Legislation Details (With Text)

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Title:	Public Hearing, Second Reading and Final Passage of an Ordinance to amend Title 11 Chapter 5: Noise Ordinance. [ROLL-CALL VOTE]		
Sponsors:			
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Attachments:	1. 21-1088_Attachment 1_Noise ordinance cover, 2. 21-1088_Attachment 2_Ordinance, 3. 21-1088_Presentation, 4. 21-1088_Final Ordinance		

Date	Ver.	Action By	Action	Result

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 5, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/

DOCKET TITLE:
Public Hearing, Second Reading and Final Passage of an Ordinance to amend Title 11 Chapter 5: Noise Ordinance. [ROLL-CALL VOTE]

ISSUE: Should City Council incorporate some necessary changes to the City's noise ordinance to make it enforceable, legal and constitutional?

RECOMMENDATION: That City Council approve the proposed Noise Ordinance amendment (Attachment 2) on first reading and set it for second reading, public hearing, and final passage on Saturday, May 15, 2021.

BACKGROUND: Staff discussed the City's noise ordinance with Council in a work session on April 6, 2021. At that session, Council instructed staff to take a two-phase approach to revising the ordinance. This first phase proposes necessary changes to ensure the City's current noise ordinance is enforceable, legal and constitutional. A later phase, planned for summer and fall 2021, will include additional community outreach and Council consideration of broader policy changes.

The City's noise ordinance was initially adopted in 1963. Since then, both the City and case law have changed considerably. These changes compel the City to update certain provisions of the ordinance to reflect current case law, city property use patterns, and present sources of noise. The first phase under consideration now primarily addresses administrative changes. The Discussion section below outlines the four categories of legally necessitated amendments and one policy change proposed for consideration at this time.

The second phase of ordinance revisions, which Council will consider this fall, will address changes based upon policy determinations in response to changes that have taken place in Alexandria since the ordinance was first passed in 1963. This would reflect changes in property uses, density and noise sources that reflect current noise impacts to the City's residential and commercial populations.

DISCUSSION: The legally necessitated changes proposed in this phase fall into four categories.

The *first category* are changes compelled by *Tanner v. Virginia Beach*, 277 Va. 432 (2009). In this case, the Virginia Supreme Court held that a "municipal noise control ordinance, prohibiting any unreasonably loud, disturbing, and unnecessary noise, or noise that disturbs or annoys the quiet, comfort, or repose of reasonable persons, failed to give "fair notice" to citizens, as required by the due process clause of the United States Constitution." The court ruled that such ordinances do not contain ascertainable or objective standards and are impermissibly vague. Therefore, staff is proposing removal of any language in the Alexandria City Noise Ordinance that allows for subjective interpretation or resembles the language that was stricken down in *Tanner.* Portions of the ordinance that contain this language either have the language stricken or removed entirely and listed as "reserved."

The *second category* of legally necessitated changes in this revision are provisions that are subject to federal or state preemption. For example, the City's authority to regulate trains, motor vehicles, and model aircraft are greatly reduced or eliminated by the federal and state regulations on these topics. Accordingly, staff proposes to remove portions of the ordinance that contain language exceeding the City's authority to regulate or that may conflict with federal or state laws.

The *third category* of legally necessitated changes are changes to the civil and criminal penalties section. The Alexandria City Charter Section 2.06 provides that designation of an offense for a civil penalty shall be in lieu of criminal sanctions. Accordingly, the noise ordinance needs to clearly identify whether an offense is civil or criminal. Staff proposes to change the penalties provision to provide procedures for civil and criminal enforcement. This revision *does not change the amount for the civil fines or the criminal penalties*. This topic will be addressed as a policy determination slated for consideration during the second phase of noise ordinance revisions.

The *fourth category* of legally necessitated changes propose provisions that contain a "presumptions of violation" clause. The existing noise ordinance contains several provisions wherein there is a presumption of a violation if the noise could be heard from a certain distance. In these situations, the burden is placed on the individual to prove they are not in violation. Because the ordinance carries potential criminal penalties, there are limits on using a "presumption of violation" that requires an individual to prove that they are not in violation. The Due Process Clause of the Constitution requires the prosecution to prove beyond a reasonable doubt every element necessary to establish the crime charged. The Due Process Clause does not prohibit the use of a permissive inference as a procedural device. However, because the existing noise ordinance does not clearly allocate burdens of proof (and the prosecution retains the ultimate burden of proof, beyond a reasonable doubt) staff recommends amending the ordinance to more clearly meet the standards for legality.

Additionally, prohibitions that contain a presumption of violation have been removed. However, any standards

contained in such presumptions have remain unchanged. An example is the proposed amendment to Section 11 -5-4.1(c) pertaining to the Central Business District where there was a presumption that noise plainly audible from 50 feet from sound generation exceeded 75 dB(A) and constituted a violation.

The one policy change proposed in this revision would add a new property use category to the definitions in 11-5-2 and decibel provisions in 11-5-5 of the existing ordinance:

> *Institutional use area. Any property that is operated by a government, nonprofit, or quasi-public use or institution, such as a library, public or private school, religious institution, hospital, convalescent home, nursing home, continuum of care facility, or municipally owned or operated building, structure, or land used for public purposes.*

The proposed addition of the institutional property use category provides clarity and sets expectations for that type of use. From a noise policy perspective, there will be minimal impact, because in most cases, the predominant use provisions will continue to determine the appropriate noise standard. This revision proposes that the maximum permissible decibel level for the institutional property use category be set at 60 dB(A), the same decibel limit for commercial property use. Currently, if the property use category cannot be specified, the default standard is the industrial property use standard at 70 dB(A).

FISCAL IMPACT: There is no fiscal impact associated with these revisions to the noise ordinance.

ATTACHMENTS:

1. Ordinance Cover
2. Noise Ordinance
3. Presentation

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