

# Work Session

<b>Agenda Item #</b>	4
<b>Meeting Date</b>	December 7, 2015
<b>Prepared By</b>	Linda S. Perlman Assistant City Attorney
<b>Approved By</b>	Suzanne R. Ludlow City Manager

<b>Discussion Item</b>	Discussion of Amendments to the Noise Control Ordinance
<b>Background</b>	Councilmember Schultz has identified various issues with the City’s noise control ordinance and made proposals for amendment of the Ordinance. In addition, there have been recurring noise problems with events and parties in the City. The attached amendments to the noise control ordinance allow for: 1) issuance of event shut down orders; and 2) notices of violation and municipal infraction citations to be issued to the property owner or person responsible for the management, occupancy or supervision of the premises where the noise is occurring. The Council also may wish to reinstitute the Noise Control Board (§14.12.140) as a functioning entity to help adjudicate noise disturbance complaints in the City; particularly neighbor-to-neighbor complaints.
<b>Policy</b>	The intent of the City’s Noise Control Ordinance is to control noise sources in order to permit the peaceful enjoyment of property and protect the public health and welfare of residents and visitors to the City. Noise can interfere with normal residential and business activities and persistent exposure to excessive noise can result in stress and, at high levels, can damage hearing.
<b>Fiscal Impact</b>	Minimal – to be determined.
<b>Attachments</b>	Draft Ordinance amending the noise control ordinance to provide for increased measures of enforcement of excessive noise levels and noise disturbance violations.
<b>Recommendation</b>	
<b>Special Consideration</b>	

1 Introduced by:

First Reading:

2

Second Reading:

3

Effective Date:

4

5

**CITY OF TAKOMA PARK, MARYLAND**

6

7

**ORDINANCE 2015-\_\_**

8 **(Amending the Noise Control Ordinance to Provide for Increased Measures of Enforcement**  
9 **of Excessive Noise Levels and Noise Disturbances Violations)**

10 **WHEREAS,**

11 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA**  
12 **PARK, MARYLAND.**

13 **SECTION 1.** Title 14, Health and Safety, Chapter 14.12, Noise Control, of the *Takoma Park Code*  
14 is amended as follows:

15 **Chapter 14.12 - NOISE CONTROL**

16 Sections:

17 14.12.010 Declaration of policy.

18 14.12.020 Exemption from County Noise Control Ordinance.

19 14.12.030 Definitions.

20 14.12.040 Regulations.

21 14.12.050 Noise level and noise disturbance violations.

22 14.12.060 Noise level and noise disturbance standards for construction.

23 14.12.070 Measurement of sound.

24 14.12.080 Leaf blowers and other power lawn tools.

25 14.12.090 Animals.

26 14.12.100 Burglar and vehicle alarms.

27 14.12.110 Exemptions.

28 14.12.120 Waivers.

29 14.12.130 Enforcement and penalties.

30 14.12.140 Noise Control Board.

31 **14.12.010 Declaration of policy.**

32 The Council of the City finds that excessive noise harms public health and welfare and impairs  
33 enjoyment of property. The intent of this noise control ordinance is to control noise sources to  
34 protect public health and to allow the peaceful enjoyment of property. This noise control ordinance  
35 shall be liberally construed to carry out this intent. (Ord. 2002-35 § 1(1), 2002/Ord. 2000-22 § 1(1),  
36 2000)

37 **14.12.020 Exemption from County Noise Control Ordinance.**

38 Pursuant to the authority conferred by ~~Article 23A, Section 2B~~ **SECTION 4-111(b) OF THE**  
39 **LOCAL GOVERNMENT ARTICLE** of the Annotated Code of Maryland and by Section 1-203  
40 of the Montgomery County Code, the City exempts itself from the provisions of Chapter 31B, Noise

41 Control, of the Montgomery County Code, except as expressly set forth in this chapter. (Ord. 2002-  
42 35 § 1(2), 2002/Ord. 2000-22 § 1(2), 2000)

43 **14.12.030 Definitions.**

44 “Ambient noise” means the total noise associated with a given environment, being usually a  
45 composite of normal or existing sounds from all sources near and far, excluding the noise source at  
46 issue.

47 “Board” means the City of Takoma Park Noise Control Board.

48 “City Manager” means the City Manager of the City of Takoma Park and includes the City  
49 Manager’s designee.

50 “City Clerk” means the City Clerk of the City of Takoma Park and includes the City Clerk’s  
51 designee.

52 “Construction” means temporary activities directly associated with site preparation, assembly,  
53 erection, repair, alteration, or demolition of structures or roadways.

54 “dBA” means decibels of sound, as determined by the A-weighting network of a sound level meter  
55 or by calculation from octave band or 1/3 octave band data.

56 “Daytime” means the hours from 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 10:00 p.m.  
57 on weekends and holidays.

58 “Decibel” means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a  
59 particular sound pressure squared to the standard reference pressure squared. For this noise control  
60 ordinance, the standard reference pressure is 20 micropascals.

61 “Enforcement officer” means a City police officer or City code enforcement officer.

62 “Intermittent noise” means a noise which goes on and off but which is steady while it is on.

63 “Leaf blower” means any portable, hand held or backpack, ~~engine-powered~~ device with a nozzle  
64 that creates a directable airstream which is capable of and intended for moving leaves **OR ANY**  
65 **OTHER TYPE OF UNATTACHED DEBRIS OR** and light materials. **LEAFBLOWER**  
66 **INCLUDES DEVICES OR MACHINES THAT ACCEPT VACUUM ATTACHMENTS.**

67 “Nighttime” means the hours from 8:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 9:00 a.m.  
68 on weekends and holidays.

69 “Noise” means sound created or controlled by human activity, from one or more sources, or sound  
70 from an animal source, heard by an individual.

71 “Noise disturbance” means any steady-state or impulsive noise occurring on either a continuous or  
72 intermittent basis that is:

- 73 1. Unpleasant, annoying, offensive, loud, or obnoxious;
- 74 2. Unusual for the time of day or location where it is produced or heard; or

75 3. Detrimental to the health, comfort, or safety of any individual or to the reasonable  
76 enjoyment of property or the lawful conduct of business because of the loudness, duration, or  
77 character of the noise.

78 **4. A SOUND LEVEL METER MEASUREMENT IS NOT REQUIRED TO**  
79 **ESTABLISH A NOISE DISTURBANCE.**

80 “Noise suppression plan” means a written plan to use the most effective noise-suppression  
81 equipment, materials, and methods appropriate and reasonable available for a particular type of  
82 construction.

83 “Person” means an individual, group of individuals, corporation, limited liability company,  
84 partnership, or voluntary association; or a department or agency of the City, County, or any other  
85 government to the extent allowed by law.

86 “Power lawn tool” means any mechanically powered lawn or garden tool, lawn mower, or powered  
87 snow removal equipment, or other similar device commonly used outdoors.

88 “Property line” means the real or imaginary line along the ground surface and its vertical extension  
89 which separates real property owned or controlled by one person from contiguous real property  
90 owned or controlled by another person or from any public right-of-way or from any public space.

91 “Receiving property” or “receiving noise area” means any real property where people live or work  
92 and where noise is heard.

93 “Sound” means an auditory sensation evoked by the oscillation of air pressure.

94 “Source” means any person, installation, device, or animal causing or contributing to noise. (Ord.  
95 2002-35 § 1(3), 2002/Ord. 2000-22 § 1(3), 2000)

96 **14.12.040 Regulations.**

97 A. In accordance with Chapter 2.12, the City Manager may establish noise control regulations and  
98 standards as necessary to accomplish the purposes and intent of this noise control ordinance and  
99 also may set fees by regulation to offset the costs of any City reviews or other actions required or  
100 authorized by this chapter.

101 B. If no City regulations have been adopted specifying the procedures and methodology for  
102 measurement of noise levels, then the provisions of **COMAR – CODE OF MONTGOMERY**  
103 **COUNTY REGULATIONS, CHAPTER 31B, NOISE CONTROL REGULATIONS,**  
104 ~~Montgomery County Regulation Number 29-86, Procedures Governing the Measurement of Noise-~~  
105 ~~Levels in Montgomery County, Maryland,~~ or any amended or successor County regulations **ON**  
106 **NOISE CONTROL** setting procedures for the measurement of noise levels, are adopted by  
107 reference. (Ord. 2002-35 § 1(4), 2002/Ord. 2000-22 § 1(4), 2000)

108 **14.12.050 Noise level and noise disturbance violations.**

109 A. Maximum Allowable Noise Levels.

110 1. Except as otherwise expressly provided in this noise control ordinance or applicable  
111 regulations, a person must not cause or permit noise levels that exceed the following levels:

**Maximum allowable noise level  
(dBA) for receiving noise area  
(outdoor noise level measurements):**

Daytime: 65 dBA

Nighttime: ~~60~~55 dBA

112  
113 2. In the event the measured ambient noise level exceeds the maximum allowable noise level  
114 (dBA) set forth in subsection (A)(1) of this section, the noise level standard (the standard  
115 against which violations are measured) shall be adjusted so as to equal the ambient noise level  
116 plus 3 dBA.

117 B. Noise Disturbance. A person must not cause or permit a noise that creates a noise disturbance.  
118 (Ord. 2002-35 § 1(5), 2002/Ord. 2000-22 § 1(5), 2000)

119 **14.12.060 Noise level and noise disturbance standards for construction.**

120 A. The provisions of Section 31B-6, Noise level and noise disturbance standards for construction,  
121 of Chapter 31B of the Montgomery County Code, as amended from time-to-time, and any applicable  
122 regulations, are adopted by reference. The Montgomery County Department of Environmental  
123 Protection is given concurrent authority, along with City enforcement officers, to enforce the noise  
124 levels for construction and to evaluate and approve noise-suppression plans for construction activity  
125 in the City.

126 B. The prohibition on noise disturbance in Section 14.12.050 applies to construction activities.  
127 (Ord. 2002-35 § 1(6), 2002/Ord. 2000-22 § 1(6), 2000)

128 **14.12.070 Measurement of sound.**

129 A. Noise levels shall be measured with a sound level meter meeting the standards of the American  
130 National Standards Institute (ANSI) S.1.4—"Specifications for Sound Level Meters" or its  
131 successor. This instrument shall be set to the appropriate weight response scales and the meter to the  
132 slow response.

133 B. Noise levels shall be measured at ~~ANY the nearest receiving property line, at any point along~~  
134 ~~the curb in front of the property line upon which the noise is being generated, or at any other~~  
135 ~~location on the receiving property or receiving noise area, unless this noise control ordinance~~  
136 ~~specifies a different measurement location~~ **OR A SPECIFIC DISTANCE.** (Ord. 2002-35 § 1(7),  
137 2002/Ord. 2000-22 § 1(7), 2000)

138 **14.12.080 Leaf blowers and other power lawn tools.**

139 A. Except as provided in this section, a person must not sell, buy, offer for sale, or use a leaf  
140 blower at any time that has an average sound level exceeding 70 dBA at a distance of 50 feet. This  
141 requirement is in addition to any other noise level or noise disturbance standard that applies under  
142 this chapter.

143 B. The City may inspect, and upon request, a person must produce, any leaf blower that is sold,  
144 offered for sale, or used in the City, in order to determine whether the leaf blower complies with

145 this section. A person who relies in good faith on a manufacturer's written representation of the  
146 sound level of a leaf blower that has not been modified is not subject to a penalty for violating this  
147 section.

148 C. No person shall use a leaf blower or other power lawn tool outdoors during the daytime for  
149 more than 2 hours of accumulated time during any 24-hour period on any individual lot or parcel of  
150 property and no leaf blower or other power lawn tool shall be used outdoors during the nighttime.  
151 (Ord. 2002-35 § 1(8), 2002/Ord. 2000-22 § 1(8), 2000)

152 **14.12.090 Animals.**

153 No person shall allow a dog, bird, or other animal in his or her possession or control to persistently,  
154 habitually, or continuously bark, howl, yelp, or make other loud noise common to its species, and  
155 cause a noise disturbance to any person or to the neighborhood **REGARDLESS OF THE**  
156 **DECIBEL LEVEL.** (Ord. 2002-35 § 1(9), 2002/Ord. 2000-22 § 1(9), 2000)

157 **14.12.100 Burglar and vehicle alarms.**

158 A. Audible burglar alarms for structures or motor vehicles are prohibited unless the operation of  
159 such alarm can be terminated within **1530** minutes of being activated.

160 B. Notwithstanding the requirements of subsection (A) of this section, any member of the Takoma  
161 Park Police Department shall have the right to take such steps as may be reasonable and necessary  
162 to disconnect any such alarm installed in any building, dwelling, or motor vehicle at any time  
163 during the period of its activation.

164 C. The Takoma Park Police Department, or any authorized designee of the City, may tow or  
165 impound any motor vehicle in which an alarm has sounded continuously for more than **1530**  
166 minutes.

167 1. Whenever a vehicle is removed pursuant to this subsection and the officer or agent knows  
168 or is able to ascertain from the registration records in the vehicle or the records of the State  
169 Motor Vehicle Administration the name and address of the vehicle owner, such officer or agent  
170 shall promptly give or cause to be given notice in writing to such vehicle owner of the fact of  
171 the vehicle removal and the reasons therefor, and the method by which release of the vehicle  
172 can be secured.

173 2. No person shall remove or permit the removal of a motor vehicle which has been towed or  
174 impounded pursuant to this subsection from the custody of the City or from the place in which  
175 the vehicle is being held without first obtaining authorization from the City, a court order, or  
176 paying any citation issued for violation of this noise control ordinance and all fines, penalties,  
177 costs and other charges associated with the towing or impoundment of the vehicle. (Ord. 2002-  
178 35 § 1(10), 2002/Ord. 2000-22 § 1(10), 2000)

179 **14.12.110 Exemptions.**

180 This noise control ordinance does not apply to:

181 A. Emergency operations by fire and rescue services, police agencies, or public utilities and their  
182 contractors;

- 183 B. Sound created by snow removal, street sweeping, and leaf collection activities by the City;
- 184 C. Sound created by garbage, trash, solid waste, and recycling collection activities by the City  
185 provided that such activities shall not begin prior to 6:30 a.m. If the National Weather Service  
186 forecast for the day is for a high temperature of 90 degrees or higher or a heat or air quality advisory  
187 has been issued for the Washington, D.C. metropolitan area, then garbage, trash, solid waste, and  
188 recycling collection activities by the City may commence at 5:30 a.m.;
- 189 D. Sound created between 9:00 a.m. and 10:00 p.m. by sports, amusements, or entertainment  
190 events or other public gatherings operated according to the requirements of the appropriate permit  
191 or licensing authority. This includes athletic events, carnivals, festivals, parades, band and orchestra  
192 activities, and public celebrations;
- 193 E. Sound created by City-sanctioned or City-sponsored activities provided the activity is being  
194 operated in accordance with the requirements of any permit and City rules for the event. This  
195 includes, but is not limited to, the Takoma Park Farmer's Market and 4th of July events (parade,  
196 concert, and fireworks). (Ord. 2002-35 § 1(11), 2002/Ord. 2000-22 § 1(11), 2000)

197 **14.12.120 Waivers.**

198 A. Temporary Waiver.

199 1. The City Manager may waive any part of this noise control ordinance for a temporary event  
200 if, in the sole judgment and discretion of the City Manager, the noise the event will create or  
201 cause in excess of the noise level limits established under this noise control ordinance is offset  
202 by the benefits of the event to the participants or the public and the noise of the event will not  
203 cause undue hardship or disturbance to the surrounding area. The City Manager may impose  
204 terms and conditions appropriate to reduce the impact of the noise level exception on the grant  
205 of a temporary waiver.

206 2. An application for a temporary waiver shall be filed with the City Clerk, or such other  
207 office as the City Manager shall designate. The applicant shall certify that notice of such  
208 temporary waiver application has been provided to all properties contiguous to the property  
209 where the event will occur, and to all properties opposite said property measured at right angle  
210 to the intervening street or streets, and to the president or other designated representative, as  
211 shown by the City's records, of the local neighborhood association. The application for a  
212 temporary waiver shall not be approved less than 10 days after the notice required under this  
213 subsection has been given. No person or household may receive more than one temporary  
214 waiver in any calendar year.

215 B. General Waiver.

216 1. The City Council may waive any part of this noise control ordinance if the City Council  
217 determines that compliance in a particular case is not practical and would impose undue  
218 hardship.

219 2. An application for a general waiver shall be filed with the City Clerk, or such other office  
220 as the City Manager shall designate. The City Clerk or the City Manager shall notify the City

221 Council of the receipt of an application for a general waiver and the City Council shall schedule  
222 a public hearing on the application within 60 days of such notification.

223 3. At least 30 days before the public hearing, the applicant shall advertise the hearing by:

224 a. Publishing a notice in **THE TAKOMA PARK NEWSLETTER AND POSTING A**  
225 **HEARING NOTICE ON THE CITY'S WEB SITE** ~~a newspaper of general circulation~~  
226 ~~in Montgomery County, Maryland;~~

227 b. Posting a sign on the property which is the location of the noise source; and

228 c. Mailing or delivering notice of such general waiver application to all properties  
229 contiguous to the property which is the location of the noise source, and to all properties  
230 opposite the property measured at right angle to the intervening street or streets, and to the  
231 president or other designated representative, as shown by the City's records, of the local  
232 neighborhood association.

233 4. Based on the evidence presented at the public hearing, and on any City staff report or other  
234 reliable information, the City Council may grant a waiver for up to 3 years, upon such terms  
235 and conditions as the City Council deems appropriate to reduce the impact of the noise level  
236 exception.

237 C. Violation of Waiver. The City Manager may suspend, modify, or revoke a temporary waiver or  
238 a general waiver if the City Manager determines that a person has violated the terms or conditions  
239 of the waiver. (Ord. 2002-35 § 1(12), 2002/Ord. 2000-22 § 1(12), 2000)

240 **14.12.130 Enforcement and penalties.**

241 A. Unless a different penalty is stated, a violation of this noise control ordinance is a Class C  
242 municipal infraction. **A SECOND VIOLATION OF THIS NOISE CONTROL ORDINANCE**  
243 **IS A REPEAT OFFENSE. A THIRD AND SUBSEQUENT VIOLATIONS OF THIS NOISE**  
244 **CONTROL ORDINANCE, WITHIN 6 MONTHS OF A PREVIOUS VIOLATION, IS A**  
245 **CLASS A MUNICIPAL INFRACTION.**

246 B. If an enforcement officer finds that a person has violated this noise control ordinance, the  
247 enforcement officer may issue a notice of violation and correction order to the person. The notice  
248 shall include the following information:

249 1. The section of this noise control ordinance that the person violated;

250 2. The date, nature, and extent of the violation;

251 3. The action required to correct the violation;

252 4. If the enforcement officer requires a compliance plan, the deadline for submitting the plan;  
253 and

254 5. The deadline for compliance.



255 C. The compliance plan referred to in subsection (B)(4) of this section must establish a schedule  
256 for achieving compliance with this noise control ordinance, as specified in the correction order. A  
257 compliance plan, and any amendments to a plan, ~~are~~ **IS** not effective until the enforcement officer  
258 approves the plan or amendment. An action allowed under an approved compliance plan does not  
259 violate this noise control ordinance.

260 D. A notice of violation and correction order under subsection (B) of this section is not required  
261 before a municipal infraction citation for violation of this noise control ordinance may be issued. An  
262 enforcement officer may issue a municipal infraction citation for a violation of this noise control  
263 ordinance if the enforcement officer:

264 ~~1. Witnesses the violation; and/or~~

265 **12.** Determines that the noise level being generated exceeds the maximum allowable noise  
266 level set forth in Section 14.12.050 of this noise control ordinance; **OR**

267 **2. DETERMINES THAT A PERSON HAS CAUSED OR PERMITTED A NOISE**  
268 **DISTURBANCE.**

269 **E. IN THE EVENT OF A NOISE DISTURBANCE OR OTHER VIOLATION OF THIS**  
270 **NOISE CONTROL ORDINANCE CREATED BY THE USE OR RENTAL OF PREMISES**  
271 **FOR A MUSIC, ENTERTAINMENT, CELEBRATION OR PERFORMANCE EVENT**  
272 **(WHETHER OR NOT ADMISSION IS CHARGED), BY CONSTRUCTION WORK, OR BY**  
273 **COMMERCIAL ACTIVITY, THE ENFORCEMENT OFFICER MAY ISSUE A**  
274 **MUNICIPAL INFRACTION CITATION TO THE PERSON WHO VIOLATES THE**  
275 **NOISE CONTROL ORDINANCE AND/OR TO THE PROPERTY OWNER OR PERSON**  
276 **RESPONSIBLE FOR THE MANAGEMENT, OCCUPANCY OR SUPERVISION OF THE**  
277 **PREMISES, BUILDING, CONSTRUCTION SITE, PROPERTY OR ACTIVITY FROM**  
278 **WHICH THE NOISE SOURCE ORIGINATES.**

279 **F.E. Noise Disturbance Complaints - REFERRAL TO NOISE COMPLAINT BOARD.**

280 1. Signed, written complaints of a noise disturbance may be submitted by two or more City  
281 residents (*see* definition of “noise disturbance” in Section 14.12.030 of this noise control  
282 ordinance).

283 2. Noise disturbance complaints shall be filed with the City Clerk, on the City’s 2-party noise  
284 disturbance complaint form, within 10 days of the occurrence of the alleged noise disturbance.  
285 Any complaint which is received by the City Clerk more than 10 days after the date of the  
286 alleged noise disturbance shall be rejected. The City Clerk shall date-stamp the noise  
287 disturbance complaint on the day the complaint is received, assign the complaint a number, and  
288 forward the complaint, along with any supporting documentation, to the Noise Control Board  
289 (see Section 14.12.140 of this noise control ordinance).

290 **G.F.** The City may seek injunctive or other appropriate judicial relief to stop or prevent  
291 continuing violations of this noise control ordinance.

292 ~~H.G.~~ In addition to any other penalty or enforcement action under this noise control ordinance, an  
293 enforcement officer may **SHUT DOWN AN EVENT OR ACTIVITY THAT IS CAUSING A**  
294 **NOISE DISTURBANCE OR CREATING NOISE THAT EXCEEDS THE MAXIMUM**  
295 **ALLOWABLE NOISE LEVELS (“EVENT SHUT DOWN ORDER”)** OR issue a stop work  
296 order or an order to cease the violation to any person who violates any provision of this noise  
297 control order. **AN EVENT SHUT DOWN ORDER**, stop work order or ~~an~~ order to cease the  
298 violation also may be issued on the basis of signed, written complaints from at least 2 reliable  
299 witnesses setting forth the facts of the alleged violation.

300 1. **IF AN EVENT OR ACTIVITY IS SHUT DOWN, THE ENFORCEMENT OFFICER**  
301 **MAY ORDER ANY OR ALL PERSONS TO LEAVE THE PREMISES WHERE THE**  
302 **EVENT OR ACTIVITY IS OCCURING.**

303 2. Any person who receives such a **AN EVENT SHUT DOWN ORDER**, stop work order or  
304 order to cease the violation shall immediately cease the activity which constitutes the violation.  
305 The person shall comply with all terms and conditions imposed by the enforcement officer  
306 before the activity may resume.

307 ~~32.~~ Violation of **AN EVENT SHUT DOWN ORDER**, a stop work order or order to cease  
308 the violation ~~shall be~~ **IS** a Class A municipal infraction.

309 3. ~~H.~~ In the event of **A RENTAL OF PREMISES FOR A MUSIC, ENTERTAINMENT,**  
310 **CELEBRATION OR PERFORMANCE EVENT (WHETHER OR NOT ADMISSION IS**  
311 **CHARGED)**, construction work, commercial activity, or other work for hire, the person who  
312 violates this noise control ordinance and **/OR** the **PROPERTY OWNER OR** person  
313 responsible for the management or supervision of the **PREMISES, BUILDING**, construction  
314 site, area, property or activity from which the noise source originates are jointly and severally  
315 responsible for violations of this chapter and shall abide by any **EVENT SHUT DOWN**  
316 **ORDER**, stop work order or order to cease the violation. (Ord. 2002-35 § 1(13), 2002/Ord.  
317 2000-22 § 1(13), 2000)

#### 318 **14.12.140 Noise Control Board.**

##### 319 A. Establishment and Membership.

320 1. A City Noise Control Board is established to assist and advise the City on noise control  
321 issues, including administration and enforcement of this noise control ordinance, and to  
322 adjudicate noise disturbance complaints.

323 2. The Board shall consist of 5 to 7 active members appointed by the Council. All members  
324 shall be residents of the City. Board members shall be appointed for a term of 3 years, except  
325 that 3 of the initial appointees shall serve 2-year terms. Terms shall begin on April 1st and end  
326 on March 31st.

327 3. The term of a Board member who is appointed to replace a member who cannot complete  
328 his or her term shall be for the remainder of the term of the Board member being replaced.

329 4. A Board member who resigns, who is removed, whose term expires or who ceases to reside  
330 in the City is ineligible to continue to serve on the Board except that, at the discretion of the

331 Chairperson, he or she may continue as an inactive member of the Board to complete work on  
332 cases in which he or she participated as an active member of the Board. This participation may  
333 include the approval and signing of Board decisions on noise disturbance complaints.

334 5. The Council may, by resolution, remove a Board member before the Board member's term  
335 has expired if the Council determines that the Board member has become incapacitated or has  
336 failed to reasonably perform his or her duties as a Board member.

337 6. The Board shall elect one member as Chairperson and another member as Vice  
338 Chairperson to serve at the pleasure of the Board. The Board shall meet at the call of the  
339 Chairperson as required to perform its duties, but not less often than semi-annually. A majority  
340 of the active members of the Board constitute a quorum for transacting business. The Board  
341 may act by a majority vote of those present.

342 7. The Board may adopt rules of procedure which further regulate its operations and the  
343 conduct of hearings.

344 B. Hearings on Noise Disturbance Complaints.

345 1. When a noise disturbance complaint under Section 14.12.130(E) is received, the Board  
346 shall schedule a hearing on the complaint and give reasonable advance notice of the date, time,  
347 and place of the hearing before the Board to the persons who filed the noise disturbance  
348 complaint ("the complainant") and the alleged violator. The alleged violator also shall be served  
349 with a copy of the noise disturbance complaint.

350 2. The hearing notice and noise disturbance complaint shall be deemed to be properly served  
351 on the alleged violator if the notice and complaint is:

352 a. Delivered to the alleged violator personally;

353 b. Sent by certified mail and the return receipt is returned indicating that the certified mail  
354 was received by the alleged violator;

355 c. Left at the alleged violator's residence or place of business with a person of suitable  
356 age and discretion; or

357 d. Mailed by first-class mail to the last-known address of the alleged violator and posted  
358 in a conspicuous location on the property where the noise disturbance violation is alleged to  
359 have occurred.

360 C. Hearing Process.

361 1. The Chairperson of the Board is authorized to designate 3 active members of the Board to  
362 sit as a panel to conduct a hearing on any noise disturbance complaint. The Chairperson of the  
363 Board shall endeavor to rotate panel membership from time to time among the active members  
364 of the Board. If the parties agree, a hearing may proceed before 2 members of the Board.

365 2. The hearing shall be open to the public. At the hearing, the complainant and the alleged  
366 violator may present testimony and evidence to substantiate any material point. All testimony

367 shall be given under oath or affirmation. Each party shall have the right to cross-examine  
368 opposing witnesses, to submit rebuttal evidence, and to present summation and argument. The  
369 Board panel also may ask questions of witnesses and enter its own evidence.

370 3. The Board panel may admit and consider evidence which would be commonly accepted by  
371 reasonable and prudent people as having a causal relationship to the matter before the Board  
372 panel. The Board panel may exclude from evidence irrelevant and repetitious testimony and  
373 documents.

374 4. The burden of proof of establishing a violation of the noise control ordinance shall be on  
375 the party who filed the noise disturbance complaint and shall be met by a preponderance of the  
376 evidence.

377 5. An audio record of the hearing shall be made. The record of the case shall consist of the  
378 audio recording and any written documentation accepted into the case file. The record of the  
379 case shall be open to inspection by any person. Upon request, the Board shall furnish copy of  
380 the record of the case to any person at the cost of supplying the same.

381 D. Decision of the Board on a Noise Disturbance Complaint.

382 1. After due consideration of the evidence and testimony presented at the hearing, the Board  
383 shall issue its decision on the noise disturbance complaint and give notice of its decision to all  
384 parties to the case. The Board's decision may be announced orally, following the hearing, or the  
385 Board may take the case under advisement and issue a written decision on the noise disturbance  
386 complaint within a reasonable time following the hearing.

387 2. In the event that the Board finds that in favor of the complainant on the noise disturbance  
388 complaint, the Board may order the violator:

389 a. To cease and desist from the conduct or activity which created the noise disturbance or  
390 to take other corrective action in order to abate or correct the violation of this noise control  
391 ordinance; and/or

392 b. To pay a fine to the City of up to \$200.00 for each violation. If there is more than one  
393 violator or if the Board has found more than one noise disturbance violation, then the fine  
394 may be imposed on each violator. If the Board finds that this a repeat violation, i.e., the  
395 violator has been found to have created a noise disturbance within a one-year period  
396 immediately preceding the occurrence of the instant noise disturbance violation, then the  
397 Board may order the violator to pay a fine to the City of up to \$400.00 for each violation.

398 3. In determining the amount of the fine to impose on a violator, pursuant to subsection  
399 (D)(2)(b) of this section, the Board shall consider whether the evidence presented at the hearing  
400 on the noise disturbance complaints indicates that significant mitigating factors warranting a  
401 reduction in the maximum amount of the fine to be imposed are present:

402 a. Whether the violator has previously been found to have violated this noise control  
403 ordinance;

404 b. Whether the violator has taken action reasonably calculated under the circumstances to  
405 prevent or mitigate future violations of this noise control ordinance; and

406 c. Whether the violation was not so egregious or lengthy in duration that a reasonable  
407 person would view the violation as reprehensible.

408 E. Enforcement of Board Decision on a Noise Disturbance Complaint.

409 1. A violator who fails to comply with a Board decision on a noise disturbance complaint may  
410 be issued a municipal infraction citation for a Class A offense.

411 2. In addition to any penalty provided herein, compliance with a Board decision may be  
412 enforced by any appropriate action, at law or equity, in any court of competent jurisdiction.  
413 (Ord. 2007-4, 2007/Ord. 2002-35 § 1(14), 2002/Ord. 2000-22 § 1(14), 2000)

414 **SECTION 3.** This Ordinance shall be effective immediately upon adoption.

415

416 **ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS**  
417 **\_\_\_ DAY OF \_\_\_\_\_, 201\_\_\_, BY ROLL-CALL VOTE AS FOLLOWS:**

418

419 **AYE:**

420 **NAY:**

421 **ABSENT:**

422 **ABSTAIN:**

423

424

**EXPLANATORY NOTE**

425

426 Additions to the existing language of the *Takoma Park Code* are shown **IN BOLD RED CAPITAL**  
427 **LETTERS.**

428

429 ~~Deletions~~ to the existing language of the *Takoma Park Code* are shown by ~~strikeout~~.

430

431 \* \* \* \* indicates language of the *Takoma Park Code* which is not reproduced in this Ordinance and which  
432 is not being changed.

433