

MINUTES
Public Hearing of the College Park City Council
Ordinance 08-O-01

An Ordinance Of The Mayor And Council Of The City Of College Park, Maryland, Amending City Code Chapter 138 "Noise", §138-5 "Prohibited Acts", And Chapter 110 "Fees And Penalties", §110-2, "Penalties" To Extend The Time Period For Which An Increased Penalty May Be Assessed For Repeat Violations Of The Noise Code From Six To Twelve Months.

Tuesday, March 11, 2008
7:30 P.M.

PRESENT: Mayor Brayman; Councilmembers Molinatto, Wojahn, Catlin, Perry, Stullich, Mark Cook, Hampton and Mary Cook; Student Liaison Danielle Kogut.

ABSENT: None.

ALSO PRESENT: Joe Nagro, City Manager; Suellen Ferguson, City Attorney; Janeen Miller, City Clerk; Sara Imhulse, Assistant to the City Manager; Bob Ryan, Director of Public Services.

Mayor Brayman opened the Public Hearing at 7:33 p.m. and invited Bob Ryan to give an overview. Mr. Ryan explained that Ordinance 08-O-01 would extend the time period where an increased penalty could be imposed for a violation of the noise ordinance from six months to twelve months. Currently, a noise code violation carries a potential fine of \$500, and repeat violations within a six month period could double to \$1,000. With this ordinance, the six-month period would be extended to twelve months. Both the occupant and the property owner could be responsible for the fine.

Councilmember Mary Cook asked about the advantage of enacting this amendment. Mr. Ryan stated one advantage is that if someone violates the ordinance the first time, they would have to be more careful for a longer period of time not to violate the ordinance again or risk facing a \$1,000 fine. She followed up with a question about how the individual occupants of a house are cited, and asked how staff determines who is in violation. Mr. Ryan stated that with the assistance of a Contract Police officer, a Code Enforcement officer asks for identification of someone who lives at the property and admits to being responsible for hosting the event.

There was discussion about when an occupant and when a property owner would receive a warning or a violation. Mr. Ryan clarified that the same occupant has to be cited for a second time within the designated time period for the property owner to also receive an increased fine. The landlord's clock totally resets when a new set of tenants moves in.

Mr. Ryan reviewed various scenarios of noise violations and fines.

Councilmember Wojahn asked about the appeal process for Municipal Infractions. They may be appealed to the District Court.

Existing noise enforcement practices and procedures were discussed.

Dave Dorsch, 4607 Calvert Road, Chair of the Landlord's Forum: He doesn't see any need for this amendment, believes it is beating up on the landlords, and won't help the problem.

Jack Robson, 4710 Calvert Road: He does not like any law that makes the landlord responsible for the people that live in their houses. He suggested a new section, 135(E), that would read as follows: "If the occupant of the property is not the owner and a valid lease or rental agreement exists between the property owner and the occupant, and a previous violation within the past twelve months has occurred, the fine will be assessed at the initial violation level upon presentation by the occupant of a valid lease or rental agreement showing a change in occupancy between the first violation and the second violation. If the occupant of the property is the owner and ownership has changed during the previous twelve months and there has been a previous violation within the past twelve months, the fine will be assessed at the initial violation level upon verification of change of ownership." He believes this addresses most of the questions that were raised, except when a complaint is filed with the Noise Control Board.

Morgan Gale, 7010 Wake Forest Drive: He is in favor of the extended period because it better reflects the tenants' occupancy. Suggested the fine to the property owner should be continued for the 12-month period regardless of whether the occupancy changes. Asked what happens when these cases go to court.

Andrew Friedson, 4615 Norwich: Thinks this is fundamentally unfair and believes it is bad public policy. Standard landlord/tenant agreements state that any fines assessed to the landlord because of the occupants will be passed on to the occupants. Believes some rental properties and occupants are being harassed by these policies.

Ballard Troy, 4702 Harvard Road: He believes this is an effective process to control neighborhood noise issues and is in favor of the proposed amendment.

Ellie Troy, 4702 Harvard Road: Believes landlords should be held responsible for the actions of their tenants. Is in favor of the extension. Asked about having a model lease that states that all occupants are responsible for the actions of the house.

Mary Ellen Salkeld, 4707 Harvard Road: Is in favor of this amendment. There is a problem house on her block and the landlord is not taking responsibility. The City's response has been good.

John Hawvermale, 1342 Excalibur Lane, Sandy Spring: He is not in agreement with the proposed extension because it doesn't seem justified. He is a property owner and has

a strict policy with his tenants including taking an additional security deposit for noise violations. Thinks the landlord's clock should reset with all new tenants.

Jerry Anzulovic, 4900 Ruatan Street: He is in favor of the extension of time proposed in the amendment. The students are of age and are supposed to obey the law. If they don't like the law, they should change it. Standard leases say that tenants are supposed to obey the laws.

Monroe Dennis, 8117 51st Avenue, President, Lakeland Civic Association: He is in favor of the extension because it better reflects the length of a rental occupancy. He believes everyone on the lease should be culpable in noise issues.

Adele Ellis, 4608 Beechwood Drive: She is in favor of the time extension. She believes the amendment will help landlords be more responsible and gain better control of their tenants.

Danielle Kogut: It is common practice for landlords to pass these fines on to tenants. Renters do not always choose their roommates, and it cannot be assumed that tenants create noise together. She suggested an amendment to allow fines to double within twelve months unless one of the five tenants is replaced.

Mayor Brayman stated the Council will defer action on the Ordinance tonight and will hold the record open for 7 days – until 5:00 p.m. on Tuesday, March 18 – to allow for written testimony. The item will return to the April 1 worksession for further discussion. No further public comment will be heard unless there is substantial change to what comes forward, in which case another public hearing may be held. He questioned whether the City could prevent a fine being passed on from one person to another.

Councilmember Wojahn asked for a legal interpretation of whether the current practice is consistent with the wording of the law. Ms. Ferguson responded that what is happening in Court is not so much a legal interpretation of City code as what is happening on the enforcement end of things.

The Public Hearing was declared closed at 8:48 p.m.

Janeen S. Miller, City Clerk