

Work Session

Agenda Item #	1
Meeting Date	February 10, 2016
Prepared By	Linda S. Perlman Assistant City Attorney
Approved By	Suzanne R. Ludlow City Manager

Discussion Item	Amendments to the Noise Control Ordinance to provide for increased measures of enforcement of excessive noise levels and noise disturbance violations.
Background	<p>On December 7, 2015, the Council held a worksession on draft amendments to the noise control ordinance to allow for: 1) issuance of event shut down orders; and 2) notices of violation and municipal infraction citations to be issued to the property owner or person responsible for the management, occupancy or supervision of the premises where the noise is occurring. The Council also is considering whether to reinstitute the Noise Control Board (§14.12.140) as a functioning entity to help adjudicate noise disturbance complaints in the City; particularly neighbor-to-neighbor complaints.</p> <p>The Council identified various provisions of the draft ordinance that should be revised, added or deleted.</p> <ol style="list-style-type: none"> 1. The definition of “noise disturbance” has been amended to delete “unusual for the time of day or location where it is produced or heard” (§14.12.030). 2. Construction Noise: The provisions of <i>Montgomery County Code</i> §31-B-6, Noise levels and noise disturbance standards for construction, are now set forth in §14.12.060—rather than simply adopting these provisions as part of the City’s noise control ordinance by reference. A fact sheet on Noise Suppression Plan Guidelines issued by the Montgomery County DEP is attached for your information. 3. An exemption from the Noise Control Ordinance for noise created by “air medical services” (<i>i.e.</i>, helicopters and other air transport used to move patients to and from hospitals and accident scenes) has been added (§14.12.110.B). 4. References to a compliance plan (<i>i.e.</i>, provisions for a violator to submit a plan or schedule of actions to take to remedy or end the noise violation) have been deleted from §14.12.130.B.4 & C. Such compliance action is sufficiently covered under the enforcement officer’s violation notice setting forth the action required to correct the violation in §14.12.130.B.3. 5. Notice of general waiver public hearings (§14.12.120.B.3) and notice of Noise Control Board hearings on noise disturbance complaints (§14.12.140.B.2.d) now may be sent by email, as well as by posting a sign on the property which is the location of the noise source or where the noise disturbance violation is alleged to have occurred. 6. The authority of the Noise Control Board to impose fines has been <u>deleted</u> (§14.12.140.D.2.b & 3). The only grant of authority to impose civil fines for

	<p>violations of municipal law is in <i>Md. Local Gov't Code Ann. §6-102 et seq.</i> which authorizes municipal infraction citations which are adjudicated in the District Court of Maryland. The revised ordinance provides that a violator who fails to comply with a Noise Control Board decision on a noise disturbance complaint may be issued a municipal infraction citation (§14.12.140.F.1).</p> <p>7. A provision, §14.12.140.E, has been added for appeal of a Noise Control Board decision (<i>i.e.</i>, judicial review of administrative agency decision to the Circuit Court).</p>
Policy	<p>The intent of the City's Noise Control Ordinance is to control noise sources in order to permit the peaceful enjoyment of property and protect the public health and welfare of residents and visitors to the City. Noise can interfere with normal residential and business activities and persistent exposure to excessive noise can result in stress and, at high levels, can damage hearing.</p>
Fiscal Impact	<p>Minimal – to be determined.</p>
Attachments	<ol style="list-style-type: none"> 1. Ordinance amending the Noise Control Ordinance to provide for increased measures of enforcement of excessive noise levels and noise disturbance violations. 2. Noise Suppression Plan Guidelines, Montgomery County Department of Environmental Protection
Recommendation	<p>Consider the Ordinance amending the noise control ordinance for first reading.</p>
Special Consideration	



NOISE SUPPRESSION PLAN GUIDELINES

Montgomery County Department of
Environmental Protection

Division of Environmental Policy & Compliance

A Noise Suppression Plan (NSP) is a plan written and developed under the guidance of an engineer familiar with the principles of acoustics. A NSP will detail the use of the most effective noise-suppression equipment, materials, and methods appropriate and reasonably available for a particular type of construction. As a minimum an NSP must contain the following:

1. A detailed scope of the work to be performed, why the project can not comply with the current construction noise standard, the duration of the project, and the expected noise levels to be produced during the project.
2. A scaled site map which accurately depicts the exact location of the project, the project boundaries and all affected residential and business properties within a radius of 500 feet of the construction site.
3. Explain how the implementation of the proposed NSP will benefit the general public.
4. A detailed description of the noise-suppression equipment, materials and methods to be employed for this project.
5. An information notice to be distributed to all nearby residences anticipated to be affected by noise from this project. The notice shall contain a description of the project, duration, noise mitigation measures to be used, and on-site contact information for the contractor.

Upon receipt and review of a NSP the Department of Environmental Protection will provide public notice to the households most likely to be affected by any construction activity noise levels that exceed 75 dBA. Please allow a minimum of 10 days after publication or circulation of the notice for Department approval of the Noise Suppression Plan .

NOTE: The 85 decibel limit, if approved, will only apply from 7:00 AM until 5:00 PM, Monday thru Friday. At all other times, including weekday Federal holidays, the maximum noise levels must comply with the noise limits as specified in Section 31B-6 of the Montgomery County Code.

Questions concerning Noise Suppression Plans should be directed to Mr. Steve Martin, Montgomery County DEP, at 240-777-7746.

1 Introduced by:

First Reading:

2

Second Reading:

3

Effective Date:

4

5

CITY OF TAKOMA PARK, MARYLAND

6

7

ORDINANCE 2016-__

8 **(Amending the Noise Control Ordinance to Provide for Increased Measures of Enforcement**
9 **of Excessive Noise Levels and Noise Disturbances Violations)**

10 **WHEREAS**, the Council finds that the residents of the City of Takoma Park have a right to
11 an environment that is free from noise levels that may jeopardize their health and enjoyment of
12 property; and

13 **WHEREAS**, loud noise can be a serious environmental and health hazard; and

14 **WHEREAS**, the purpose of Chapter 14.12, Noise Control, of the *Takoma Park Code* is to
15 establish the lawful and unlawful limits of noise within the City and the enforcement procedures
16 and requirements pertaining thereto, and to control noise sources to protect public health and allow
17 the peaceful enjoyment of property; and

18 **WHEREAS**, the City Council wishes to amend the City's Noise Control Ordinance in order
19 to provide for increased enforcement of excessive noise levels and of noise disturbance violations,
20 including allowing the police to issue event shut-down orders and for violation notices and citations
21 to be issued to the property owner or to the person responsible for the management, occupancy, or
22 supervision of premises where the noise violation is occurring.

23 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
24 **TAKOMA PARK, MARYLAND:**

25 **SECTION 1.** Title 14, Health and Safety, Chapter 14.12, Noise Control, of the *Takoma*
26 *Park Code* is amended as follows:

27 **Chapter 14.12 - NOISE CONTROL**

28 Sections:

29 14.12.010 Declaration of policy.

30 14.12.020 Exemption from County Noise Control Ordinance.

31 14.12.030 Definitions.

32 14.12.040 Regulations.

33 14.12.050 Noise level and noise disturbance violations.

34 14.12.060 Noise level and noise disturbance standards for construction.

35 14.12.070 Measurement of sound.

36 14.12.080 Leaf blowers and other power lawn tools.

37 14.12.090 Animals.

38 14.12.100 Burglar and vehicle alarms.

- 39 14.12.110 Exemptions.
- 40 14.12.120 Waivers.
- 41 14.12.130 Enforcement and penalties.
- 42 14.12.140 Noise Control Board.

43 **14.12.010 Declaration of policy.**

44 The Council of the City finds that excessive noise harms public health and welfare and impairs
45 enjoyment of property. The intent of this noise control ordinance is to control noise sources to
46 protect public health and to allow the peaceful enjoyment of property. This noise control ordinance
47 shall be liberally construed to carry out this intent. (Ord. 2002-35 § 1(1), 2002/Ord. 2000-22 § 1(1),
48 2000)

49 **14.12.020 Exemption from County Noise Control Ordinance.**

50 Pursuant to the authority conferred by ~~Article 23A, Section 2B~~ **SECTION 4-111(b) OF THE**
51 **LOCAL GOVERNMENT ARTICLE** of the Annotated Code of Maryland and by Section 1-203
52 of the Montgomery County Code, the City exempts itself from the provisions of Chapter 31B, Noise
53 Control, of the Montgomery County Code, except as expressly set forth in this chapter. (Ord. 2002-
54 35 § 1(2), 2002/Ord. 2000-22 § 1(2), 2000)

55 **14.12.030 Definitions.**

56 “Ambient noise” means the total noise associated with a given environment, being usually a
57 composite of normal or existing sounds from all sources near and far, excluding the noise source at
58 issue.

59 “Board” means the City of Takoma Park Noise Control Board.

60 “City Manager” means the City Manager of the City of Takoma Park and includes the City
61 Manager’s designee.

62 “City Clerk” means the City Clerk of the City of Takoma Park and includes the City Clerk’s
63 designee.

64 “Construction” means temporary activities directly associated with site preparation, assembly,
65 erection, repair, alteration, or demolition of structures or roadways.

66 “dBA” means decibels of sound, as determined by the A-weighting network of a sound level meter
67 or by calculation from octave band or 1/3 octave band data.

68 “Daytime” means the hours from 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 10:00 p.m.
69 on weekends and holidays.

70 “Decibel” means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a
71 particular sound pressure squared to the standard reference pressure squared. For this noise control
72 ordinance, the standard reference pressure is 20 micropascals.

73 “Enforcement officer” means a City police officer or City code enforcement officer.

74 “Intermittent noise” means a noise which goes on and off but which is steady while it is on.

75 “Leaf blower” means any portable, hand held or backpack, ~~engine-powered~~ device with a nozzle
76 that creates a directable airstream which is capable of and intended for moving leaves **OR ANY**
77 **OTHER TYPE OF UNATTACHED DEBRIS OR** ~~and light~~ materials. **LEAFBLOWER**
78 **INCLUDES DEVICES OR MACHINES THAT ACCEPT VACUUM ATTACHMENTS.**

79 “Nighttime” means the hours from 8:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 9:00 a.m.
80 on weekends and holidays.

81 “Noise” means sound created or controlled by human activity, from one or more sources, or sound
82 from an animal source, heard by an individual.

83 “Noise disturbance” means any steady-state or impulsive noise occurring on either a continuous or
84 intermittent basis that is:

- 85 1. Unpleasant, annoying, offensive, loud, or obnoxious; **OR**
- 86 2. ~~Unusual for the time of day or location where it is produced or heard; or~~
- 87 3. Detrimental to the health, comfort, or safety of any individual or to the reasonable
88 enjoyment of property or the lawful conduct of business because of the loudness, duration, or
89 character of the noise.

90 **A SOUND LEVEL METER MEASUREMENT IS NOT REQUIRED TO ESTABLISH A**
91 **NOISE DISTURBANCE.**

92

93 “Noise suppression plan” means a written plan to use the most effective noise-suppression
94 equipment, materials, and methods appropriate and reasonable available for a particular type of
95 construction.

96 “Person” means an individual, group of individuals, corporation, limited liability company,
97 partnership, or voluntary association; or a department or agency of the City, County, or any other
98 government to the extent allowed by law.

99 “Power lawn tool” means any mechanically powered lawn or garden tool, lawn mower, or powered
100 snow removal equipment, or other similar device commonly used outdoors.

101 “Property line” means the real or imaginary line along the ground surface and its vertical extension
102 which separates real property owned or controlled by one person from contiguous real property
103 owned or controlled by another person or from any public right-of-way or from any public space.

104 “Receiving property” or “receiving noise area” means any real property where people live or work
105 and where noise is heard.

106 “Sound” means an auditory sensation evoked by the oscillation of air pressure.

107 “Source” means any person, installation, device, or animal causing or contributing to noise. (Ord.
108 2002-35 § 1(3), 2002/Ord. 2000-22 § 1(3), 2000)

109 **14.12.040 Regulations.**

110 A. In accordance with Chapter 2.12, the City Manager may establish noise control regulations and
111 standards as necessary to accomplish the purposes and intent of this noise control ordinance and
112 also may set fees by regulation to offset the costs of any City reviews or other actions required or
113 authorized by this chapter.

114 B. If no City regulations have been adopted specifying the procedures and methodology for
115 measurement of noise levels, then the provisions of **COMAR – CODE OF MONTGOMERY**
116 **COUNTY REGULATIONS, CHAPTER 31B, NOISE CONTROL REGULATIONS,**
117 ~~Montgomery County Regulation Number 29-86, Procedures Governing the Measurement of Noise-~~
118 ~~Levels in Montgomery County, Maryland,~~ or any amended or successor County regulations **ON**
119 **NOISE CONTROL** setting procedures for the measurement of noise levels, are adopted by
120 reference. (Ord. 2002-35 § 1(4), 2002/Ord. 2000-22 § 1(4), 2000)

121 **14.12.050 Noise level and noise disturbance violations.**

122 A. Maximum Allowable Noise Levels.

123 1. Except as otherwise expressly provided in this noise control ordinance or applicable
124 regulations, a person must not cause or permit noise levels that exceed the following levels:

**Maximum allowable noise level
(dBA) for receiving noise area
(outdoor noise level measurements):**

Daytime: 65 dBA

Nighttime: ~~60~~55 dBA

125 2. In the event the measured ambient noise level exceeds the maximum allowable noise level
126 (dBA) set forth in subsection (A)(1) of this section, the noise level standard (the standard
127 against which violations are measured) shall be adjusted so as to equal the ambient noise level
128 plus 3 dBA.

129 B. Noise Disturbance. A person must not cause or permit a noise that creates a noise disturbance.
130 (Ord. 2002-35 § 1(5), 2002/Ord. 2000-22 § 1(5), 2000)

131 **14.12.060 Noise level and noise disturbance standards for construction.**

132 **A. MAXIMUM ALLOWABLE NOISE LEVELS FOR CONSTRUCTION.**

133 **1. A PERSON MUST NOT CAUSE OR PERMIT NOISE LEVELS FROM**
134 **CONSTRUCTION ACTIVITY THAT EXCEED THE FOLLOWING LEVELS:**

135 **(A) FROM 7:00 A.M. TO 5:00 P.M. WEEKDAYS:**

136 **(I) 75 DBA IF THE CITY OR MONTGOMERY COUNTY DEPARTMENT**
137 **OF ENVIRONMENTAL PROTECTION HAS NOT APPROVED A NOISE-**
138 **SUPPRESSION PLAN FOR THE ACTIVITY; OR**

139 (II) 85 DBA IF THE CITY OR MONTGOMERY COUNTY DEPARTMENT
140 OF ENVIRONMENTAL PROTECTION HAS APPROVED A NOISE-
141 SUPPRESSION PLAN FOR THE ACTIVITY.

142 (B) THE LEVEL SPECIFIED IN SECTION 14.12.050 AT ALL OTHER TIMES.

143 2. CONSTRUCTION NOISE LEVELS MUST BE MEASURED AT THE LOCATION,
144 AT LEAST 50 FEET FROM THE SOURCE, ON A RECEIVING PROPERTY WHERE
145 NOISE FROM THE SOURCE IS GREATEST.

146 3. THE CITY OR MONTGOMERY COUNTY DEPARTMENT OF
147 ENVIRONMENTAL PROTECTION MUST BY REGULATION ESTABLISH
148 REQUIREMENTS FOR NOISE-SUPPRESSION PLANS AND ADOPT PROCEDURES
149 FOR EVALUATING AND APPROVING PLANS. THE REGULATIONS MUST
150 PROVIDE THAT, AT LEAST 10 DAYS BEFORE APPROVING A NOISE-
151 SUPPRESSION PLAN, THE CITY OR MONTGOMERY COUNTY DEPARTMENT
152 OF ENVIRONMENTAL PROTECTION MUST PROVIDE PUBLIC NOTICE
153 REASONABLY CALCULATED TO REACH AT LEAST A MAJORITY OF
154 HOUSEHOLDS THAT MIGHT BE AFFECTED BY THE CONSTRUCTION
155 ACTIVITY NOISE LEVELS ABOVE 75 DBA.

156 B. CONSTRUCTION NOISE DISTURBANCE. THE PROHIBITION ON NOISE
157 DISTURBANCE IN SECTION 14.12.050.B APPLIES TO CONSTRUCTION ACTIVITIES,
158 NOTWITHSTANDING SUBSECTION A.

159 C. EXAMPLES. THE FOLLOWING EXAMPLES ILLUSTRATE COMMON
160 CONSTRUCTION NOISE-PRODUCING ACTS THAT VIOLATE THIS SECTION IF
161 THEY EXCEED THE NOISE LEVEL STANDARDS SET IN SUBSECTION A OR
162 CREATE A NOISE DISTURBANCE. THE EXAMPLES ARE ILLUSTRATIVE ONLY AND
163 DO NOT LIMIT OR EXPAND THE CONSTRUCTION NOISE LEVEL OR NOISE
164 DISTURBANCE STANDARDS OF THIS SECTION:

- 165 1. DELIVERING MATERIALS OR EQUIPMENT, OR LOADING OR UNLOADING
166 DURING NIGHTTIME HOURS IN A RESIDENTIAL AREA.
- 167 2. OPERATING CONSTRUCTION EQUIPMENT WITH AUDIBLE BACK-UP
168 WARNING DEVICES DURING NIGHTTIME HOURS.

169 ~~A. D. The provisions of Section 31B-6, Noise level and noise disturbance standards for~~
170 ~~construction, of Chapter 31B of the Montgomery County Code, as amended from time to time, and~~
171 ~~any applicable regulations, are adopted by reference. The Montgomery County Department of~~
172 ~~Environmental Protection is given concurrent authority, along with City enforcement officers, to~~
173 ~~enforce the noise levels for construction and to evaluate and approve noise-suppression plans for~~
174 ~~construction activity in the City.~~

175 ~~B. The prohibition on noise disturbance in Section 14.12.050 applies to construction activities.~~
176 ~~(Ord. 2002-35 § 1(6), 2002/Ord. 2000-22 § 1(6), 2000)~~

177 **14.12.070 Measurement of sound.**

178 A. Noise levels shall be measured with a sound level meter meeting the standards of the American
179 National Standards Institute (ANSI) S.1.4—”Specifications for Sound Level Meters” or its
180 successor. This instrument shall be set to the appropriate weight response scales and the meter to the
181 slow response.

182 B. Noise levels shall be measured at **ANY** ~~the nearest receiving property line, at any point along~~
183 ~~the curb in front of the property line upon which the noise is being generated, or at any other~~
184 location on the receiving property ~~or receiving noise area~~, unless this noise control ordinance
185 specifies a different measurement location **OR A SPECIFIC DISTANCE**. (Ord. 2002-35 § 1(7),
186 2002/Ord. 2000-22 § 1(7), 2000)

187 **14.12.080 Leaf blowers and other power lawn tools.**

188 A. Except as provided in this section, a person must not sell, buy, offer for sale, or use a leaf
189 blower at any time that has an average sound level exceeding 70 dBA at a distance of 50 feet. This
190 requirement is in addition to any other noise level or noise disturbance standard that applies under
191 this chapter.

192 B. The City may inspect, and upon request, a person must produce, any leaf blower that is sold,
193 offered for sale, or used in the City, in order to determine whether the leaf blower complies with
194 this section. A person who relies in good faith on a manufacturer’s written representation of the
195 sound level of a leaf blower that has not been modified is not subject to a penalty for violating this
196 section.

197 C. No person shall use a leaf blower or other power lawn tool outdoors during the daytime for
198 more than 2 hours of accumulated time during any 24-hour period on any individual lot or parcel of
199 property and no leaf blower or other power lawn tool shall be used outdoors during the nighttime.
200 (Ord. 2002-35 § 1(8), 2002/Ord. 2000-22 § 1(8), 2000)

201 **14.12.090 Animals.**

202 No person shall allow a dog, bird, or other animal in his or her possession or control to persistently,
203 habitually, or continuously bark, howl, yelp, or make other loud noise common to its species, and
204 cause a noise disturbance to any person or to the neighborhood **REGARDLESS OF THE**
205 **DECIBEL LEVEL**. (Ord. 2002-35 § 1(9), 2002/Ord. 2000-22 § 1(9), 2000)

206 **14.12.100 Burglar and vehicle alarms.**

207 A. Audible burglar alarms for structures or motor vehicles are prohibited unless the operation of
208 such alarm can be terminated within **1530** minutes of being activated.

209 B. Notwithstanding the requirements of subsection (A) of this section, any member of the Takoma
210 Park Police Department shall have the right to take such steps as may be reasonable and necessary
211 to disconnect any such alarm installed in any building, dwelling, or motor vehicle at any time
212 during the period of its activation.

213 C. The Takoma Park Police Department, or any authorized designee of the City, may tow or
214 impound any motor vehicle in which an alarm has sounded continuously for more than ~~1530~~
215 minutes.

216 1. Whenever a vehicle is removed pursuant to this subsection and the officer or agent knows
217 or is able to ascertain from the registration records in the vehicle or the records of the State
218 Motor Vehicle Administration the name and address of the vehicle owner, such officer or agent
219 shall promptly give or cause to be given notice in writing to such vehicle owner of the fact of
220 the vehicle removal and the reasons therefor, and the method by which release of the vehicle
221 can be secured.

222 2. No person shall remove or permit the removal of a motor vehicle which has been towed or
223 impounded pursuant to this subsection from the custody of the City or from the place in which
224 the vehicle is being held without first obtaining authorization from the City, a court order, or
225 paying any citation issued for violation of this noise control ordinance and all fines, penalties,
226 costs and other charges associated with the towing or impoundment of the vehicle. (Ord. 2002-
227 35 § 1(10), 2002/Ord. 2000-22 § 1(10), 2000)

228 **14.12.110 Exemptions.**

229 This noise control ordinance does not apply to:

230 A. Emergency operations by fire and rescue services, police agencies, or public utilities and their
231 contractors;

232 **B. SOUND CREATED BY AIR MEDICAL SERVICES; THAT IS, THE USE OF AIR**
233 **TRANSPORTATION, AIRPLANE OR HELICOPTER, TO MOVE PATIENTS TO AND**
234 **FROM HEALTHCARE FACILITIES AND ACCIDENT SCENES.**

235 ~~B.~~ **C.** Sound created by snow removal, street sweeping, and leaf collection activities by the City;

236 ~~C.~~ **D.** Sound created by garbage, trash, solid waste, and recycling collection activities by the City
237 provided that such activities shall not begin prior to 6:30 a.m. If the National Weather Service
238 forecast for the day is for a high temperature of 90 degrees or higher or a heat or air quality advisory
239 has been issued for the Washington, D.C. metropolitan area, then garbage, trash, solid waste, and
240 recycling collection activities by the City may commence at 5:30 a.m.;

241 ~~D.~~ **E.** Sound created between 9:00 a.m. and 10:00 p.m. by sports, amusements, or entertainment
242 events or other public gatherings operated according to the requirements of the appropriate permit
243 or licensing authority. This includes athletic events, carnivals, festivals, parades, band and orchestra
244 activities, and public celebrations;

245 ~~E.~~ **F.** Sound created by City-sanctioned or City-sponsored activities provided the activity is being
246 operated in accordance with the requirements of any permit and City rules for the event. This
247 includes, but is not limited to, the Takoma Park Farmer's Market and 4th of July events (parade,
248 concert, and fireworks). (Ord. 2002-35 § 1(11), 2002/Ord. 2000-22 § 1(11), 2000)

249 **14.12.120 Waivers.**

250 A. Temporary Waiver.

251 1. The City Manager may waive any part of this noise control ordinance for a temporary event
252 if, in the sole judgment and discretion of the City Manager, the noise the event will create or
253 cause in excess of the noise level limits established under this noise control ordinance is offset
254 by the benefits of the event to the participants or the public and the noise of the event will not
255 cause undue hardship or disturbance to the surrounding area. The City Manager may impose
256 terms and conditions appropriate to reduce the impact of the noise level exception on the grant
257 of a temporary waiver.

258 2. An application for a temporary waiver shall be filed with the City Clerk, or such other
259 office as the City Manager shall designate. The applicant shall certify that notice of such
260 temporary waiver application has been provided to all properties contiguous to the property
261 where the event will occur, and to all properties opposite said property measured at right angle
262 to the intervening street or streets, and to the president or other designated representative, as
263 shown by the City's records, of the local neighborhood association. The application for a
264 temporary waiver shall not be approved less than 10 days after the notice required under this
265 subsection has been given. No person or household may receive more than one temporary
266 waiver in any calendar year.

267 B. General Waiver.

268 1. The City Council may waive any part of this noise control ordinance if the City Council
269 determines that compliance in a particular case is not practical and would impose undue
270 hardship.

271 2. An application for a general waiver shall be filed with the City Clerk, or such other office
272 as the City Manager shall designate. The City Clerk or the City Manager shall notify the City
273 Council of the receipt of an application for a general waiver and the City Council shall schedule
274 a public hearing on the application within 60 days of such notification.

275 3. At least 30 days before the public hearing, the applicant shall advertise the hearing by:

276 a. Publishing a notice in **THE TAKOMA PARK NEWSLETTER AND POSTING A**
277 **HEARING NOTICE ON THE CITY'S WEB SITE** ~~a newspaper of general circulation~~
278 ~~in Montgomery County, Maryland;~~

279 b. Posting a sign on the property which is the location of the noise source; and

280 c. Mailing, **EMAILING** or delivering notice of such general waiver application to all
281 properties contiguous to the property which is the location of the noise source, and to all
282 properties opposite the property measured at right angle to the intervening street or streets,
283 and to the president or other designated representative, as shown by the City's records, of
284 the local neighborhood association.

285 4. Based on the evidence presented at the public hearing, and on any City staff report or other
286 reliable information, the City Council may grant a waiver for up to 3 years, upon such terms

287 and conditions as the City Council deems appropriate to reduce the impact of the noise level
288 exception.

289 C. Violation of Waiver. The City Manager may suspend, modify, or revoke a temporary waiver or
290 a general waiver if the City Manager determines that a person has violated the terms or conditions
291 of the waiver. (Ord. 2002-35 § 1(12), 2002/Ord. 2000-22 § 1(12), 2000)

292 **14.12.130 Enforcement and penalties.**

293 A. Unless a different penalty is stated, a violation of this noise control ordinance is a Class C
294 municipal infraction. **A SECOND VIOLATION OF THIS NOISE CONTROL ORDINANCE**
295 **IS A REPEAT OFFENSE. A THIRD AND SUBSEQUENT VIOLATIONS OF THIS NOISE**
296 **CONTROL ORDINANCE, WITHIN 6 MONTHS OF A PREVIOUS VIOLATION, IS A**
297 **CLASS A MUNICIPAL INFRACTION.**

298 B. If an enforcement officer finds that a person has violated this noise control ordinance, the
299 enforcement officer may issue a notice of violation and correction order to the person. The notice
300 shall include the following information:

301 1. The section of this noise control ordinance that the person violated;

302 2. The date, nature, and extent of the violation; **AND**

303 3. The action required to correct the violation;

304 ~~4. If the enforcement officer requires a compliance plan, the deadline for submitting the plan;~~
305 ~~and~~

306 ~~5. The deadline for compliance.~~

307 ~~C. The compliance plan referred to in subsection (B)(4) of this section must establish a schedule~~
308 ~~for achieving compliance with this noise control ordinance, as specified in the correction order. A~~
309 ~~compliance plan, and any amendments to a plan, are not effective until the enforcement officer~~
310 ~~approves the plan or amendment. An action allowed under an approved compliance plan does not~~
311 ~~violate this noise control ordinance.~~

312 **C.D.** A notice of violation and correction order under subsection (B) of this section is not required
313 before a municipal infraction citation for violation of this noise control ordinance may be issued. An
314 enforcement officer may issue a municipal infraction citation for a violation of this noise control
315 ordinance if the enforcement officer:

316 ~~1. Witnesses the violation; and/or~~

317 **12.** Determines that the noise level being generated exceeds the maximum allowable noise
318 level set forth in Section 14.12.050 of this noise control ordinance; **OR**

319 **2. DETERMINES THAT A PERSON HAS CAUSED OR PERMITTED A NOISE**
320 **DISTURBANCE.**

321 **E. IN THE EVENT OF A NOISE DISTURBANCE OR OTHER VIOLATION OF THIS**
322 **NOISE CONTROL ORDINANCE CREATED BY THE USE OR RENTAL OF PREMISES**
323 **FOR A MUSIC, ENTERTAINMENT, CELEBRATION OR PERFORMANCE EVENT**
324 **(WHETHER OR NOT ADMISSION IS CHARGED), BY CONSTRUCTION WORK, OR BY**
325 **COMMERCIAL ACTIVITY, THE ENFORCEMENT OFFICER MAY ISSUE A**
326 **MUNICIPAL INFRACTION CITATION TO THE PERSON WHO VIOLATES THE**
327 **NOISE CONTROL ORDINANCE AND/OR TO THE PROPERTY OWNER OR PERSON**
328 **RESPONSIBLE FOR THE MANAGEMENT, OCCUPANCY OR SUPERVISION OF THE**
329 **PREMISES, BUILDING, CONSTRUCTION SITE, PROPERTY OR ACTIVITY FROM**
330 **WHICH THE NOISE SOURCE ORIGINATES.**

331 **F.E. Noise Disturbance Complaints - REFERRAL TO NOISE CONTROL BOARD.**

332 1. Signed, written complaints of a noise disturbance may be submitted by two or more City
333 residents (*see* definition of “noise disturbance” in Section 14.12.030 ~~of this noise control~~
334 ~~ordinance~~).

335 2. Noise disturbance complaints shall be filed with the City Clerk, on the City’s 2-party noise
336 disturbance complaint form, within 10 days of the occurrence of the alleged noise disturbance.
337 Any complaint which is received by the City Clerk more than 10 days after the date of the
338 alleged noise disturbance shall be rejected. The City Clerk shall **RECORD THE DATE** ~~date~~
339 ~~stamp~~ the noise disturbance complaint ~~on the day the complaint~~ is received, assign the
340 complaint a number, and forward the complaint, along with any supporting documentation, to
341 the Noise Control Board (see Section 14.12.140 ~~of this noise control ordinance~~).

342 **G.F.** The City may seek injunctive or other appropriate judicial relief to stop or prevent
343 continuing violations of this noise control ordinance.

344 **H.G.** In addition to any other penalty or enforcement action under this noise control ordinance, an
345 enforcement officer may **SHUT DOWN AN EVENT OR ACTIVITY THAT IS CAUSING A**
346 **NOISE DISTURBANCE OR CREATING NOISE THAT EXCEEDS THE MAXIMUM**
347 **ALLOWABLE NOISE LEVELS (“EVENT SHUT DOWN ORDER”)** OR issue a stop work
348 order or an order to cease the violation to any person who violates any provision of this noise
349 control order. **AN EVENT SHUT DOWN ORDER**, stop work order or ~~an~~ order to cease the
350 violation also may be issued on the basis of signed, written complaints from at least 2 reliable
351 witnesses setting forth the facts of the alleged violation.

352 1. **IF AN EVENT OR ACTIVITY IS SHUT DOWN, THE ENFORCEMENT OFFICER**
353 **MAY ORDER ANY OR ALL PERSONS TO LEAVE THE PREMISES WHERE THE**
354 **EVENT OR ACTIVITY IS OCCURING.**

355 2. Any person who receives such a **N EVENT SHUT DOWN ORDER**, stop work order or
356 order to cease the violation shall immediately cease the activity which constitutes the violation.
357 The person shall comply with all terms and conditions imposed by the enforcement officer
358 before the activity may resume.

359 **32.** Violation of **AN EVENT SHUT DOWN ORDER**, a stop work order or order to cease
360 the violation ~~shall be~~ **IS** a Class A municipal infraction.

361 **3. H.** In the event of **A RENTAL OF PREMISES FOR A MUSIC, ENTERTAINMENT,**
362 **CELEBRATION OR PERFORMANCE EVENT (WHETHER OR NOT ADMISSION IS**
363 **CHARGED),** construction work, commercial activity, or other work for hire, the person who
364 violates this noise control ordinance and/OR the **PROPERTY OWNER OR** person
365 responsible for the management or supervision of the **PREMISES, BUILDING,** construction
366 site, area, property or activity from which the noise source originates are jointly and severally
367 responsible for violations of this chapter and shall abide by any **EVENT SHUT DOWN**
368 **ORDER,** stop work order or order to cease the violation. (Ord. 2002-35 § 1(13), 2002/Ord.
369 2000-22 § 1(13), 2000)

370 **14.12.140 Noise Control Board.**

371 A. Establishment and Membership.

- 372 1. A City Noise Control Board is established to assist and advise the City on noise control
373 issues, including administration and enforcement of this noise control ordinance, and to
374 adjudicate noise disturbance complaints.
- 375 2. The Board shall consist of 5 to 7 active members appointed by the Council. All members
376 shall be residents of the City. Board members shall be appointed for a term of 3 years, except
377 that 3 of the initial appointees shall serve 2-year terms. Terms shall begin on April 1st and end
378 on March 31st.
- 379 3. The term of a Board member who is appointed to replace a member who cannot complete
380 his or her term shall be for the remainder of the term of the Board member being replaced.
- 381 4. A Board member who resigns, who is removed, whose term expires or who ceases to reside
382 in the City is ineligible to continue to serve on the Board except that, at the discretion of the
383 Chairperson, he or she may continue as an inactive member of the Board to complete work on
384 cases in which he or she participated as an active member of the Board. This participation may
385 include the approval and signing of Board decisions on noise disturbance complaints.
- 386 5. The Council may, by resolution, remove a Board member before the Board member's term
387 has expired if the Council determines that the Board member has become incapacitated or has
388 failed to reasonably perform his or her duties as a Board member.
- 389 6. The Board shall elect one member as Chairperson and another member as Vice
390 Chairperson to serve at the pleasure of the Board. The Board shall meet at the call of the
391 Chairperson as required to perform its duties, but not less often than semi-annually. A majority
392 of the active members of the Board constitute a quorum for transacting business. The Board
393 may act by a majority vote of those present.
- 394 7. The Board may adopt rules of procedure which further regulate its operations and the
395 conduct of hearings.

396 B. Hearings on Noise Disturbance Complaints.

- 397 1. When a noise disturbance complaint under Section 14.12.130(E) is received, the Board
398 shall schedule a hearing on the complaint and give reasonable advance notice of the date, time,

399 and place of the hearing before the Board to the persons who filed the noise disturbance
400 complaint (“the complainant”) and the alleged violator. The alleged violator also shall be served
401 with a copy of the noise disturbance complaint.

402 2. The hearing notice and noise disturbance complaint shall be deemed to be properly served
403 on the alleged violator if the notice and complaint is:

404 a. Delivered to the alleged violator personally;

405 b. Sent by certified mail and the return receipt is returned indicating that the certified mail
406 was received by the alleged violator;

407 c. Left at the alleged violator’s residence or place of business with a person of suitable
408 age and discretion; or

409 d. Mailed by first-class mail to the last-known address of the alleged violator **OR**
410 **EMAILED TO THE ALLEGED VIOLATOR** and posted in a conspicuous location on
411 the property where the noise disturbance violation is alleged to have occurred.

412 C. Hearing Process.

413 1. The Chairperson of the Board is authorized to designate 3 active members of the Board to
414 sit as a panel to conduct a hearing on any noise disturbance complaint. The Chairperson of the
415 Board shall endeavor to rotate panel membership from time to time among the active members
416 of the Board. If the parties agree, a hearing may proceed before 2 members of the Board.

417 2. The hearing shall be open to the public. At the hearing, the complainant and the alleged
418 violator may present testimony and evidence to substantiate any material point. All testimony
419 shall be given under oath or affirmation. Each party shall have the right to cross-examine
420 opposing witnesses, to submit rebuttal evidence, and to present summation and argument. The
421 Board panel also may ask questions of witnesses and enter its own evidence.

422 3. The Board panel may admit and consider evidence which would be commonly accepted by
423 reasonable and prudent people as having a causal relationship to the matter before the Board
424 panel. The Board panel may exclude from evidence irrelevant and repetitious testimony and
425 documents.

426 4. The burden of proof of establishing a violation of the noise control ordinance shall be on
427 the party who filed the noise disturbance complaint and shall be met by a preponderance of the
428 evidence.

429 5. An audio **OR VIDEO** record of the hearing shall be made. The record of the case shall
430 consist of the ~~audio~~ recording and any written documentation accepted into the case file. The
431 record of the case shall be open to inspection by any person. Upon request, the Board shall
432 furnish copy of the record of the case to any person at the cost of supplying the same.

433 D. Decision of the Board on a Noise Disturbance Complaint.

434 1. After due consideration of the evidence and testimony presented at the hearing, the Board
435 shall issue its decision on the noise disturbance complaint and give notice of its decision to all
436 parties to the case. The Board’s decision may be announced orally, following the hearing, or the
437 Board may take the case under advisement and issue a written decision on the noise disturbance
438 complaint within a reasonable time following the hearing.

439 2. In the event that the Board finds that in favor of the complainant on the noise disturbance
440 complaint, the Board may order the violator ~~to~~ ^{to} cease and desist from the conduct or activity
441 which created the noise disturbance **AND**/or to take other corrective action in order to abate or
442 correct the violation of this noise control ordinance. ~~;~~ [;] ~~and/or~~

443 ~~b. To pay a fine to the City of up to \$200.00 for each violation. If there is more than one~~
444 ~~violator or if the Board has found more than one noise disturbance violation, then the fine~~
445 ~~may be imposed on each violator. If the Board finds that this a repeat violation, i.e., the~~
446 ~~violator has been found to have created a noise disturbance within a one-year period~~
447 ~~immediately preceding the occurrence of the instant noise disturbance violation, then the~~
448 ~~Board may order the violator to pay a fine to the City of up to \$400.00 for each violation.~~

449 ~~3. In determining the amount of the fine to impose on a violator, pursuant to subsection~~
450 ~~(D)(2)(b) of this section, the Board shall consider whether the evidence presented at the hearing~~
451 ~~on the noise disturbance complaints indicates that significant mitigating factors warranting a~~
452 ~~reduction in the maximum amount of the fine to be imposed are present:~~

453 ~~a. Whether the violator has previously been found to have violated this noise control~~
454 ~~ordinance;~~

455 ~~b. Whether the violator has taken action reasonably calculated under the circumstances to~~
456 ~~prevent or mitigate future violations of this noise control ordinance; and~~

457 ~~e. Whether the violation was not so egregious or lengthy in duration that a reasonable~~
458 ~~person would view the violation as reprehensible.~~

459 **E. APPEALS FROM A BOARD DECISION ON A NOISE DISTURBANCE COMPLAINT.**
460 **WITHIN 30 DAYS OF THE ISSUANCE OF A DECISION ON A NOISE DISTURBANCE**
461 **COMPLAINT, A PERSON WHO WAS A PARTY TO THE PROCEEDINGS BEFORE THE**
462 **BOARD AND WHO IS AGGRIEVED BY THE DECISION MAY FILE A PETITION FOR**
463 **JUDICIAL REVIEW IN ACCORDANCE WITH TITLE 7, CHAPTER 200, JUDICIAL**
464 **REVIEW OF ADMINISTRATIVE AGENCY DECISIONS, OF THE MARYLAND RULES**
465 **OF PROCEDURE, AS AMENDED.**

466 **F.** Enforcement of Board Decision on a Noise Disturbance Complaint.

467 1. A violator who fails to comply with a Board decision on a noise disturbance complaint may
468 be issued a municipal infraction citation for a Class A offense.

469 2. In addition to any penalty provided herein, compliance with a Board decision may be
470 enforced by any appropriate action, at law or equity, in any court of competent jurisdiction.
471 (Ord. 2007-4, 2007/Ord. 2002-35 § 1(14), 2002/Ord. 2000-22 § 1(14), 2000)

472 **SECTION 3.** This Ordinance shall be effective immediately upon adoption.

473 **ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS**
474 **___ DAY OF _____, 2016, BY ROLL-CALL VOTE AS FOLLOWS:**

475
476 **AYE:**
477 **NAY:**
478 **ABSENT:**
479 **ABSTAIN:**

480
481 **EXPLANATORY NOTE**

482
483 Additions to the existing language of the *Takoma Park Code* are shown **IN BOLD RED CAPITAL**
484 **LETTERS.**

485
486 Deletions to the existing language of the *Takoma Park Code* are shown by ~~striketrough~~.

487
488 * * * * indicates language of the *Takoma Park Code* which is not reproduced in this Ordinance
489 and which is not being changed.

490
491 Additions to the existing language of the *Takoma Park Code* made after the Council Worksession
492 on December 7, 2015, are shown **IN BOLD RED CAPITAL LETTERS AND UNDERLINED.**

493
494 Deletions to the existing language of the *Takoma Park Code* made after the Council Worksession
495 on December 7, 2015, are shown by ~~double-striketrough~~.