

05/23/2022
6/6/2022

ORDINANCE NO. M- [Ordinance Number]

AN ORDINANCE of the City of Vancouver expanding the definition of public disturbances to restrict certain additional noises and vibrations, expanding the definition of pedestrian interference to prohibit targeted picketing or protesting, and allowing the City to assert a claim or lawsuit on behalf of an official, employee or volunteer to the extent it is reasonably necessary in order to further a public purpose; amending Vancouver Municipal Code Sections 7.05.010 “Public Disturbances”, 7.04.020 “Pedestrian Interference”, 7.04.030 “Definitions”, and 2.46.020 “Defense of Officials, Employees, and Volunteers”; providing for severability; and setting an effective date.

WHEREAS, Chapter 7.05 of the Vancouver Municipal Code (“VMC”) relating to Public Disturbances and VMC Chapter 7.04 relating to Pedestrian Interference and VMC Chapter have not been revised since 2003; and

WHEREAS, since 2003, noise produced by human activities has been increasingly recognized as a serious and growing environmental and health problem; and

WHEREAS, noise pollution has been implicated in a variety of health disorders, ranging from stress and hypertension to permanent hearing loss; and

WHEREAS, inadequately controlled noise can adversely affect people's health, safety, welfare, property values and the environment; and

WHEREAS, effective control of noise is essential to conducting normal pursuits of life, including recreation, work and socializing; and

WHEREAS, Washington Administrative Code 173-60-060 allows local governments to regulate noise from any source as a nuisance; and

WHEREAS, this Ordinance enacts narrowly drawn, content-neutral regulations guaranteed by Article I, Section 5 of the Washington Constitution and the First Amendment of the United States Constitution; and

WHEREAS, VMC Chapter 2.46.020 relating to Defense of Officials, Employees and Volunteers has not been revised since 1995; and

WHEREAS in the past few years, cities and counties across the country have seen an increase in the number of elected officials, healthcare workers, elections workers, and other public servants experiencing increased threats, violence, and intimidation as a result of their work; and

WHEREAS, in recent years the City of Vancouver has seen an increase in the number of its officials, employees and volunteers being targeted for actions or inactions untaken in the course and scope of their duties on behalf of the City; and

WHEREAS the safety and well-being of the City's officials, employees and volunteers is of high priority of the Vancouver City Council; and

WHEREAS, with proper notice to the public, the Vancouver City Council conducted a first reading of the proposed ordinance on May 23, 2022, and a public hearing concerning the Ordinance and proposed code changes on June 6, 2022.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings. The recitals set forth above, together with Staff Report SR-____ and all attachments thereto are hereby incorporated by this reference as findings in support of this Ordinance.

Section 2. Section 7.05.010 of the Vancouver Municipal Code entitled “Public Disturbance” as established by Ordinance M-3624, (2003) is hereby amended to read as follows:

Section 7.05.010 Public Disturbance

A. A person is guilty of public disturbance if he or she:

1. Causes a public disturbance or is in possession and control of property on which a public disturbance occurs. The following sounds are determined to be public disturbances:

a. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.

b. The creation of frequent, repetitive, or continuous sounds or vibrations (infrasound) in connection with the starting, operation, repair, rebuilding, or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace, comfort, and repose of owners or possessors of real property.

c. Yelling, shouting, hooting, whistling, ~~or singing~~ or using noise makers like whistles, fireworks, sound amplifying equipment or airhorns within a residential district, on or near the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time and place in a manner so as to unreasonably disturb or interfere with the peace, comfort, and repose of owners or possessors of real property.

d. The creation of frequent, repetitive, or continuous sounds or vibrations (infrasound) which emanate from any building, structure, apartment, condominium, or yard adjacent thereto that unreasonably interfere with the peace, comfort, and repose of owners or possessors of real property such as sounds from musical instruments, audio sound systems, band sessions, or social gatherings.

e. The creating of frequent, repetitive, or continuous sounds or vibrations (infrasound) made by any animal, such as barking or howling, except that such sounds made in animal shelters, commercial kennels, veterinary hospitals, pet shops, or pet kennels licensed under and in compliance with other provisions of the VMC shall be exempt from this provision.

f. Sound or vibrations (infrasound) from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty (50) feet from the source, and if not operated upon the real property of the operator. This provision shall not apply to such sounds emitted from scheduled events or activities at parks and recreational facilities such as public address systems for park or game events or concerts or similar park or recreation activities.

g. The creation of frequent, repetitive, or continuous sounds or vibrations (infrasound) made in connection with outdoor construction or the movement of construction related materials, including noise made by devices capable of producing sound by either striking or cutting objects, such as hammers, saws, or other equipment with internal combustion engines; provided, however, such sounds shall be exempt from the provisions of this code under the following circumstances:

1. During the hours of 7:00 a.m. through 8:00 p.m., or
2. In commercial areas not within 300 feet of any residential areas.

B. The foregoing enumeration of acts and noises shall not be construed as excluding other acts and noises which offend the public peace.

C. Public disturbance is a misdemeanor. (Ord. M-3624, 2003)

Section 3. Section 7.04.020 of the Vancouver Municipal Code entitled “Pedestrian Interference” as established by Ordinance M-3624, (2003) is hereby amended to read as follows:

Section 7.04.020 Pedestrian Interference

A person is guilty of pedestrian interference if he or she intentionally:

1. Aggressively begs in a public place; ~~or~~
2. Obstructs pedestrian or vehicular traffic. (~~Ord. M-3624, 2003~~); or
3. Engages in targeted picketing or protesting before or about the residence or dwelling of another.

Section 4. Section 7.04.030 of the Vancouver Municipal Code entitled “Definitions” as established by Ordinance M-3624, (2003) is hereby amended to read as follows:

Section 7.04.030 Definitions

The following definitions shall apply in this chapter:

1. “Aggressively beg” means to beg with the intent to intimidate another person into giving money or goods.
2. “Beg” means to ask for money or goods as a charity, whether by words, bodily gestures, signs, or other means.
3. “Intimidate” means to engage in conduct which would make a reasonable person fearful or feel compelled.
4. “Obstruct pedestrian or vehicular traffic” means to:
 - a. Walk, stand, sit, lie, grasp a person, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact; or
 - b. Sit or lie down upon a public sidewalk, during the hours between 7:00 a.m. and 9:00 p.m. in a manner which blocks the sidewalk.
 - c. Provided however, that no person shall be cited under subsection (b) unless the person engages in conduct prohibited in subsection (b), after having been notified by a law enforcement officer that the conduct violates this section.
5. “Public place” means an area generally visible to public view and/or open to public access and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks, and streets open to the general public including places that serve food or drink or provide entertainment, and the doorways and entrances to such buildings or dwellings and the grounds enclosing them.
6. “Targeted picketing or protesting” means producing sounds in violation of VMC 7.05.010 (A)(1)(c), communicating an intention to inflict imminent bodily harm against the occupant of the residence or dwelling, encouraging immediate acts of violence where the encouragement goes beyond strong rhetoric, or demonstrating against the actions or inactions of the occupant of the residence or dwelling.

Section 5. The title of Chapter 2.46 of the Vancouver Municipal Code “Defense of Officials, Employees and Volunteers” as established by Ordinance M-3179, (1995) is hereby amended to read as follows:

Chapter 2.46 ~~Defense~~ Protection of Officials, Employees and Volunteers

Section 6. Section 2.46.020 of the Vancouver Municipal Code entitled “Legal Representation” as established by Ordinance M-3179, (1995) is hereby amended to read as follows:

Section 2.46.020 Legal Representation

a. The city ~~shall~~ may provide to an official, employee or volunteer, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official, employee or volunteer may have concluded service or employment with the city, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official, employee or volunteer resulting from any conduct, act or omission of such official, employee, or volunteer performed or omitted on behalf of the city in their capacity as a city official, employee, or volunteer, which act or omission is within the scope of his/her service or employment with the city, or assert a claim or lawsuit reasonably necessary in order to further a public purpose.

b. The legal services shall be provided by the office of the city attorney unless:

1. Any provision of an applicable policy of insurance provides otherwise; or
2. A conflict of interest or ethical bar exists with respect to said representation; or
3. The city attorney appoints alternate legal counsel to the case.

c. In the event that outside counsel is retained under subsections (b)(1) and (b)(3) of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs ~~of defense, and attorney’s fees~~, provided that in no event shall the official, employee or volunteer be indemnified for attorney's fees in excess of the rates established by the city's contract with the attorney selected by the city. The official, employee or volunteer shall be liable for all attorney's fees in excess of said rate. In the event that outside counsel is retained under subsection (b)(2) of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs ~~of defense, and attorney’s fees~~, provided that in no event shall the official, employee or volunteer be indemnified for attorney's fees in excess of the then prevailing hourly rate in the Vancouver area. The official, employee or volunteer shall be liable for all attorney's fees in excess of said rate. (Ord. M-3179 §3, 1995)

Section 7. Severability. If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

Section 8. Effective Date. This Ordinance shall be effective thirty days after adoption.

Read First Time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read Second Time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmember

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of June, 2022.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. M-_____

AN ORDINANCE relating to expanding the definition of public disturbances to restrict certain additional noises and vibrations, expanding the definition of pedestrian interference to prohibit targeted picketing or protesting, and allowing the City to assert a claim or lawsuit on behalf of an official, employee or volunteer to the extent it is reasonably necessary in order to further a public purpose; amending Vancouver Municipal Code Sections 7.05.010 “Public Disturbances”, 7.04.020 “Pedestrian Interference”, 7.04.030 “Definitions”, and 2.46.020 “Defense of Officials, Employees, and Volunteers”; providing for severability; and setting an immediate effective date. The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).