

Work Session

Agenda Item #	9
Meeting Date	July 27, 2015
Prepared By	Jessie Carpenter City Clerk
Approved By	Suzanne R. Ludlow City Manager

Discussion Item	Types of Noise Complaints and the Role of the Noise Control Board
Background	<p>Chapter 14.12 of the City Code was adopted in 2002 in an effort to control noise sources to protect public health and allow the peaceful enjoyment of property. The Noise Ordinance established a Noise Control Board to assist and advise the City on noise control issues, including administration and enforcement of Chapter 14.12 and to adjudicate noise disturbance complaints.</p> <p>The Police Department is the lead noise enforcement agency in the City since the Noise Control Board became inactive. The Department receives a variety of noise complaints from the community.</p> <p>This work session has been scheduled at the request of Councilmember Schultz to begin discussion of options relating to the Noise Ordinance. He has drafted some ideas for improving the ordinance. Police Chief Goldberg’s comments are shown on the draft document. Assistant City Attorney Perlman has made some comments as well. They are also attached for Council’s information.</p> <p>For this meeting, staff recommends that Council focus on describing the problems that occur in the various wards which could be addressed by the ordinance and by the Noise Control Board. At a subsequent meeting to be scheduled in the fall, the City Attorney and staff will return with recommendations for amending the City’s Noise Ordinance and reactivating the Noise Control Board or with other alternatives.</p>
Policy	The Council seeks to protect public health and allow the peaceful enjoyment of property.
Fiscal Impact	To be determined.
Attachments	<ul style="list-style-type: none"> • Councilmember Schultz’ document on issues related to the Takoma Park Noise Ordinance • Email thread with comments from the City Attorney and Police Chief • Takoma Park Code Chapter 14.12 Noise Control Ordinance
Recommendation	Describe noise issues in the community.
Special Consideration	

Version 1
6/12/15

Issues related to the Takoma Park Noise Ordinance, Chapter 14.12

1. The current standards for daytime and nighttime noise limits are so low that, according to the police, it makes it difficult to justify issuing a citation. The nighttime noise limit is 55 decibels, which is equivalent to the sound of a quiet office and normal conversation.

Thus, almost any sound at night will exceed the noise limit, including in some sections of the city ambient sound itself. Ambient sound can include normal traffic, buses, Metro trains, and weather-related noise created by wind and rain. It is usually self-evident to an enforcement officer that a noise disturbance that draws the attention of residents greatly exceeds the maximum allowable noise levels, especially at night.

Therefore, to make the nighttime noise limit practicable, and hence more likely to be actually enforced, I **recommend** a higher sound limit of 60 decibels at nighttime.

I am undecided about raising the daytime limit from the current 65-decibel level. It should be noted, however, that the ordinance states: "In the event the measured ambient noise exceeds the maximum noise level (dBa) set forth in subsection (A)(1) of this section, the noise level standard . . . shall be adjusted so as to equal the ambient noise level plus 3 dBa."

(For those not acquainted, a change in noise level of 1 dBa is "imperceptible" and 3 dBa is "barely perceptible," according to a local noise expert, Phoenix Noise & Vibration, LLC)

2. Section 14.12.040 states: "If no City regulations have been adopted specifying the procedures and methodology of noise levels, then the provisions of Montgomery County Regulation Number 29-86 . . . are adopted by reference."

There seem to be no such City regulations and I am unable on my own to find said County regulations.

I **recommend** that the reference source be made more readily accessible.

3. The ordinance fails to state what method an enforcement officer must use to ascertain sound level. It does not state that he or she cannot use his or her judgment. By default, it appears that an officer can exercise his or her own judgment. The ordinance is vague about this.

Furthermore, Section 14.12.130 Enforcement and penalties, ¶ D states: "An enforcement officer may issue a municipal infraction citation for a violation of this noise control ordinance if the enforcement officer: 1. Witnesses the violation; and/or 2. Determines that the noise level being generated exceeds the maximum allowable noise level set forth in Section 14.12.050 of this noise control ordinance."

This text clearly gives the officer the choice of exercising his or her judgment as opposed to having to use a calibrated sound meter.

Comment [AG1]: I would like to see us mirror the county db levels.

Comment [AG2]: The county Dept. of Environmental Protection is primary during daylight hours for noise complaints. The county police handles the afterhours complaints. Animal Services Division handles the chronic barking dog complaints.

In the county the wording is such that the officer may enforce a violation defined as creating a noise disturbance across residential boundaries and is pretty much the officers' discretion. The county police do not have any sound meters. Only DEP.

Furthermore, ¶ E. Noise Disturbance Complaints does not require City residents to employ the use of a sound meter device in order to file a complaint; only that the residents file a properly signed written complaint.

I therefore **recommend** inserting clear language that an enforcement officer may exercise judgment in determining that a violation of the noise ordinance has occurred when the officer witnesses the noise, does not have ready access to a sound meter and where the noise level is egregiously loud.

4. The ordinance at 14.12.070 states: “Noise levels shall be measured with a sound meter meeting the standards of ANSI . . .” at the “nearest receiving property line, at any point along the curb in front of the property line upon which the noise is being generated, or at any other location on the receiving property or receiving noise area, unless this noise control ordinance specifies a different measurement location.”

The quoted text is similar to the County’s text.

This language is vague and confusing. There is no distinction between “the receiving property” and “receiving noise area” because this Chapter defines them the same. For the benefit of the enforcement officer and for residents, the above text needs to be simplified.

I therefore **recommend** substituting: “B. Noise levels shall be measured at any location on the receiving property, unless this ordinance specifies a different measurement location or a specific distance.”

5. Section 14.12.090 Animals

This subsection refers to “a dog, bird or other animal . . . persistently, habitually, or continuously” making “loud noise”.

It does not however indicate a noise level.

A small dog yapping all day may or may not violate the noise limit, but still can be an awful and upsetting nuisance. The police are the only enforcement entity in the City who can act. The County Animal Control agency does not deal with these matters.

Therefore, I **recommend** adding the following to the end of the only sentence in this section: “. . . regardless of the decibel level.”

Comment [AG3]: Actually, under the county animal control does handle barking dog complaints although we get the call first.

6. 14.12.100 Burglar and vehicle alarms

Our ordinance states: “A. Audible burglar alarms for structures or motor vehicles are prohibited unless the operation of such alarm can be terminated within 30 minutes of being activated.

30 minutes can seem like an eternity, especially at night.

I **recommend** that 30 minutes be changed to 15 minutes in this subsection.

Comment [AG4]: No real opinion. Most reset fairly quickly. The only way to enforce this however is to know who owns the car and if they are local. More often than not, the vehicle is not listed to the address where it is parked.

7. **Recommend** a new Section 14.12. 101 “Engine Brakes”

A. Under Maryland Law Title 22-611 a person may not operate within the State a commercial motor vehicle equipped with an engine brake unless the engine brake is connected to a properly functioning exhaust muffler system in constant operation. Disabling of an exhaust muffler system is prohibited.

B. Operating a commercial motor vehicle in the City in violation of the Maryland law shall be subject to a Class C Violation.

Maryland Code’s definition of “Engine Brake” as “means an add-on compression brake for diesel engines.”

This text should go into the definitions section at 14.12.030.

I note that engine braking that is not muffled can be a terribly staccato noise along New Hampshire Ave, in the range of 96 to 101 decibels at 50 feet distance.

Comment [AG5]: I live in an unincorporated area on a state road. I hear them everyday, despite living in a residential section. The problem of enforcement is we actually need truck inspector trained officers to enforce it. I plan on having several officers trained but just FYI.

8. **Recommend** a new Section 14.12.102. Alcoholic beverage consumption

A. Any event or activity that is held in the City in or on the grounds of a non-residential property, including property where a residence is a temporary or incidental land use, where noise levels exceed the maximum allowable noise levels permitted by this ordinance, and during which event or activity alcoholic beverages are consumed, shall be subject to immediate shut down of the event. An enforcement officer who witnesses the event or activity may issue an order to cease the violation, to cease all activity and to order all persons to leave the premises.

B. A person or persons who conduct, organize, sponsor or allow such a violation to occur shall be charged with a Class A municipal infraction.

C. Any activity or events otherwise sanctioned by the City or otherwise granted a waiver or permit by the City in accordance with this ordinance shall be exempt from this Section.

Comment [AG6]: Looks good. I like the idea that after issuing the citation if the event continues we can charge via arrest if the code allows it.

9. **Recommend** a new Section 14.12.103 Amplified megaphones and sound systems

A. Except when previously authorized by permit or waiver, it shall be against the law for a person to use an amplified megaphone or sound system for commercial advertising or to attract attention.

B. This provision does not apply to law enforcement activity and any sounds associated with emergency vehicles or to emergency personnel.

10. The Noise Control Board should be reactivated by city council’s appointment of new members in accordance with this noise control ordinance. This will give complainants an important secondary source of relief from noise troublemakers who refuse to cooperate with their neighbors and who understand that the police are not likely to act against them with issuance of a citation. Circumstances exist where violators turn down the sound only for as long as when the police are present. Conversely, the Board may also serve to enable persons to defend themselves if they feel unfairly singled out.

Comment [AG7]: Actually, I like the idea that the board would be primary for long term and repeat infractions, especially between neighbors.

11. The terms “stopwork order” (Section 14.12.130) and “reliable witnesses” (14.12.130.G) are not defined.

12 “Leafblower” is incorrectly defined in this ordinance as an engine-powered device. Only internal combustion powered leafblowers have engines. Also, this is contradictory to the definition of a “Power lawn tool”. Do we want to subject all mechanical power tools in this ordinance including electric lawn mowers? Or just those powered by gasoline or diesel fuel?

According to Consumer Reports, [I will provide an attachment], which ranks leafblowers by sound level at 50-foot distance, almost all electric leafblowers operate at or below the industry standard of 70 decibels at 50-foot distance. Some gasoline-powered leafblowers also do so today because of mufflers.

According to Eric Hardy, Ace Hardware’s store manager, the leafblowers that Ace sells do not display noise levels generated by the leafblower. He said the store can find out this information if a customer were to inquire.

Comment [AG8]: I would suggest that none of the electric tools create the noise level of gasoline engines. I would focus on the gas powered engines.

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From: Linda Perlman <perlman@sp-law.com>
To: Jessie Carpenter <jessiec@takomaparkmd.gov>
Date: Friday, July 24, 2015
Subject: Proposed changes to the Noise Ordinance, chapter 14.12

Proposal 9 - new section prohibiting the use of an "amplified megaphone or sound system for commercial advertising or to attract attention." I would caution against distinguishing between commercial speech (advertising) and non-commercial speech in a noise ordinance.

-----Original Message-----

From: Alan Goldberg [mailto:AlanG@takomaparkmd.gov]
Sent: Friday, June 26, 2015 3:22 PM
To: Linda Perlman; Frederick Schultz; Bruce Williams; Suzanne Ludlow
Cc: Kenneth Sigman; silber@sp-law.com Silber
Subject: Re: FW: Proposed changes to the Noise Ordinance, chapter 14.12

I believe you are correct regarding the engine brakes. The Maryland TR 22-601 sets the regulations for vehicle noise emissions. Tr 22-611 regulates the operation of commercial vehicles with engine brakes. The only stipulation is that they must have it connected to an operational exhaust system that is not disabled or bi-passed. If the equipment does not comply we can charge under the state law. On state highways, we probably cannot regulate noise levels of vehicles other than the Transportation Regs. I doubt that it is an issue on city streets.

As far as shutting down parties, unless it is an underage party or actual alcohol violations like sales, etc. there is no specific authority to shut down an event. We can cite or arrest based on the individual circumstances. Many of the hosted events at the Zion Church hall involve alcohol. We can only enforce alcohol violations for age, sales, etc. We can only enforce open container or drinking in public on public property.

Chief Alan M. Goldberg
Takoma Park Police Department
7500 Maple Ave
Takoma Park, MD 20912
Office: 301 891-7104
AlanG@takomaparkmd.gov

>>> Linda Perlman <perlman@sp-law.com> 6/26/2015 2:51 PM >>>

Dear Fred:

Suzanne Ludlow sent your proposals for amendments to the noise ordinance to Susan Silber who asked me to look at them.

I have not had time to do any research, but I have concerns about two of your proposals:

1. Engine Brakes. It is not within the City's authority to regulate the equipment on a commercial vehicle being operated on a highway in the City. I don't believe that framing the failure to have an engine brake connected to a properly functioning exhaust muffler system as a noise violation gives the City authority to issue a municipal infraction citation for a violation of the state motor vehicle law.

2. Alcoholic Beverage Consumption. Alcoholic beverage regulation is the exclusive purview of the state. There are already state laws against public consumption of alcoholic beverages (open container, etc.) and in parks and other public property, etc. and by persons under age 21. Again, I don't think that tying alcoholic beverage consumption to a noise violation allows the City to charge the violator with a Class A municipal infraction offense for drinking or possessing alcohol--and making too much noise while doing so.

I'd like the POLICE CHIEF'S opinion, but I think there already are sufficient laws to shut down parties or events where alcohol is being illegal consumed or possessed--without attempting to tie an alcoholic beverage violation to a noise violation.

Is this matter scheduled for Council discussion and, if so, when?

Linda S. Perlman
Silber, Perlman, Sigman & Tilev, P.A.
7000 Carroll Avenue, Suite 200
Takoma Park, MD 20912-4437

-----Original Message-----

From: Frederick [mailto:fshultz@starpower.net]

Sent: Friday, June 12, 2015 6:32 PM

To: Suzanne Ludlow; Bruce Williams

Cc: Alan Goldberg; Sara Daines

Subject: Proposed changes to the Noise Ordinance, chapter 14.12

Suzie and Bruce:

Here are proposals for amendments to the noise ordinance.

I have chosen to make recommendations in a narrative format rather than waste time fussing over precise legal edits to the current ordinance. This way we can identify issues, problems and better ideas. Forward to Sue Silber as you wish, but I assume you would want to consider this first before doing so.

I have sent this to my constituent Tess Ferrara. Tess is a practicing attorney, a former member of the Noise Control Board, and long-time sufferer of the Lutheran Church's abuse. Her house backs onto the church. She's also smart and sensible and motivated. Tess participated last October in a frank discussion that the Chief, Kenner, and I with the pastor.

Fred

Chapter 14.12

NOISE CONTROL

Sections:

- 14.12.010 Declaration of policy.
- 14.12.020 Exemption from County Noise Control Ordinance.
- 14.12.030 Definitions.
- 14.12.040 Regulations.
- 14.12.050 Noise level and noise disturbance violations.
- 14.12.060 Noise level and noise disturbance standards for construction.
- 14.12.070 Measurement of sound.
- 14.12.080 Leafblowers and other power lawn tools.
- 14.12.090 Animals.
- 14.12.100 Burglar and vehicle alarms.
- 14.12.110 Exemptions.
- 14.12.120 Waivers.
- 14.12.130 Enforcement and penalties.
- 14.12.140 Noise Control Board.

14.12.010 Declaration of policy.

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

14.12.020 Exemption from County Noise Control Ordinance.

Pursuant to the authority conferred by Article 23A, Section 2B of the Annotated Code of Maryland and by Section 1-203 of the Montgomery County Code, the City exempts itself from the provisions of Chapter 31B, Noise Control, of the Montgomery County Code, except as expressly set forth in this chapter. (Ord. 2002-35 § 1(2), 2002/Ord. 2000-22 § 1(2), 2000)

14.12.030 Definitions.

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

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

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

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

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

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

“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. on weekends and holidays.

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

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

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

“Leafblower” means any portable, hand held or backpack, engine-powered device with a nozzle that creates a directable airstream which is capable of and intended for moving leaves and light materials.

“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. on weekends and holidays.

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

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

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

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

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

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

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

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

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

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

14.12.040 Regulations.

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

B. If no City regulations have been adopted specifying the procedures and methodology for measurement of noise levels, then the provisions of Montgomery County Regulation Number 29-86, Procedures Governing the Measurement of Noise Levels in Montgomery County, Maryland, or any amended or successor County regulations setting procedures for the measurement of noise levels, are adopted by reference. (Ord. 2002-35 § 1(4), 2002/Ord. 2000-22 § 1(4), 2000)

14.12.050 Noise level and noise disturbance violations.

A. Maximum Allowable Noise Levels.

1. Except as otherwise expressly provided in this noise control ordinance or applicable 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:	55 dBA

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

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

14.12.060 Noise level and noise disturbance standards for construction.

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

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

14.12.070 Measurement of sound.

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

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

14.12.080 Leafblowers and other power lawn tools.

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

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

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

14.12.090 Animals.

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

14.12.100 Burglar and vehicle alarms.

A. Audible burglar alarms for structures or motor vehicles are prohibited unless the operation of such alarm can be terminated within 30 minutes of being activated.

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

C. The Takoma Park Police Department, or any authorized designee of the City, may tow or impound any motor vehicle in which an alarm has sounded continuously for more than 30 minutes.

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

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

14.12.110 Exemptions.

This noise control ordinance does not apply to:

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

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

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

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

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

14.12.120 Waivers.

A. Temporary Waiver.

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

2. An application for a temporary waiver shall be filed with the City Clerk, or such other office as the City Manager shall designate. The applicant shall certify that notice of such temporary waiver application has been provided to all properties contiguous to the property where the event will occur, and to all properties opposite

said property measured at right angle to the intervening street or streets, and to the president or other designated representative, as shown by the City's records, of the local neighborhood association. The application for a temporary waiver shall not be approved less than 10 days after the notice required under this subsection has been given. No person or household may receive more than one temporary waiver in any calendar year.

B. General Waiver.

1. The City Council may waive any part of this noise control ordinance if the City Council determines that compliance in a particular case is not practical and would impose undue hardship.
2. An application for a general waiver shall be filed with the City Clerk, or such other office as the City Manager shall designate. The City Clerk or the City Manager shall notify the City Council of the receipt of an application for a general waiver and the City Council shall schedule a public hearing on the application within 60 days of such notification.
3. At least 30 days before the public hearing, the applicant shall advertise the hearing by:
 - a. Publishing a notice in a newspaper of general circulation in Montgomery County, Maryland;
 - b. Posting a sign on the property which is the location of the noise source; and
 - c. Mailing or delivering notice of such general waiver application to all properties contiguous to the property which is the location of the noise source, and to all properties opposite the property measured at right angle to the intervening street or streets, and to the president or other designated representative, as shown by the City's records, of the local neighborhood association.
4. Based on the evidence presented at the public hearing, and on any City staff report or other reliable information, the City Council may grant a waiver for up to 3 years, upon such terms and conditions as the City Council deems appropriate to reduce the impact of the noise level exception.

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

14.12.130 Enforcement and penalties.

A. Unless a different penalty is stated, a violation of this noise control ordinance is a Class C municipal infraction.

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

1. The section of this noise control ordinance that the person violated;
2. The date, nature, and extent of the violation;
3. The action required to correct the violation;
4. If the enforcement officer requires a compliance plan, the deadline for submitting the plan; and
5. The deadline for compliance.

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

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

1. Witnesses the violation; and/or
2. Determines that the noise level being generated exceeds the maximum allowable noise level set forth in Section 14.12.050 of this noise control ordinance.

E. Noise Disturbance Complaints.

1. Signed, written complaints of a noise disturbance may be submitted by 2 or more City residents (see definition of “noise disturbance” in Section 14.12.030 of this noise control ordinance).
2. Noise disturbance complaints shall be filed with the City Clerk, on the City 2-party noise disturbance complaint form, within 10 days of the occurrence of the alleged noise disturbance. Any complaint which is received by the City Clerk more than 10 days after the date of the alleged noise disturbance shall be rejected. The City Clerk shall date-stamp the noise disturbance complaint on the day the complaint is received, assign the complaint a number, and forward the complaint, along with any supporting documentation, to the Noise Control Board (see Section 14.12.140 of this noise control ordinance).

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

G. In addition to any other penalty or enforcement action under this noise control ordinance, an enforcement officer may issue a stopwork order or an order to cease the violation to any person who violates any provision of this noise control order. A stopwork order or an order to cease the violation also may be issued on the basis of signed, written complaints from at least 2 reliable witnesses setting forth the facts of the alleged violation.

1. Any person who receives such a stopwork order or order to cease the violation shall immediately cease the activity which constitutes the violation. The person shall comply with all terms and conditions imposed by the enforcement officer before the activity may resume.
2. Violation of a stopwork order or order to cease the violation shall be a Class A municipal infraction.

H. In the event of construction work, commercial activity, or other work for hire, the person who violates this noise control ordinance and the person responsible for the management or supervision of the construction site, area, property or activity from which the noise source originates are jointly and severally responsible for violations of this chapter and shall abide by any stopwork order or order to cease the violation. (Ord. 2002-35 § 1(13), 2002/Ord. 2000-22 § 1(13), 2000)

14.12.140 Noise Control Board.

A. Establishment and Membership.

1. A City Noise Control Board is established to assist and advise the City on noise control issues, including administration and enforcement of this noise control ordinance, and to adjudicate noise disturbance complaints.
2. The Board shall consist of 5 to 7 active members appointed by the Council. All members shall be residents of the City. Board members shall be appointed for a term of 3 years, except that 3 of the initial appointees shall serve 2-year terms. Terms shall begin on April 1st and end on March 31st.
3. The term of a Board member who is appointed to replace a member who cannot complete his or her term shall be for the remainder of the term of the Board member being replaced.
4. A Board member who resigns, who is removed, whose term expires or who ceases to reside in the City is ineligible to continue to serve on the Board except that, at the discretion of the Chairperson, he or she may continue as an inactive member of the Board to complete work on cases in which he or she participated as an

active member of the Board. This participation may include the approval and signing of Board decisions on noise disturbance complaints.

5. The Council may, by resolution, remove a Board member before the Board member's term has expired if the Council determines that the Board member has become incapacitated or has failed to reasonably perform his or her duties as a Board member.

6. The Board shall elect one member as Chairperson and another member as Vice Chairperson to serve at the pleasure of the Board. The Board shall meet at the call of the Chairperson as required to perform its duties, but not less often than semi-annually. A majority of the active members of the Board constitute a quorum for transacting business. The Board may act by a majority vote of those present.

7. The Board may adopt rules of procedure which further regulate its operations and the conduct of hearings.

B. Hearings on Noise Disturbance Complaints.

1. When a noise disturbance complaint under Section 14.12.130(E) is received, the Board shall schedule a hearing on the complaint and give reasonable advance notice of the date, time, and place of the hearing before the Board to the persons who filed the noise disturbance complaint ("the complainant") and the alleged violator. The alleged violator also shall be served with a copy of the noise disturbance complaint.

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

- a. Delivered to the alleged violator personally;
- b. Sent by certified mail and the return receipt is returned indicating that the certified mail was received by the alleged violator;
- c. Left at the alleged violator's residence or place of business with a person of suitable age and discretion; or
- d. Mailed by first-class mail to the last-known address of the alleged violator and posted in a conspicuous location on the property where the noise disturbance violation is alleged to have occurred.

C. Hearing Process.

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

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

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

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

5. An audio record of the hearing shall be made. The record of the case shall consist of the audio recording and any written documentation accepted into the case file. The record of the case shall be open to inspection by

any person. Upon request, the Board shall furnish copy of the record of the case to any person at the cost of supplying the same.

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

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

2. In the event that the Board finds that in favor of the complainant on the noise disturbance complaint, the Board may order the violator:

a. To cease and desist from the conduct or activity which created the noise disturbance or to take other corrective action in order to abate or correct the violation of this noise control ordinance; and/or

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

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

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

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

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

E. Enforcement of Board Decision on a Noise Disturbance Complaint.

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

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