

ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK AMENDING
CITY CODE CHAPTER 138 “NOISE”, §§138-2, “DEFINITIONS”, 138-5,
“PROHIBITED ACTS”, AND 138-6, “VIOLATIONS AND PENALTIES” TO DEFINE
CONSTRUCTION ACTIVITY AND NOISE DISTURBANCE, CHANGE THE HOURS
INCLUDED IN THE DEFINITIONS OF DAY AND NIGHT, INCLUDE NOISE
DISTURBANCE AS A VIOLATION, CLARIFY THE NOISE MEASUREMENT POINT
FOR MULTI-FAMILY DWELLINGS, INCLUDE REFERENCE TO VARIOUS NOISE
ACTIVITIES THAT ARE PROHIBITED BY OR EXEMPTED FROM THIS CHAPTER
THROUGH THE STATE ENVIRONMENTAL ARTICLE, SPECIFICALLY
AUTHORIZE THE NOISE BOARD TO HEAR CERTAIN CASES, AND TO MAKE
OTHER CLARIFYING AND CONFORMING CHANGES

WHEREAS, the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of College Park have the authority to pass such ordinances as it deems necessary to preserve peace and good order, and to protect the health, comfort and convenience of the residents of the municipality; and

WHEREAS, the Mayor and Council determined that the residents of the City have a right to an environment that is free from noise that may jeopardize their health, general welfare or property and as a result adopted Chapter 138, “Noise”; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to amend Chapter 138, “Noise” to define construction activity and noise disturbance, change the hours included in the definitions of day and night, include noise disturbance as a violation, clarify the noise measurement point for multi-family dwellings, include reference to various noise activities that are prohibited by or exempted from this Chapter through the State Environmental Article, specifically authorize the Noise Board to hear certain cases, and to make other clarifying and conforming changes.

Section 1. **NOW THEREFORE, BE IT ORDAINED AND ENACTED**, by the Mayor and Council of the City of College Park, Maryland that Chapter 138 “Noise”, §138-2, “Definitions”, be, and is hereby, repealed, re-enacted and amended to read as follows:

CAPS
 [Brackets]
 Asterisks * * *

: Indicate matter added to existing law.
 : Indicate matter deleted from law.
 : Indicate matter remaining unchanged in existing law but not set forth in Ordinance.

§ 138-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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CONSTRUCTION

TEMPORARY ACTIVITIES DIRECTLY ASSOCIATED WITH SITE PREPARATION, ASSEMBLY, ERECTION, REPAIR, ALTERATION, OR DEMOLITION ON ROADWAYS OR PRIVATE PROPERTY.

* * * *

DAY

The period between 7:00 a.m. and 8:00 p.m., MONDAY THROUGH FRIDAY, AND BETWEEN 8:00 A.M. AND 8:00 P.M. ON SATURDAYS, SUNDAYS AND HOLIDAYS.

* * * *

NIGHT

The period between 8:00 p.m. and 7:00 a.m. MONDAY THROUGH FRIDAY, AND BETWEEN 8:00 P.M. AND 8:00 A.M. ON SATURDAYS, SUNDAYS AND HOLIDAYS.

* * * *

NOISE DISTURBANCE MEANS ANY NOISE THAT IS:

- (A) UNPLEASANT, ANNOYING, OFFENSIVE, LOUD, OR OBNOXIOUS;
- (B) UNUSUAL FOR THE TIME OF DAY OR LOCATION WHERE IT IS PRODUCED OR HEARD;
- (C) DETRIMENTAL TO THE HEALTH, COMFORT, QUALITY OF LIFE, OR SAFETY OF ANY INDIVIDUAL OR TO THE REASONABLE ENJOYMENT OF PROPERTY OR THE LAWFUL CONDUCT OF BUSINESS BECAUSE OF THE LOUDNESS, DURATION, OR CHARACTER OF THE NOISE; OR
- (D) EXCEEDS THE OBJECTIVE STANDARDS OF THIS CHAPTER.

* * * *

SOUND LEVEL METER An instrument meeting ANSI SI.4, 1971, Specifications for Sound-Level Meters, comprising a microphone, an amplifier, an output meter and a frequency-weighting network or networks that is used for the measurement of sound-pressure levels in a specified manner. **SOUND LEVEL METERS USED TO DETERMINE COMPLIANCE WITH THIS CHAPTER SHALL MEET OR EXCEED THE SPECIFICATIONS FOR TYPE II SOUND LEVEL METERS.**

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Section 2. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter 138 “Noise”, §138-5, “Prohibited Acts” be, and is hereby, repealed, re-enacted and amended to read as follows:

§ 138-5. Prohibited acts AND EXEMPTIONS.

A. [~~Unless it is for the purpose of necessary property maintenance during the day, i~~] It shall be unlawful:

(1) For any owner or occupant of real property located within the City to make or to generate loud or raucous sound on said property, or to permit any loud or raucous sound to be made or generated on said property, so as to cause unreasonable annoyance or disturbance to others living or located nearby, **OR TO CREATE A NOISE DISTURBANCE OR PERMIT THE CREATION OF A NOISE DISTURBANCE;**

(2) For the owner or occupant of real property located within the City to make any noise or operate any sound amplifier on said property, or to permit any noise to be made or any sound amplifier to be operated on said property, so as to be clearly audible to any person located beyond the property line of such property at a level higher than 65 dBA during the day or 55 dBA during the night, as such sound may be measured from any point along the curb in front of the property line upon which the noise is being generated or at any place on adjacent property, provided that the person measuring the sound shall first obtain the permission of the adjacent property owner to enter upon said property. **FOR ANY MULTI-FAMILY UNIT, THE SOUND MAY BE MEASURED FROM ANY POINT OUTSIDE OF THE UNIT FROM WHICH THE NOISE EMANATES;** and

(3) For any person to cause, suffer, allow or permit the operation of an amplified source of sound in such a manner that it raises the total sound levels to greater than the following permissible sound level limits, when measured from within a building on an adjacent property.

(a) dBC above neighborhood residual sound level.

[1] Nights: three dBC.

[2] All other times: six dBC.

(4) **A PERSON MAY NOT CAUSE OR PERMIT THE EMISSION OF PROMINENT DISCRETE TONES AND PERIODIC NOISES WHICH EXCEED A LEVEL WHICH IS 5 DBA LOWER THAN THE APPLICABLE LEVEL LISTED IN THIS SECTION.**

(5) **A PERSON MAY NOT CAUSE OR PERMIT, BEYOND THE PROPERTY LINE OF A SOURCE, VIBRATION OF SUFFICIENT INTENSITY TO CAUSE ANOTHER PERSON TO BE AWARE OF THE VIBRATION BY SUCH DIRECT MEANS AS SENSATION OF TOUCH OR VISUAL OBSERVATION OF MOVING OBJECTS.**

(6) **A PERSON MAY NOT OPERATE OR PERMIT TO BE OPERATED AN OFF-ROAD INTERNAL COMBUSTION ENGINE POWERED RECREATIONAL VEHICLE,**

INCLUDING, BUT NOT LIMITED TO, A DIRT BIKE, AN ALL TERRAIN VEHICLE, A GO CART, A SNOWMOBILE, OR A SIMILAR VEHICLE, ON PRIVATE PROPERTY CLOSER THAN 300 FEET TO A NEIGHBORING RESIDENCE OR THE ASSOCIATED CURTILAGE, WITHOUT THE WRITTEN PERMISSION OF THE AFFECTED RESIDENT, UNLESS IT CAN BE DEMONSTRATED TO THE CITY THAT THE VEHICLE CAN BE OPERATED WITHIN THE NOISE LIMITS SPECIFIED IN THIS SECTION.

(7) A PERSON MAY NOT CAUSE OR PERMIT NOISE LEVELS EMANATING FROM CONSTRUCTION OR DEMOLITION SITE ACTIVITIES WHICH EXCEED:

(A) 90 DBA DURING DAYTIME HOURS;

(B) THE LEVEL SPECIFIED IN THIS SECTION DURING NIGHTTIME HOURS.

~~[(4)]~~(8) For the owner or occupant of real property located within the City to permit guests or invitees to such property to make noise on adjacent property, whether public or private, where that noise, if made or generated on the property itself, would violate ANY PROVISION OF Subsection A~~[(1), (2), or (3)]~~ of this section.

B. It shall be unlawful for the nonresident owner of a property to permit the occupants of such property to violate the provisions of Subsection A of this section. The owner shall not be deemed to have violated this subsection unless the owner, or owner's agent:

(1) Has received notice from any source, that a current or prior occupant of such property has, or is alleged to have, previously engaged in conduct that violates this section regardless of whether a finding of a violation by the Noise Control Board or by a court of competent jurisdiction was made; or

(2) Has failed to take action reasonably calculated under the circumstances to prevent a violation of this section from occurring or recurring.

C. A violation of this section shall be a municipal infraction, subject to the fine imposed by Chapter 110, Fees and Penalties.

D. Each repeat violation within a twelve-month period shall give rise to a charge as set forth in Chapter 110, Fees and Penalties.

E. EXEMPTIONS.

(1) THE PROVISIONS OF THIS SECTION MAY NOT APPLY TO DEVICES USED SOLELY FOR THE PURPOSE OF WARNING, PROTECTING, OR ALERTING THE PUBLIC, OR SOME SEGMENT THEREOF, OF THE EXISTENCE OF AN EMERGENCY OR HAZARDOUS SITUATION.

(2) ONLY THE FOLLOWING ARE EXEMPTED FROM THE PROVISIONS OF THIS SECTION:

(A) HOUSEHOLD TOOLS AND PORTABLE APPLIANCES IN NORMAL USAGE DURING DAYTIME HOURS;

(B) LAWN CARE AND SNOW REMOVAL EQUIPMENT (DAYTIME ONLY) WHEN USED AND MAINTAINED IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS;

(C) BLASTING OPERATIONS FOR DEMOLITION, CONSTRUCTION, AND MINING OR QUARRYING (DAYTIME ONLY);

(D) AIRCRAFT AND RELATED AIRPORT OPERATIONS AT AIRPORTS LICENSED BY THE MARYLAND AVIATION ADMINISTRATION;

(E) MOTOR VEHICLES ON STATE LANDS UNDER THE JURISDICTION OF THE DEPARTMENT OF NATURAL RESOURCES;

(F) EMERGENCY OPERATIONS;

(G) PILE DRIVING EQUIPMENT DURING THE DAYTIME HOURS OF 8 A.M. TO 5 P.M.;

(H) SOUND, EXCEPT THOSE SOUNDS THAT ARE ELECTRONICALLY AMPLIFIED, BETWEEN 7 A.M. AND MIDNIGHT, CREATED BY:

(I) SPORTING EVENTS (EXCEPT TRAP SHOOTING, SKEET SHOOTING, OR OTHER TARGET SHOOTING);

(II) ENTERTAINMENT EVENTS;

(III) OTHER PUBLIC GATHERINGS OPERATING UNDER AND WITHIN THE RESTRICTIONS SET BY A PERMIT OR PERMISSION OF THE CITY; AND

(IV) ATHLETIC CONTESTS, AMUSEMENT PARKS, CARNIVALS, FAIRS AT FAIRGROUNDS, SANCTIONED AUTO RACING FACILITIES, PARADES, AND PUBLIC CELEBRATIONS.

(I) RAPID RAIL TRANSIT VEHICLES AND RAILROADS;

(J) CONSTRUCTION AND REPAIR WORK ON PUBLIC PROPERTY;

(L) AIR CONDITIONING OR HEAT PUMP EQUIPMENT USED TO COOL OR HEAT HOUSING ON RESIDENTIAL PROPERTY. FOR THIS EQUIPMENT, A PERSON MAY NOT CAUSE OR PERMIT NOISE LEVELS WHICH EXCEED 70 DBA FOR AIR CONDITIONING EQUIPMENT AND 75 DBA FOR HEAT PUMP EQUIPMENT;

(M) HOUSEHOLD PETS ON RESIDENTIAL PROPERTY THAT ARE MAINTAINED IN ACCORDANCE WITH LOCAL ZONING REQUIREMENTS;

(N) TRASH COLLECTION OPERATIONS BETWEEN THE HOURS OF 7 A.M. AND 8 P.M., MONDAY THROUGH FRIDAY, AND BETWEEN 8:00 A.M. AND 8:00 P.M. ON SATURDAYS, SUNDAYS AND HOLIDAYS.

Section 2. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter 138 “Noise”, §138-6, “Violations and penalties” be, and is hereby, repealed, re-enacted and amended to read as follows:

§ 138-6. Violations and penalties.

A. Code Enforcement or Law Enforcement Officer. When a City Code Enforcement Officer, or a state, county, University of Maryland or other law enforcement officer chosen by the City, determines, based upon the results of a test conducted using a calibrated sound-level meter, that noise is being or has been generated in violation of § 138-5A(2) [~~or~~] (3), (4), (5), (6) OR (7) of this chapter, [~~he/she shall issue~~] a municipal infraction citation SHALL BE ISSUED to the violator(s) in accordance with the provisions of § 6-103 of the Local Government Article, of the Annotated Code of Maryland. In the event that more than one owner and/or more than one occupant of the real property is alleged to have violated the provisions of this chapter, a municipal infraction citation may be issued to each alleged violator.

B. Noise Control Board.

(1) When two or more City residents submit written complaints that noise is being or has been generated in violation of § 138-5A(1), (5), (6) or [~~138-5A(4)~~] (8) of this chapter, which complaints shall be delivered to the City Clerk, or postmarked, within 15 days of the alleged violation, AND REQUEST A HEARING BEFORE THE NOISE CONTROL BOARD, the Director shall:

(a) Schedule a hearing before the Noise Control Board within 30 days of receipt of complaints referred to in this section; and

(b) Give notice of the alleged violation to the owner and the occupant(s) of the property upon which such violation has allegedly occurred.

(2) When a violation of § 138-5 of this chapter has been alleged in accordance with the provisions of Subsection B of this section, the Noise Control Board shall conduct a hearing for the purpose of determining whether such violation has occurred.

(3) When the Noise Control Board determines, in accordance with the provisions of § 138-8 of this chapter, that a violation of § 138-5 has occurred, the Director shall notify the violator of the determination of the Noise Control Board that a violation has occurred and shall cause a municipal infraction citation to be issued to the violator, in accordance with the provisions of

[~~Article 23A, § 3,~~] §6-103 of the LOCAL GOVERNMENT ARTICLE, Annotated Code of Maryland.

C. (Reserved)

D. The City may seek court action to abate any noise nuisance in lieu of or in addition to any other enforcement remedies that may be available pursuant to this chapter.

E. In addition, the Public Services Director shall schedule a show-cause hearing before the College Park Advisory Planning Commission as to why the City occupancy permit for the property should not be revoked for three or more violations of the provisions of this chapter **THAT HAVE BEEN ADMITTED OR THAT HAVE BEEN DETERMINED IN COURT** within any twelve-month period, and may otherwise request such a hearing for violations of this chapter at his/her discretion.

Section 4. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall post at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, and on the City cable channel, and if time permits, in any City newsletter, the proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council.

The public hearing, hereby set for _____ P.M. on the _____ day of _____, 2019, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard.

After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. This Ordinance shall become effective on _____, 2019 provided that, as soon as practicable after adoption, the City Clerk shall post a fair summary of the

Ordinance and notice of its adoption at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, on the City cable channel, and in any City newsletter.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid and enforceable.

In accordance with Title 3 of the Environment Article of the Annotated Code of Maryland, the City shall send to the Maryland Department of the Environment a copy of this Ordinance as adopted.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ____ day of _____ 2019.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ____ day of _____ 2019.

EFFECTIVE the ____ day of _____, 2019.

ATTEST:

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

Patrick L. Wojahn, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Suellen M. Ferguson, City Attorney