



Virginia Local Government Law

Noise Ordinances Being Struck Down Post-Tanner: The Problem of Decibels

By: Andrew McRoberts. *This was posted Wednesday, February 16th, 2011*

As discussed in the last post, many localities are struggling after the Virginia Supreme Court's opinion in [*Tanner v. City of Virginia Beach*](#) to adopt ordinances to comply with that decision. No longer can localities use a "reasonable person" standard in a criminal noise ordinance without risking a run-in with *Tanner*.

What can replace that maleable and useful standard?

As localities continue to struggle post-*Tanner*, many would say that noise decibel limits are the answer. They are plainly objective. However, it is not entirely clear that air pressure readings measured by noise meters is all that easier for the average person to understand than the "reasonable person" standard.

Writing a decibel-based noise ordinance is on the one hand very easy. Place decibel limits in zoning districts or locality-wide, perhaps with different standards for night versus daytime.

But adopting decibel limits by ordinance is a notoriously difficult line-drawing exercise. Why is 65 decibels a violation at 8:01 p.m but not at 7:59 p.m.? Why is a higher noise level appropriate in a commercial zone and not right next door in an office zone? A washing machine makes a noise equivalent to 75 decibels. A conversation can easily reach 65 decibels. But do you want to hear such a noise in your home as you try to sleep?

Taking into account all of the differences in public perception and community consensus of what is appropriate and what is inappropriate noise is difficult. A lawn mower is very, very loud, but acceptable during daytime for a while, right? Using a power saw during a nighttime storm to remove a branch that threatens your house is certainly not unreasonable, but writing that into a decibel-based ordinance is easier said than done. A locality may want to exempt in its ordinance common and accepted noises such as church bells or carillon music on Sunday morning. But how to do this without facing a complaint that the locality is treating the sports bar opening early for the big NFL game that is just as loud unfairly?

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Noise decibel limits are also not that easy for a typical law enforcement officer to apply and could have other disadvantages for enforcement. [See Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing*, 97 Colum. L. Rev. 551, 614 \(1997\).](#) At a minimum, the right (fairly expensive) equipment and an authorized person trained to use it must be available at the time of the complaint and the noise. I previously raised concerns with the difficulty of using decibel limits and meters [on this blog](#).

We anticipate continued challenges to noise ordinances post-*Tanner*, and nearly as many creative ways to address the regulation of noise as there are Virginia local governments. Will decibel levels be the answer to *Tanner*?

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