

ORDINANCE NO. 3726

AN ORDINANCE to amend and reordain Section 11-5-12 (PENALTIES) of Chapter 5 (NOISE CONTROL), and to further amend Chapter 5 by adding thereto a new Section 11-5-4.1 (NOISES PROHIBITED--CENTRAL BUSINESS DISTRICT), all of Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, the Council of the City of Alexandria finds and determines that:

1. The central business district attracts a large number of tourists, restaurant and other business patrons, and other visitors to the City of Alexandria, including during the late evening and early morning hours.

2. Because of the historic pattern of the development of the central business district as a mixed-use area, the district contains many residences, and residential uses above ground floor retail and commercial uses.

3. The streets, other public places and quasi-public places in the central business district have become a popular location for the open air performance of music, song and other shows and performances which attract participants or spectators, including during the late evening and early morning hours.

4. Noise is generated by these shows and performances, as well as a variety of other activities, in the central business district, including activities during the late evening and early morning hours.

5. The noise engendered by some such activities has unreasonably disturbed the comfort, health, welfare, environment, peace and repose of persons who reside in the residences and dwelling units within and immediately adjacent to the central business district.

6. The following regulations constitute reasonable time, place and manner regulations on the right of persons to use the streets, public areas and quasi-public areas within the central business district, and are necessary to balance that right with the right of persons residing in residences and dwelling units within and immediately adjacent to the district to reasonable peace and quietude in the enjoyment of their residences and dwellings; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 5 of Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding thereto a new Section 11-5-4.1, to read as follows:

Sec. 11-5-4.1 Noises prohibited--central business district.

(a) Notwithstanding any conflicting provision of this chapter or other law, it shall be unlawful for any person to engage in, or to suffer or permit on or with property under such person's control, any sound generation, as defined in this section, in or on any public or private street, sidewalk or alley, any public park, marina or open space, or any private outdoor property that is open to the public for commercial or recreational purposes, within the central business district established by section 8-300(A) of the City of Alexandria Zoning Ordinance, except as is permitted by this section.

(b) "Sound generation" shall mean any conduct, activity or operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary, ambulatory or from a vehicle, which produces or generates sound in excess of the volume levels, and for a duration of time greater than the duration, specified in this section.

(c) Between the hours of 7:00 a.m. and 11:00 p.m., Monday through Sunday, no sound generation shall result in sound having a volume of 75 db(A) or more, at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of time greater than 60 seconds in any one hour period. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 75 db(A) at 10 feet of distance and thus violate this subsection, and the burden shall be on the person responsible for such sound generation to prove otherwise.

(d) Between the hours of 11:00 p.m. and 7:00 a.m., no sound generation shall exceed a volume of 65 db(A) at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of 60 seconds between such hours. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 65 db(A) at 10 feet of distance and thus violate this subsection, and the burden shall be on the person responsible for such sound generation to prove otherwise.

(e) This section shall not apply to any sound generation which occurs:

- (1) as part of a city-sponsored festival or event;
- (2) at a designated performance area within a public park, marina or open space in conformity with regulations

promulgated by the city manager or the director of parks, recreation and cultural activities;

(3) in conformity with regulations promulgated by the city manager for the use of market square;

(4) under a special permit, displayed at the place of sound generation, issued by the city manager pursuant to section 11-5-7; or

(5) on private property pursuant to a special use permit, displayed at the place of sound generation, approved by the city council under section 11-500 of the City of Alexandria Zoning Ordinance.

(g) This section shall be enforced by the director, the chief of police, the director of citizen assistance, the director of parks, recreation and cultural activities within any public park, marina or open space, and the director of general services within market square, and by their respective designees.

(h) As used in this section, "background noise level" means all sound sources impacting at the place of measurement, excluding the specific source that is suspected of violating this section.

(i) A violation under the section may be proved by either or both:

(1) Testimony or other evidence that the sound generation was plainly audible above the background noise level at the distance from the source, and for the duration of time, specified in subsections (c) or (d); or

(2) Testimony or other evidence that the sound generation equalled or exceeded the sound level, at the distance from the source, and for the duration of time, specified in subsections (c) or (d), as measured with a sound level meter, maintained in good working order, and having an accuracy specification of ± 2 dB at 114 dB SPL (sound pressure level) or better, and using the A weighting network of such meter. The measurement of sound level under this section, made with such meter, need not comply with the provisions of section 11-5-5.

Section 2. That Section 11-5-12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 11-5-12 Penalties.

(a) Civil violation. Any person who commits, permits, assists in or attempts any violation of this chapter, whether by

act or omission, shall be liable for a civil violation as follows:

(1) The first violation of this chapter by such person shall be punished by a civil penalty in the amount of \$50.

(2) The second violation of this chapter committed by such person within seven days of the first violation shall be punished by a civil penalty in the amount of \$100.

(3) The third and any subsequent violation of this chapter committed by such person within 14 days of the first violation shall be punished by a civil penalty in the amount of \$500.

(b) Criminal violation. Any person who knowingly refuses or neglects to comply with any written order to cease or abate any violation of this chapter, issued by an authorized enforcement officer, shall be guilty of a class 2 misdemeanor.

(c) Each hour of a continued violation shall constitute a separate offense under this chapter.

(d) Procedures.

(1) If an authorized enforcement officer determines that a violation of this chapter has occurred, the officer may cause a notice of the violation to be served on any or all persons committing, permitting, assisting in or attempting such violation.

(2) The notice shall provide that the person charged with a violation may elect to make an appearance in person, or in writing by mail, to the treasurer of the city, and admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time period fixed in the notice.

(3) If a person charged with a violation does not elect to admit liability or plead no contest, and abate the violation, the violation shall be tried in the Alexandria General District Court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law. In the event the violation exceeds the jurisdictional limits of the General District Court, the violation shall be tried in the Alexandria Circuit Court.

(4) A finding of admission of liability or a plea of no contest to a civil violation shall not be deemed a criminal violation for any purpose.

(5) A notice of civil violation, or a summons or arrest for a criminal violation, as provided in this section, may be

issued or had, notwithstanding that no prior notice of violation and ordering of corrective measures as provided in section 11-5-10 has been given.

(6) The provisions for judicial review contained in section 11-5-16 shall have no application to notices of violation, or summons or arrests, issued or made under the provisions of this section.

Section 3. That this ordinance shall become effective on July 1, 1994.

PATRICIA S. TICER
Mayor

Final Passage: June 14, 1994