Analyst *ST*

COPY Charles Samuels, 2nd District Councilmember
Jan Girardi, 2nd District Liaison

DATE June 22, 2011

PAGE/s 1 of 2

TITLE Amending Ordinance No. 2011-119 Concerning Sound and Noise in the City to change the definitions of daytime and nighttime.

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

SUGGESTED STANDING COMMITTEE

Charles Samuels

Public Safety

ORDINANCE/RESOLUTION SUMMARY

Amend Ord. No. 2011-119 to change the definition of daytime and nighttime hours so that in Sec. 38-32(3) "Daytime hours" means the period of the day beginning at 7:00 a.m. and ending at 10:00 p.m., local time; and in Sec 38-32(16) "nighttime hours" means the period beginning at 10:00 p.m. and ending at 7:00 a.m. of the next day, local time.

BACKGROUND

The Public Safety Standing Committee reviewed Ord. No. 2011-119, concerning sound control and noise in the City. During Committee discussions it was recommended that the definitions of daytime and nighttime hours be amended as stated in the summary above.

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact \$ 0

Fiscal Summary: N/A

Attachment/s Yes No