

AN ORDINANCE AMENDING LEXINGTON CITY CODE CHAPTER 275

WHEREAS, certain noise is a hazard to public health, welfare, peace and safety, and the quality of life of the citizens of the City of Lexington; and

WHEREAS, the residents of and visitors to the City of Lexington are entitled to and should be ensured of an environment free from noise that jeopardizes public health, welfare, peace and safety, or degrades the quality of life; and

WHEREAS, it is the policy of the City of Lexington to protect the health, welfare, peace and safety of its residents and visitors and to promote an environment free from sound and noise disruptive of peace and good order;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of Lexington, Virginia, pursuant to their authority, that:

Chapter 275 ("Noise") is hereby amended and ordained to read as follows:

Chapter 275 - NOISE

Sec. 275-1 Declaration of findings and policy.

The City Council hereby finds and declares that certain noise is a hazard to public health, welfare, peace and safety and the quality of life of the citizens of Lexington; that the people have a right to and should be ensured of an environment free from noise that jeopardizes public health, welfare, peace and safety or degrades the quality of life; and that it is the public policy of the City Council to prevent such noise to the extent such action is not inconsistent with state or federal law or Constitutional rights. Any noise that violates this chapter is hereby declared to be a nuisance, and the City may apply its powers regarding the abatement of nuisances to those noise violations.

Sec. 275-2 Definitions.

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

"Activity Permit" means a permit required for all outdoor activities where sound amplifying equipment or equipment for broadcasting music, human voices or other similar sounds may be used.

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

“Decibel-A-weighted (dBA)” means the sound level, in decibels, measured with a sound-level meter using the A-weighting network or scale as specified in ANSI S1.4-1983 specification for sound-level meters.

“Dwelling unit” means one (1) or more rooms arranged, designed, or intended to be occupied as living quarters, having rigid exterior wall structures.

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

“Enclosed dwelling unit” means the dwelling unit has its doors and windows closed.

“Main Campus” means those parts of the campuses of Virginia Military Institute and Washington and Lee University that are bounded on the southwest by West Nelson Street (from the City’s limits to its intersection with North Jefferson Street) and on the southeast by North Jefferson Street (to its intersection with North Main Street) and North Main Street (to the City’s limits) LESS Tax Map Number 16 1 40 (5 Lee Avenue) and Tax Map Number 16 1 40# (0 Lee Avenue) owned by Washington & Lee University PLUS Tax Map Number 17 1 17 (329 North Main Street) and those portions of Tax Map Number NM 53 situated on the southeast side of North Main Street owned by Virginia Military Institute.

“Medical care facility” is defined as set forth in Va. Code § 32.1-102.1, as amended.

“Motor vehicle” means every vehicle defined as a motor vehicle by Va. Code § 46.2-100, as amended.

“Noise” means the intensity, frequency, duration, or character of sounds from one or more sources.

“Noise source,” “source of noise,” and “source of sound” mean any equipment, facility, motor vehicle, conduct, activity or operation, whether human, animal, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

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

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

“School” means: (i) a public school subject to Va. Code Title 22.1, as amended; (ii) a private school serving children in one (1) or more grades between kindergarten and grade twelve (12); (iii) a school for students with disabilities as that term is defined in Va. Code § 22.1-319, as amended; (iv) a child day center as that term is defined in Va. Code § 22.1-289.02, as amended; and (v) any public or private institution of higher education, as those terms are defined in Va. Code § 23.1-100, as amended.

“Sound amplifying equipment” means any machine or device for the amplification of the human voice, music or any other sound, such as loudspeakers, public address systems, speakers, amplifiers, and similar devices. This term shall not include warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles used only for traffic safety purposes.

“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 description of sound may include any characteristic of such sound, including duration, intensity and frequency.

“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 American National Standards Institute specifications for sound level meters.

“Sound level meter” means equipment deemed proper to be used to determine the decibel level of any sound, including noise, as provided in Va. Code §§ 2.2-1112(C) and 19.2-270.7, as amended.

Sec. 275-3 Administration and enforcement.

(a) The Police Department shall develop and issue Activity Permits and shall be charged with administering and enforcing the provisions of this chapter and may be assisted by other city departments as directed by the City Manager.

(b) Any person operating, permitting, or controlling a source of noise shall be guilty of any violation caused by that source. If the person operating, permitting, or controlling the noise source cannot be identified, or the noise source is a business entity or premises, any owner, tenant, resident, or manager physically present on the property where the noise source is located may be charged if the circumstances establish their dominion and control over the noise source.

(c) Whenever an authorized enforcement officer has reason to believe that a violation of any provision of this chapter has occurred and may re-occur, such officer may give notice of the violation to the person operating, permitting, or controlling a source of noise in violation of this chapter, ordering the person to take such corrective measures as are necessary to prevent such re-occurrence. If a noise source in violation of this chapter is a business entity or premises, any owner, officer, director, or registered agent may be served with the notice and order. The notice and order shall be in writing and shall be served personally upon the person to whom directed, or if not found, by mailing a copy thereof by certified mail to his or her usual place of abode and conspicuously posting a copy at the premises affected by notice and order, if any.

(d) Nothing in this chapter shall prevent an authorized enforcement officer from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(e) Any person intending to host an outdoor activity involving the use of sound amplifying equipment or other equipment for broadcasting music, human voices or other similar sounds must obtain an Activity Permit from the Police Department. The Activity Permit issued under this subsection shall not authorize any violation of this chapter.

Sec. 275-4 Specific Prohibitions (Civil Violations).

Subject to the exceptions provided in Section 275-8, any of the following acts, or the causing or permitting thereof, is declared to be a civil violation of this chapter without any requirement of scientific measurement of sound levels by a sound level meter or any similar device. This enumeration shall not be construed to limit, in any way, the general prohibitions contained in Section 275-5:

(a) Radios, television sets, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, audio system in a motor vehicle, television, record, tape or compact disc player, drum, musical instrument, any device capable of producing or reproducing sound, or any similar device in such a manner or with such volume or duration that it is plainly audible (i) inside the confines of another person's enclosed dwelling unit; (ii) at a distance of 100 or more feet in any direction from the operator between the hours of 7:00 a.m. and 10:00 p.m. (from Sunday morning through Thursday night) or the hours of 7:00 a.m. and 11:00 p.m. (from Friday morning through Saturday night); or (iii) at a distance of 50 or more feet in any direction from the operator between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or the hours of 11:00 p.m. and 7:00 a.m. (from Friday night through Sunday morning).

(b) Sound amplifying equipment and similar devices. Using, operating, or permitting the operation of any sound amplifying equipment, mobile sound vehicle, communication system, or similar device capable of amplifying sound,

including any such device in a motor vehicle, for any purpose between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or the hours of 11:00 p.m. and 7:00 a.m. (from Friday night through Sunday morning) in such a manner as to permit sound to be plainly audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) at a distance of fifty (50) or more feet from the device.

(c) Vehicle horns, signaling devices and similar devices. Sounding or permitting the sounding of any horn, whistle, signaling device, or similar device on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space continuously or intermittently for more than ten (10) consecutive seconds, except when the sounding of any such device is intended as a danger warning or for traffic safety purposes.

(d) Non-emergency signaling devices. Sounding or permitting the sounding of any amplified signal continuously or intermittently from any bell, chime, siren, whistle, or similar device intended primarily for non-emergency purposes from any one location for more than ten (10) consecutive seconds in any hourly period; provided, however, that this subsection shall not apply to the sounding of such devices by religious uses or by public bodies or agencies for testing, traffic control or other public purposes.

(e) Emergency signaling devices, security, burglar and fire alarms, etc. Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, siren, whistle, or similar device, for a period in excess of ten (10) minutes in any residential area and fifteen (15) minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency, after giving 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.

(f) Explosive, fireworks and similar devices. Using or firing any explosives, fireworks or similar devices which create impulsive sound in such a manner as to be plainly audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) at a distance of fifty (50) or more feet from the source. An exception to this subsection may be granted by the City Manager through a fireworks permit.

(g) Yelling, shouting, etc. Yelling, shouting, whistling or singing between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or the hours of 11:00 p.m. and 7:00 a.m. (from Friday night through Sunday morning) in such a manner as to permit sound to be plainly audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) at a distance of fifty (50) or more feet from the source of the sound.

(h) Social gatherings and parties. Allowing any noise between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or the

hours of 11:00 p.m. and 7:00 a.m. (from Friday night through Sunday morning) generated from a gathering of two (2) or more people that is plainly audible (i) inside the confines of another person's enclosed dwelling unit; or (ii) in a residential area, at fifty (50) or more feet from the gathering.

(i) Schools, public buildings, places of worship, and medical care facilities. The creation of any noise on the grounds of or on any street adjacent to any school, court, public building, place of worship, hospital, nursing home, assisted-living facility, or other medical care facility while the same is in use in a manner that is plainly audible within such building while it is used and interferes with the operation of the institution.

(j) Vehicles. Operation of a motor vehicle or operation of a motorcycle within the city with a gutted muffler, muffler cutout, straight exhaust, or without interior baffle plates or other effective muffling devices, as provided by Va. Code § 46.2-1047, as amended.

(k) Construction equipment, pneumatic hammer, chain saw, etc. The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, pneumatic hammer, chain saw, steam shovel, derrick, steam or electric hoist, or other appliance or other construction equipment between the hours of 7:00 p.m. and 7:00 a.m. except as provided in section 275-8 below, or as specifically deemed necessary and authorized by a written document issued by the City Manager or his/her designee.

(l) Animals. Allowing any animal or bird to create sound or noise that is plainly audible at least once a minute for twenty (20) consecutive minutes (i) inside the confines of another person's enclosed dwelling unit; or (ii) at a distance of fifty (50) feet or more from the animal or bird. This subsection shall not apply to any bona fide agricultural activity.

(m) Commercial vehicle and trash collection vehicle operation. The operation of a trash, refuse, waste, or recycling collection vehicle, or other commercial vehicle between the hours of 10:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible inside the confines of another person's enclosed dwelling unit. This subsection shall not apply to the operation of such vehicles on the main campuses of Virginia Military Institute and Washington and Lee University.

(n) Lawn care activities. Creating any sound or noise plainly audible inside the confines of another person's enclosed dwelling unit between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal or other landscaping, lawn or timbering activities.

Sec. 275-5 Noise violations measured by sound level meter; maximum permitted levels (Criminal Violations).

In addition to the specific prohibitions of Section 275-4 above, certain other sounds or noises shall be regulated on a decibel basis as measured by a sound level meter.

Subject to the exceptions provided in Section 275-8, any of the following acts, or the causing or permitting thereof, is declared to be a criminal violation of this chapter:

(a) Operating, permitting, or causing any source of sound or noise to create a sound level inside the confines of another person's enclosed dwelling unit: (i) between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or the hours of 11:00 p.m. to 7:00 a.m. (from Friday night and Sunday morning) in excess of fifty-five (55) dBA, or (ii) between the hours of 7:00 a.m. and 10:00 p.m. (from Sunday morning through Thursday night) or the hours of 7:00 a.m. to 11:00 p.m. (from Friday morning through Saturday night) in excess of sixty-five (65) dBA, when measured inside the enclosed dwelling unit at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.

(b) Operating, permitting, or causing any source of sound or noise to create a sound level that when measured in any public area, including but not limited to any public street or sidewalk, or from other private property: (i) between the hours of 7:00 a.m. and 10:00 p.m. (from Sunday morning through Thursday night) or between the hours of 7:00 a.m. to 11:00 p.m. (from Friday morning through Saturday night) exceeds seventy-five (75) dBA, or (ii) between the hours of 10:00 p.m. and 7:00 a.m. (from Sunday night through Friday morning) or between the hours of 11:00 p.m. to 7:00 a.m. (from Friday night through Sunday morning) exceeds sixty-five (65) dBA; provided, however that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the City or for which the City has issued a special permit authorizing the activity.

Sec. 275-6 Sound level meter measurement procedures (Criminal Violations).

(a) The decibel level of any sound or noise regulated on a decibel basis by this chapter shall be measured by a sound level meter. Such measurements shall be accepted as prima facie evidence of the decibel level of the sound or noise at issue in any court or legal proceeding to enforce the provisions of this chapter.

(b) The accuracy of the sound level meter may be tested by a calibrator. Any sworn report of the results of any test of the calibrator for the accuracy of a sound level meter shall be admissible in court in any criminal or civil proceeding, as evidence of the facts therein stated.

(c) An individual operating a sound level meter pursuant to the provisions of this chapter shall issue a certificate to indicate:

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

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

(3) The name of the accused;

(4) The location of the sound or noise;

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

(6) The decibel level reading.

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

Sec. 275-7 Violations and Penalties.

(a) Civil Violations. Any person who commits, permits, or assists in any violation of Section 275-4 of this chapter, whether by act or omission, shall be liable for a civil violation as follows:

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

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

(b) Procedures for Civil Violations.

(1) If an authorized enforcement officer determines that a civil violation of this chapter has occurred, the officer may issue a summons as a notice of violation to be served on any or all persons committing, permitting, or assisting in such violation.

(2) The summons shall provide that the person charged with a violation may elect to make an appearance in person, or in writing by mail, to the Clerk of the District Court with jurisdiction over the person, and admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time-period fixed in the notice.

(3) If a person charged with a civil violation does not elect to admit liability or plead no contest, and abate the violation, the violation shall be tried in a Lexington/Rockbridge District Court upon a warrant in debt or

motion for judgment, with the same right of appeal as provided for civil actions at law.

(i) In the event the violation exceeds the jurisdictional limits of the General District Court, the violation shall be tried in the Rockbridge County Circuit Court.

(ii) During the pendency of any appeal, the notice of violation shall remain in full force and effect.

(4) A finding or admission of liability or a plea of no contest to a civil violation shall not be deemed evidence of a criminal violation for any purpose.

(5) A notice of civil violation as provided in this section may be issued or had, notwithstanding that no prior notice of violation and ordering of corrective measures as provided in Section 275-3 has been given.

(c) Criminal Violations.

(1) Any person who commits, permits, or assists in any violation of Section 275-5 of this chapter, whether by act or omission, shall be guilty of a misdemeanor as follows:

(i) The first violation by such person shall constitute a class 3 misdemeanor.

(ii) The second violation, and any subsequent violation, committed by such person within one year of any previous violation shall constitute a class 2 misdemeanor.

(2) Any person who knowingly refuses or neglects to comply with any injunction order issued by a Court of competent jurisdiction or any written order to cease or abate any violation of this chapter, issued by an authorized enforcement officer pursuant to Section 275-3(c), shall be guilty of a misdemeanor as follows:

(i) The first violation by such person shall constitute a class 3 misdemeanor.

(ii) The second violation, and any subsequent violation, committed by such person within one year of any previous violation shall constitute a class 2 misdemeanor.

(d) Injunction. In addition to and not in lieu of the penalties prescribed in this section, the City may apply to the Rockbridge County Circuit Court for an injunction against the continuing, repeated, or intermittent violation of any of the provisions of this chapter and may seek any other remedy or relief authorized by law.

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

Sec. 275-8 Exceptions.

The prohibitions found in Sections 275-4 and 275-5 shall not apply to:

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

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

(c) Noise created by and as a result of events or activities sponsored by or carried out by the City, including City utilities work, street sweeping, snow and ice removal, garbage pick-up and similar activities.

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

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

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

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

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

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

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

(k) School-sponsored band performances or practices, athletic contests or practices and other school sponsored activities on the grounds of any school, or on the main campus of Virginia Military Institute or Washington and Lee University.

(l) Normal and customary use of outdoor recreational facilities owned or leased by the City or the School Board.

(m) Normal and customary use of open-air venues for which a conditional use permit has been issued pursuant to the City zoning ordinance.

Sec. 275-9 Severability.

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

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately upon and after its passage.

Adopted and Effective this the 6th day of April, 2023.

Approved: _____


Frank W. Friedman, Mayor

Attest: _____


Jani Hostetter, Clerk