

Section 5-7-42 of the City Code (Attachment 2) on second reading and final passage on Tuesday, July 6, 2021.

BACKGROUND: The City is currently in the process of updating its Noise Ordinance considering changes in case law, city property use patterns and present sources of noise since the Noise Ordinance was adopted in 1963. The first phase of the process to revise the ordinance approved by City Council in May 2021 made necessary and largely administrative changes to ensure the City's current noise ordinance is enforceable, legal and constitutional. A later phase that is set for summer and fall 2021, will include additional community outreach and City Council consideration of broader policy changes.

As part of the first phase, provisions in the City's Noise Ordinance that pertained to regulation of animal noise that did not comply with current Virginia law were repealed. An identical provision also appeared in the section of the City Code regulating Animals and Fowl. With the input of the community received as part of the community outreach surrounding changes to the City's Noise Ordinance that included presentations to civic groups and HOA's, as well as web-based surveys, the changes to the section of the City Code regulating Animals and Fowl will be updated to be consistent with Virginia law.

DISCUSSION: The City's regulations regarding animal noise previously appeared in both the City's Noise Ordinance and Chapter 7 of the City Code governing Animals and Fowl. As part of the first phase to update the City's Noise Ordinance, this provision has been removed from the Noise Ordinance and will now only appear in Chapter 7 of the City Code. Staff proposes this change in the location of the provision because the regulation of animal noise is enforced by the City's Animal Control Officers rather than Transportation and Environmental Services staff. Additionally, this provision should be updated in light of a case from the Virginia Supreme Court that ruled that ordinances 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. *Tanner v. Virginia Beach*, 277 Va. 432 (2009). The court ruled that such ordinances do not contain ascertainable or objective standards and are impermissibly vague.

Based on input from both the community and the Animal Welfare League of Alexandria (AWLA), acting as the City's animal control officers, staff is proposing removal of the current standard for animal noise and replacing it with the quantifiable standard in the proposed amendment which declares permitting a dog to bark, howl, bay, or make any such other sound a nuisance:

- a. *Between 10p.m. and 7 a.m. that is plainly audible in any other person's residential dwelling with the doors and windows closed and the source of the sound generation is discernable regardless of whether such doors or windows are closed; or*
- b. *Between 7 a.m. and 10 p.m. when the sound is plainly audible and discernable across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than five consecutive or non-consecutive minutes in any ten-minute period of time. Sounds that can be heard for less than five consecutive or non-consecutive minutes in any ten-minute period shall not be subject to this Section.*
- c. *The provisions of this Section shall not apply to any dog that at that time of the sound or sound generation (1) was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat, (2) is a police dog that is engaged in the performance of its duties, or (3) is part of a bone fide agricultural operation.*

Both Fairfax and Arlington Counties have the same or similar quantifiable standards contained in their animal ordinances relative to dog barking and other animal sounds. This proposed amendment is in line with ordinances in the City's neighboring jurisdictions.

Quantifiable Standard	Alexandria (Proposed)	Arlington County	Fairfax County
Between 10p.m. and 7 a.m. that is plainly audible in any other person's residential dwelling with the doors and windows closed and the source of the sound generation is discernable regardless of whether such doors or windows are closed	X		X
Between 7 a.m. and 10 p.m. can be heard for more than five consecutive or non-consecutive minutes in any ten-minute period of time	X		X
Animal sounds for five consecutive or non-consecutive minutes in any ten-minute period of time	X		X
Animal sounds at least once per minute for ten consecutive minutes		X	

FISCAL IMPACT: There is no fiscal impact associated with this amendment to Section 5-7-42 of the City Code.

ATTACHMENTS:

1. Animal Code Cover
2. Animal Code Amended Ordinance

STAFF:

Joanna Anderson, City Attorney
Adrienne Fine, Assistant City Attorney
Shawn Lassiter, Assistant City Attorney
Laura Triggs, Deputy City Manager
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