

Benjamin and DesPortes: For Crying Out Loud, This Law Is Ridiculous

by Steven D. Benjamin and Betty Layne DesPorties

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Living in the city is different from living in the country. People live closer together and amidst a greater diversity of interests, pastimes, and sounds. However, living in a city does not require tolerating noise that unreasonably interferes with sleep or daily living. When polite requests or appropriate patience are ineffective solutions, government involvement might be necessary.

The problem with the City of Richmond's new anti-noise law is not that it tries to prohibit unreasonable noise; it is that the law criminalizes virtually all sound. Any violation of the law is a Class 2 misdemeanor, carrying up to six months in jail and a \$1,000 fine.

Richmond's anti-noise law is simply too broad. The first sentence criminalizes any sound from a device or musical instrument between 7:00 a.m. and 11:00 p.m. that can be heard inside someone else's home, or 50 feet away. This provision gives everyone a cone of silence around their home, and 50 feet around them wherever they go. Music that pedestrians can hear during the day through an open screen window is criminal, as is the murmur of a television through a common wall.

The second sentence, still referring to instruments or devices that make sound, says: "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." This language is clear and unambiguous. If the 11:00 o'clock TV news can be heard by anyone else, even in the same household, the operator is committing a crime. After 11:00 p.m., any music heard by any person other than the operator is criminal, even if everyone is a willing listener. This provision criminalizes background music in a bar.

The third sentence prohibits all noise, including talking, that can be heard in someone else's home after midnight and before 7:00 a.m. This sentence criminalizes the banter of Fan joggers at 6:00 a.m., the footsteps and closing

doors of neighbors in the adjoining apartment, and the crying of babies.

The anti-noise law exempts certain categories of sound, including any sound generated by religious expression. While bells and hymns from a house of worship are easy to classify, the law does not provide any guidance for police to distinguish religious music or sound -- which can be played at any time and at any volume -- from the non-religious music or sound that is criminal if it can simply be heard.

A law so ridiculous in its unnecessary breadth and unworkable exceptions should never have been enacted. Nor should people trust city officials to use such a bad law responsibly. As the Supreme Court recently reiterated, the First Amendment protects people from government; it does not leave people at government's mercy.

Citizens should insist on an anti-noise law that works and makes sense. A good law would objectively prohibit only noise that truly interferes with daily living. A good law might do what this law does not: use decibel levels as a gauge of reasonableness, distinguish noise permitted in business, residential, and mixed-use communities, and substitute a civil penalty driven by citizen complaint for a jailable offense charged at the discretion of the police.

My co-author and law partner Betty Layne Desportes and I represent four young people (three musicians and the young woman who hosted the band) who were charged with noise violations after her home was raided. They could have had their charges dismissed, but they refused because they want a ruling on the unconstitutionality of the anti-noise law. They are not standing up because they think they have the right to play loud music interfering with the rights of others. Instead, they are risking conviction to object that this is an unconstitutional law that criminalizes our right to express ourselves with music and speech, and our right to generate and hear sound that is an acceptable part of daily life. They are right to do so. Our most basic freedoms deserve more responsible handling. Steven D. Benjamin is a Richmond lawyer. He wrote this piece with his law partner, Betty Layne DesPortes. Contact them at sdbenjamin@aol.com.