

Asheville struggles with noise: Construction, bars, dogs present vexing problem

Joel Burgess, Asheville Citizen Times Published 11:09 a.m. ET Jan. 27, 2019

ASHEVILLE - John Maddux knows about noise — and how it can make people angry.

When Maddux became assistant city attorney and counsel to the [Noise Ordinance Appeals Board \(/story/news/local/2016/06/10/details-noise-ordinance-appeals-board/83963872/\)](#) in 2014, he asked police to direct every complaint to him.

"So over the last four and a half years I've heard about every barking dog, muffler that isn't on properly, a neighbor mowing their lawn, yelling kids, the gamut. If you can image a noise problem it's come to my desk."

That is why Maddux told the City Council current noise regulations that rely on an unenforceable \$50 penalty aren't working. "No one," he said, was coming out of the appeals board hearings "very happy."

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Noise complaints, including those about construction, have proven difficult for city officials to tackle. (Photo: Angeli Wright/awright@citizen-times.com)

But fixing the problem isn't proving easy and has become entangled in competing concerns about quality of life, the city's "vibrancy" and potential unintended consequences of sending someone spiraling down into the criminal justice system.

Even a temporary fix Maddux proposed to change the penalty to an infraction handled by the courts hit a barrier this week over the concerns from council members and the public.

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It's not clear what the next step will be. Maddux didn't return an email and phone call Friday, but city spokeswoman Polly McDaniel said staff were going to study the issue further. Council members Tuesday said they want more vetting of even temporary changes before moving on to a planned overhaul of noise rules.

"I think this needs more marinating," said Mayor Esther Manheimer.

The rules, the problems

Under rules in place for the last two decades the city has a "fairly subjective standard," Maddux said. A noise is considered a violation if it "endangers or injures the health or safety of humans or animals, endangers or injures personal or real property or disturbs a reasonable person of normal sensitivity."

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Police on site can make a decision or two different households can bring a complaint to the appeals board made up of a police officer, an animal control officer, a member of the city's development services and two members of the public.

Violators get a \$50 civil penalty. If that's not paid, the city can go to court, but after changes in state rules it costs more to file in civil court than what the city could get back in penalties, Maddux said.

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Barking dogs were a big complaint more than a decade ago, the assistant city attorney said. Later bars and nightclubs became a chief bother. Now construction noise (</story/news/local/2017/01/17/answer-man-night-time-construction-noise-legal/96662740/>) is what's causing a lot of irritation.

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For residents in the Kenilworth neighborhood next to Mission Hospital, it's the constant hum of equipment used to cool the buildings.

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"We're requested with one of the most powerful, soon to be private entities in the community," said resident Martha Salyers.

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The quick fixes to the ordinance proposed by Maddux included eliminating the appeals board, giving staff the power to stop construction over noise and changing the civil penalty to an infraction, which is non-criminal but is handled by the courts.

Salyers said she was concerned about getting rid of the board and wanted the city to push ahead on the overhaul.

But Andrew Fletcher a member of the council-appointed Downtown Commission and outspoken busker advocate, said there hadn't been enough public engagement and the process needed to be slowed down.

"As a musician, sometimes one person's noise is another person's economic livelihood," Fletcher said.

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The biggest pushback from council members, though, was over the size of the fines, which could reach \$288 with court costs, and the possibility someone could face cascading legal consequences.

Councilwoman Sheneika Smith asked if a warning could be issued instead of the fine, saying "\$288 might not seem like a lot of money to some people here," but could cause great difficulties for others.

Councilman Keith Young said in his job in the Buncombe County Clerk of Court's office he encounters many instances of people who miss a court date for minor offenses and are then charged with failure to appear, sometimes followed by more charges.

"This hasn't even been looked at through an equity lens," he said.

In overhauling the rules the city is facing a staff shortage with no permanent city attorney and no named deputy attorney. City Manager Debra Campbell, who came to the job this month, said the process wouldn't be fast.

Campbell said the active music and nightlife in the city was important, but so was Asheville's "incredible" livability.

We'll be "trying to find balance of maintaining that vibrancy we have but also to be able sleep and enjoy life in your home."

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