

INTRODUCED: December 14, 2009

AN ORDINANCE No. 2009- **236**

To repeal City Code § 38-31, 38-32 and 102-44, pertaining to the regulation of loud and disturbing noise and unnecessary noise in the operation of motor vehicles, and to amend City Code ch. 38, art. I, div. 1 by adding therein new sections 38-31, concerning the prohibition of excessive noise, and 38-32, concerning exceptions to the prohibition on excessive noise.

Patrons – Mr. Samuels and Mr. Tyler

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: **JAN 25 2010** AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 38-31, 38-32 and 102-44 of the Code of the City of Richmond (2004) be and are hereby repealed as follows:

Sec. 38-31. Enumeration of acts declared loud and disturbing noise; emergency exceptions.

(a) The following acts, among others, are declared to be loud and disturbing noises in violation of this article, but such enumeration shall not be deemed to be exclusive:

(1) *Horns and other signal devices.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for any unreasonable period of time.

(2) *Radios, phonographs, etc.* The playing of any radio, phonograph or any musical instrument in such a manner or with such volume, particularly during the hours between 12:00 midnight and 7:00 a.m., as to disturb the quiet, comfort or repose of persons in any dwelling, hotel or other type of residence.

(3) *Keeping of animals or birds.* The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity to such an extent as shall constitute a nuisance.

(4) *Operation of vehicles.* The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud and disturbing grating, grinding, rattling or other noises.

(5) *Blowing of steam whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.

(6) *Discharge into open air of exhaust of engines.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motorboat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(7) *Adjacent to schools, institutions, hospitals, courts.* The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while such is in

session or adjacent to any hospital which unreasonably interferes with the workings of such institution or which disturbs patients in the hospital, provided conspicuous signs are displayed in any such street indicating that the street is a school, hospital or court street.

(8) *Loading and unloading vehicles; opening and destruction of bales, boxes, crates, etc.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(9) *Shouting and crying of peddlers, hawkers and vendors.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(10) *Use of drums, loudspeakers, etc.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise.

(11) *Amplified sound from vehicles.* The playing, use or operation or the permitting of the playing, use or operation of any radio, tape player, loudspeaker or other electronic device used for the amplification of sound, which is located within a motor vehicle and which is audible from outside the motor vehicle at a distance of 50 feet or more.

(b) No section of this article shall apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

Sec. 38-32. Creation of loud and disturbing noise.

(a) It shall be unlawful to create or to assist in creating any unreasonably loud and disturbing noise in the city. Noise of such character, intensity and duration as to be detrimental to the life or health of any person or to unreasonably disturb the quiet, comfort or repose of any person is hereby prohibited.

(b) Any person who violates this section shall be deemed to be guilty of a class 2 misdemeanor.

(c) Each day of violation of this section shall constitute a separate offense.

(d) The person operating or controlling a sound source shall be guilty of any violation caused by that source. If that source cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

Sec. 102-44. Unnecessary noise in operation of motor vehicles.

(a) No vehicle shall be loaded with materials likely to create loud noises by striking together, without using every reasonable effort to deaden the noise.

(b) The use in, upon or attached to any motor vehicle operating on any city street of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound therefrom is cast upon any street to promote or advertise the sale of goods, wares or merchandise or for the purpose of advertising auction sales, sporting events or other business or things advertised thereby is prohibited. This subsection shall not apply to motor vehicles driven in a duly authorized parade. The use of a loudspeaker on a motor vehicle for making auction sales in streets directly in front of the property then being sold and entirely outside of the business districts of the city shall not be construed as a violation of this subsection when such use is limited strictly to the selling at auction of such property.

(c) It shall be unlawful for any person in operating a motorcycle, moped, or motorized skateboard or scooter within the city to create in the operation thereof any unreasonably loud, disturbing or unnecessary noise. In operating a motorcycle, moped, or motorized skateboard or scooter, the following acts, among others, are declared to create loud,

disturbing and unnecessary noises in violation of this subsection, but such enumeration shall not be deemed to be exclusive:

(1) The use of a motorcycle, moped, or motorized skateboard or scooter so out of repair as to cause thereby loud and unnecessary grating, grinding, rattling or any of such noises or any other unnecessary noise.

(2) The practice of unnecessarily racing the motor of a motorcycle, moped, or motorized skateboard or scooter while standing or moving, thereby causing unnecessary noise from such motor.

(3) The practice of unnecessarily retarding the spark to the motor and thereby causing unnecessary loud and explosive noise from the motor.

(4) In starting a motorcycle, moped, or motorized skateboard or scooter off from a standing position, the practice of gaining speed unnecessarily quickly and thereby causing unnecessary and loud noise from the motor.

(5) The practice of coming to an unreasonably quick stop with a motorcycle, moped, or motorized skateboard or scooter and thereby causing unnecessary grinding of brakes and screeching of tires or either of such noises.

§ 2. That Chapter 38, Article I, Division 1 of the Code of the City of Richmond (2004) be and is hereby amended and reordained by adding therein new sections numbered 38-31 and 38-32 as follows:

Sec. 38-31. Excessive noise prohibited.

(a) It shall be unlawful for any person:

(1) To use, operate or play between the hours of 7:00 a.m. and 11:00 p.m. any radio, phonograph, television, record, compact disc player, musical instrument,

loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible (i) inside the confines of the dwelling unit, house or apartment of another person or (ii) at fifty (50) or more feet from the device, except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events. Between the hours of 11:00 p.m. and 7:00 a.m., sound from such equipment shall not be plainly audible to any person other than the operator.

(2) To allow noise between the hours of 12:01 a.m. and 7:00 a.m. that is plainly audible inside the confines of the dwelling unit, house or apartment of another person.

(3) To allow any animal or bird to create noise such that it is plainly audible at least once a minute for 10 consecutive minutes (i) inside the confines of the dwelling unit, house or apartment of another; or (ii) at fifty (50) or more feet from the animal or bird.

(4) To play or permit the playing of any radio, stereo, tape player, compact disc player, loud speaker or other electronic device or mechanical equipment used for the amplification of sound, which is located within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of 50 feet or more from the vehicle.

(5) To operate a motor vehicle including a motorcycle that creates mechanical or exhaust noise that is plainly audible at a distance of two hundred (200) feet or more from the vehicle.

(6) To sound or permit the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public property, except as a warning of danger.

(7) To create plainly audible noise in residential areas between 10:00 p.m. and 5:00 a.m. in connection with the loading or unloading of refuse, waste or recycling collection vehicles.

(8) To create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal and other landscaping, lawn or timbering activities.

(9) To create plainly audible noise in connection with the erection, including excavation, demolition, alteration, or repair of any building or improvement between the hours of 7:00 p.m. and 7:00 a.m., except for emergency repairs to rectify an unsafe condition.

(10) To operate any chain saw, pile driver, mechanical shovel, pneumatic hammer, derrick, or mechanical hoist between the hours of 7:00 p.m. and 7:00 a.m., except for emergency repairs to rectify an unsafe condition.

(b) Any person convicted of a violation of this section shall be guilty of a class 2 misdemeanor.

Sec. 38-32. Exceptions.

Section 38-31 of this Code shall have no application to any sound generated by any of the following:

(1) Public speaking and public assembly activities conducted on any public right-of-way or public property provided, however, that the terms of any special events permit issued

under Article X, Chapter 102 of the City Code regarding assemblies, permits and parades shall apply.

(2) Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.

(3) Activities on or in school athletic facilities, or on or in publicly owned property and facilities.

(4) Radios, loud speakers, sirens, horns, and bells on police, fire, or other emergency response vehicles.

(5) Motor vehicle alarms or other motor vehicle security devices.

(6) Parades, fireworks displays, school-related activities, and other such public special events or public activities; subject, however, to the terms of any permit issued under Article V, Chapter 46.1 of the City Code regarding fireworks and pyrotechnics permits or under Article X, Chapter 102 of the City Code regarding assemblies, demonstrations and parades shall apply.

(7) Fire alarms and burglar alarms, prior to the giving of 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.

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

§ 3. This ordinance shall be in force and effect upon adoption.



Richmond City Council

The Voice of the People

Richmond, Virginia

Daisy E. Weaver
Council Chief of Staff

Office of the Council Chief of Staff

Ordinance/Resolution Request

TO Norman Sales, Richmond City Attorney

THROUGH Daisy E. Weaver, Council Chief of Staff *DEW*

FROM Tony Leone, Council Fiscal Analyst
Office of the Council Chief of Staff

COPY Charles Samuels, City Council, 2nd District
Jan Girardi, Liaison
Victoria Benjamin, Esq., General Counsel, Richmond Police Department

DATE November 20, 2009

PAGES 2

TITLE **AMEND SECTIONS OF THE CITY CODE TO COMPLY WITH VA. SUPREME COURT RULING REGARDING NOISE ORDINANCES**

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

Charles Samuels

SUGGESTED STANDING COMMITTEE

Public Safety

ORDINANCE/RESOLUTION SUMMARY

Amend the relevant sections of the Richmond City Code regarding noise violations as a result of the Virginia Supreme Court decision in Tanner v. City of Virginia Beach.

BACKGROUND

This past April, the Virginia Supreme Court ruled in Tanner v. City of Virginia Beach that Virginia Beach's noise ordinance was unconstitutionally vague. The use of "unreasonably loud" language as the standard for determining noise violations was ruled to be too subjective. This ruling affects all Virginia localities that have noise ordinances that use the same or similarly vague language as the language in Virginia Beach's noise ordinance.

The Richmond Police Department determined that the following sections of the Richmond City Code use the same subjective standard of "unreasonably loud" or other similar language and are therefore unenforceable:

Section 38-32 – Uses the same "unreasonably loud" standard as Virginia

Beach.

Section 102-44 paragraph (c) – Uses the same type of "reasonableness" standard to determine "unnecessary noise."

Section 38-31 (a) (1) Horns and other signal devices – Uses the same "unreasonably loud" standard found in City Code section 38-32 and the Virginia Beach code section.

The City Attorney should also review the following sections of the City Code related to noise violations—as well as any other sections deemed relevant—to determine whether or not each section is constitutional:

Regarding noise from cars:

Section 38-31 (a) (4)

Section 38-31 (a) (11)

Regarding noise from homes:

Section 38-31 (a) (2)

Other sections:

Section 38-31 (a) (3)

Section 38-31 (a) (5)

Section 38-31 (a) (6)

Section 38-31 (a) (7)

Section 38-31 (a) (8)

Section 38-31 (a) (9)

Section 38-31 (a) (10)

Section 102-44 (a)

Section 102-44 (b)

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact \$

Fiscal Summary

Attachment/s Yes No