

**ORDINANCE AMENDING AND RE-ENACTING SECTION 15-3-2(b), 15-3-2(c)(7),
15-3-2(d)(4) and ENACTING SECTION 15-3-2(c)(8) and 15-3-3 OF THE
HARRISONBURG CITY CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARRISONBURG,
VIRGINIA:**

That Section 15-3-2(b) be amended and re-enacted as follows:

Sec. 15-3-2. - Noise violations; penalties.

- (a) *Declaration of findings and policy:* The city council hereby finds and declares that excessive noise is a serious hazard to the public health, welfare, peace and safety, and the quality of life. It is, therefore, the policy of the city and the purpose of this section to prevent such excessive noise.
- (b) *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:]

City Manager means the Harrisonburg City Manager or his/her designee

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).

Dwelling unit means a building or portion thereof designed or intended to be occupied as living quarters by one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Mass outdoor social gathering means a social event conducted outside or in a partially enclosed structure, on public or private land in the city to which one hundred (100) or more people are invited or expected to attend, as licensees, invitees, or trespassers, or as people who happen to show up or at which one hundred (100) or more people are actually in attendance. The term may also be referred to as "the event".

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Owner means the person owning, controlling, or possessing land, premises, or personalty.

Person means any individual, firm, owner, sole proprietorship, partnership, limited liability company, corporation, unincorporated association, governmental body, municipal corporation, executor, administrator, trustee, guardian, agent, occupant or other legal entity.

Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties, provided that a sound shall be determined to be audible even if specific words or phrases cannot be distinguished.

Property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one (1) person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

Residential area means any property zoned for residential use, whether or not exclusively.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Sound amplifying equipment means any machine or device for the amplification of the human voice, music, or any other sound. This term shall not include warning devices on authorized emergency vehicles, horns or other warning devices on other vehicles used only for traffic safety purposes.

That Section 15-3-2(c)(7) be amended and re-enacted and 15-3-2(c)(8) be enacted as follows:

(7) *Large party nuisance.* The creation of plainly audible sound ~~that between the hours of 10:00 p.m. and 7:00 a.m. that continues unabated for thirty (30) minutes or more, and~~ emanates from a gathering of ten (10) or more people where the gathering is not completely contained within a structure, but spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces and is plainly audible across a property line, or through partitions common to two (2) dwelling units within a building, or at a distance of one hundred (100) feet or more from its source and on property other than that which the sound originates.

(8) *Mass outdoor social gatherings, using or causing to be used sound amplifying equipment for the purpose of producing music or entertainment for a mass outdoor social gathering, unless such use is registered with the City Manager, as provided in Section 15-3-3.*

That Section 15-3-2(d)(4) be amended and re-enacted as follows:

(4) *Exemptions.* The following activities or sources of noise shall be exempt from the prohibitions set forth in this ~~chapter section~~:

- a. Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools.
- b. Athletic contests and other officially sanctioned activities in city parks.
- c. Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, including road construction and maintenance.

~~d. Gardening, lawn care, tree maintenance or removal and other landscaping activities.~~

~~d.e.~~ Church bells or carillons.

ef. Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.

fg. Activities for which the regulation of noise has been preempted by federal law.

gh. Public and private transportation, refuse collection and sanitation services.

hi. A special event that is conducted in accordance with a valid permit issued by the city in accordance with the city's special events regulations.

That Section 15-3-3 be enacted as follows:

Section 15-3-3. - Noise Permit for use for mass outdoor social gathering.

- (a) No person shall operate, cause to be operated, or permit the operation on any land of which that person is an owner or on any land of which that person is in control, of any sound amplifying equipment in the city in connection with a mass outdoor social gathering; and no person shall sponsor a mass outdoor social gathering at which sound amplifying equipment is proposed to be used, or is used, unless a permit has first been obtained from the city for such use of sound amplifying equipment as provided in this section.
- (b) Persons applying for a permit under this section at least thirty (30) days prior to the event shall file with the city manager an application, in writing, giving the following information, hereby ordained as substantive requirements of this section:
 - (1) Evidence of plans to mitigate and limit the sound from the mass outdoor social gathering, so that the effects of the excessive noise are minimized or eliminated;
 - (2) The name, address, and telephone number of the owner or owners of the site for the event;
 - (3) The name, address, and telephone number of the sponsor or sponsors;
 - (4) The name, address, and telephone number of a contact person representing the sponsor or owner, or both, who shall be available at the provided telephone number during the event and authorized to address problems related to the event that affect private citizens;
 - (5) The proposed location of the event; the boundaries of the event site; a general description of the sound equipment to be used; and the land use characteristics of the area surrounding the site;
 - (6) The expected number of persons to attend the event;
 - (7) The date and beginning and ending times for the use of amplified sound, and the beginning and ending times of the event, which in both cases shall not precede 10:30 a.m. or exceed 10:00 p.m. of any day.
 - (8) Evidence that plans and provisions for the following have been addressed: Provision of at least one (1) toilet facility per fifty (50) people; sufficient refuse containers; and provision of ample, designated parking areas, or arrangement for transporting attendees to and from a remote parking area, or both, including if applicable, copies of written permission to use private property, not that of the owner of the site of the event or sponsor, for parking;
 - (9) Evidence that all city and state parking laws, and all city noise control laws, will be complied with;

- (10) Evidence of plans to clean up the event site and surrounding area after the event;
- (11) Evidence that notice of the event and names, telephone numbers, and addresses of the owner, sponsor and contact person have been given to representatives of any residential area that might be impacted by the mass outdoor social gathering.
- (12) Evidence that the owner or sponsor has arranged for the presence during the mass outdoor social gathering of a sufficient (as determined by the city manager) number of monitors. The monitors shall aid the owner or sponsor in the resolution of any problems created by the event, including the conduct of objectionable activities by participants, and may report to the city police any violations of the law that may take place during the event. Nothing in this subparagraph shall afford the monitors city or other police powers or create an agency relationship between the city and the monitors. Monitors shall be acting for the owner or sponsor of the mass outdoor social gathering.
- (c) Upon receipt of a substantially completed registration form, as determined by the city manager, using the standards of this section, the city manager shall immediately accept in writing the application.
- (d) The city manager may review the application with the applicant to lessen, adjust, or accommodate to the peculiarities of the situation, but not increase, the requirements of this chapter, in order to achieve the goals and meet the standards of public safety, comfort, convenience, and welfare, by reducing or limiting excessive noise and other adverse effects from the mass outdoor social gathering. To this end, with the city manager's permission, the applicant may amend the applicant's application up to three (3) days prior to the event.
- (e) Upon the city manager's satisfaction that the applicant for the permit has met the standards of this section, the city manager on behalf of the city shall issue a written permit called for under this section to the applicant and shall send a copy of the permit to the city clerk for filing.
- (f) The applicant shall comply with the permit and with the terms of this chapter in the conduct of the mass outdoor social gathering and in the use of amplified sound for a mass outdoor social gathering. The permittee shall keep the permit in the permittee's possession during the mass outdoor social gathering and shall promptly display it to any police officer on request.
- (g) In case of emergency, or other circumstance calling for the immediate conduct of a mass outdoor social gathering, so that the 30-day deadline set out in subsection (b) cannot be met, the city manager may waive the deadline using the following standards, as applicable: the intensity or immediacy of the emergency or circumstance; lack of alternate means of applicants accomplishing these same goals by complying with the deadline; and avoidance of nullifying the deadline by a repeated course of conduct. The waiver shall be in writing, shall address these standards as applicable, and shall be filed in the office of the city clerk.
- (h) Penalties for violations of this section shall be as set forth in Section 15-3-2(h)

This ordinance shall be effective on the ____ day of August, 2016

ADOPTED AND APPROVED this _____ day of August, 2016.

MAYOR

ATTEST:

City Clerk