

Revisions to Staff's 10/17/12 Draft Revision to Chapter 15 of the Arlington County Code ("The Noise Ordinance")

Suggested by the Planning & Zoning Committee of the Arlington County Civic Federation (ACCF)
V.1 – 11/11/2012

Overview of Changes in the Staff Draft

Staff characterizes their changes to the current Noise Ordinance as "revisions" and "not a major overhaul." While the precipitating event for the proposed changes was that the Virginia Supreme Court struck down to use of the *reasonable person* standard to define a noise disturbance, staff has also addressed many other items in their draft. Among them are the following changes to the current Noise Code, which is 30 years old:

- 15-5.A — Measuring the maximum permissible noise based on the zoning district designation of the property from which the noise is emitted rather than the receiving property as specified in the current code
- Table I — Changing the standards in Table I to apply to all sources rather than to stationary sources as specified in the current code
- Table II — Eliminating mobile sources and changes Table II to motor vehicles
- 15-6.C — Changing where noise is measured from the noise source:
 - C.1 measures maximum noise "from any built street at the curb or on the edge of the pavement or from any location on property adjoining the property from which the noise is emitted, unless the property from which the noise is emitted is located in a multi-unit structure, in which case the measurements shall be made pursuant to subsection C.3." rather than 50 feet
 - C.2 measures noise from motor vehicles 50 feet from the source
 - C.3 (referenced above) adds standards for measuring noise in a multi-unit structure
- Eliminating noise sensitive zones such as hospitals
 - In our 11/7/2012 meeting, staff indicated that such institutions can abate noise inflow through construction materials.

- Exempting construction noise due to emergency repairs to public utilities and infrastructure performed by public utilities, or by local, state or federal governments, or their contractors
- 15-4.F — Adding seven new exemptions from the noise limits:
 - 1. Band performances or practices, athletic contests or practices, and other school-sponsored activities on the grounds of public or private schools, colleges, or universities
 - 2. Athletic contests and other activities officially sponsored, authorized, or otherwise sanctioned by the Arlington County Department of Parks, Recreation and Cultural Resources
 - 3. Church bells or carillons
 - 4. Religious or political gatherings and other activities protected by the First Amendment to the Constitution of the United States of America
 - 5. Activities for which the regulation of noise has been preempted by Virginia or federal law
 - 6. Audible signal devices which are employed as warning or alarm signals in case of fire, emergency, collision, theft, or burglary, or imminent danger, and the testing of such signals, or noise that is emitted in conjunction with a duly-authorized parade
 - 7. Permanently installed commercial power generation systems used to provide emergency backup electric power at commercial properties, including multi-unit structures, institutional structures, and public utility, data and telecommunication facilities
 - Note that there is no exemption for installed natural gas powered generators for single-family homes.
- 15-6. Refines the list of Prohibited Acts and indicates that they are prohibited regardless of zoning district. Significant changes include:
 - F expands the restrictions on the list of devices that produce, reproduce, or amplify sound AND adding the standard “be heard within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at any built street at the curb or on the edge of the pavement.”
 - E (deleted) removes noise the prohibition related to persons or groups of persons
 - H expands the time a vehicle can run a propulsion engine when parked or unattended from 3 minutes to 10 minutes

- I makes it unlawful for animal or bird noise to be “audible at least once per minute for ten (10) consecutive minutes within any dwelling unit, house or apartment of another person, at any street edge, or across a real property boundary.”
- 15-8.D deletes the section which previously prohibited disclosure of evidence.

It should also be noted that staff’s draft:

- Maintains the 90 dBA limit for construction noise and special events that are in the current code
- Does not address our request that a policy and procedure be established for homeowners to use gas-powered generators during an emergency

Additional Insights from Our 11/7/2012 Meeting with Staff

Staff included: Bob Brosnan (head of CPHD), Gary Greene and Daniel Wills from Code Enforcement, Police Captain Franz Desamour who is the police liaison for the Noise Code revisions, and Police Captain Charles Penn who is the District 2 Commander.

We spent much of the meeting discussing enforcement. The Police and Code Inspectors from the Inspections Services Division — not the Zoning Division — will share enforcement responsibilities, except that only the Police will enforce aspects of the Noise Code that affect motor vehicles.

Code Enforcement will be on duty Monday thru Friday from 8 a.m. until 5 p.m. When we asked how people would know whom to call when, Gary Green indicated that staff would conduct a “public education” campaign.

We also confirmed that Police Officers will neither be equipped with noise measuring devices nor trained to use it. Also, we confirmed that code inspection will not ordinarily respond to new noise complaints during their off-duty hours (but may from time to time work at off-hours to inspect noise sources where there are reported repeat or chronic problems). We concluded that in practice:

- Code Enforcement Inspectors will handle Table I issues when they are on duty.
- The Police will handle Table II issues (motor vehicles) at all times.
- The Police and Code Inspectors will handle Prohibited Acts specified in section 15-6.

The Police have indicated that they can enforce the above without using noise measuring equipment.

When we asked about noise from people, Gary Green indicated that neither Code Inspectors nor Police Officers would use noise equipment to measure noise generated by people. We indicated that this was an important issue and discussed complaints we have received that there has been little or no enforcement for loud late-night parties (such as those with *beer pong* drinking games). We noted that such parties often did not involve loud music and thus would not be covered by the Prohibited Acts list in section 15-6. Nor would the celebratory people noise generated from outdoor café and rooftop sports bars.

Our Recommended Changes

1. Noise disturbances from people versus equipment. The revised code focuses on noise from equipment but does not address noise from people, which is a very common source of concern in the community. Of course, we support the proposed protection in section 15-4.F.4 of all First Amendment-protected gatherings. But also, we believe the community will expect the noise ordinance to be available as an explicit tool for addressing excessive nighttime noise emanating from people. We acknowledge that to do this may require defining a time of day at which loud outdoor parties become unreasonable, and that the specific time(s) of day chosen will require a policy judgment. We suggest that:

- Staff add two new definitions:
 - “Enclosed” means within a structure and fully enclosed by walls, roof, windows and doors, in which all windows and doors are installed and closed.
 - “Late night outdoor gathering” means a gathering of two or more persons for social purposes not within an enclosed structure and occurring after [10 p.m.] the day before a weekday that is not a holiday or between the hours of [midnight] and 7 a.m. on any day.
- Staff add two new prohibitions:
 - It shall be unlawful for a person to participate in a late night outdoor gathering that is audible within an enclosed dwelling unit, house or apartment of another person at least once per minute for ten (10) consecutive minutes.
 - It shall be unlawful for a restaurant to operate outside an enclosed structure in the nighttime in such a manner that its operation (including sounds generated by patrons) can be heard within any

nearby enclosed dwelling unit, house or apartment of another person at least 20 feet from the source of the sound.

2. **Table I noise limits set by zoning district.** We have several concerns:

FIRST, the impact of reversing the current ordinance so that noise limits are based on the zoning district of the noise producer rather than the noise recipient without additional limitations based on the characteristics of the adjacent properties. For example, the C and C-O zoning districts listed in Table I would be subject to a 65 dBA continuous noise limit and a 100 dBA impulsive noise limit for both Daytime and Nighttime. Staff justified these levels by indicating that, "the ambient noise level along the east-west arteries of the Rosslyn-Ballston corridor ... averaged 62 decibels on a Thursday evening." We doubt that the ambient noise level in the R-B corridor is applicable to all of Arlington or even to all of the R-B corridor. We suggest that:

- Staff identify what properties are or will be subject to the higher noise limits from adjacent properties than currently allowed; and
- The Noise Code provide lower dBA limits or hourly limits where they find that adjacent properties will be subject to higher noise levels than now allowed.

SECOND, during our meeting, staff suggested that persons who choose to live near the developed or industrial areas of Arlington should reasonably expect to endure higher levels of noise than those who choose to live elsewhere. However, it seems to us that perhaps the reverse might also be true: that users of those commercial and industrial sites nearest to (or even including) residential areas should reasonably expect to be allowed to emit less noise than those located far from any residence. In any event, we believe this is a major policy issue and that this change in policy approach from the current ordinance could reasonably be seen by some residents as a "major" change. We suggest that:

- Staff clearly explain this significant policy recommendation in future public presentations and Board reports, outline how it differs from the current ordinance's approach, and explain why staff determined that sound-receiving sites, rather than sound-emitting sites, should bear all the burdens in mixed-zone areas.

THIRD, that Table I does not provide a comprehensive list of zoning districts. For example, it is unclear where districts such as R-C and C-TH belong. We suggest that:

- Table I list all current zoning districts so there is no confusion about what limits are being set for all properties.

FOURTH, that the zoning district often does not accurately reflect the

actual use or the noise level that citizens might expect. For example, R-C zones may have separate residential and commercial buildings and C-TH (commercial townhouses) may be primarily residential such as the 2401 block of Fairfax Drive. Conversely, some RA-zoned buildings are in the heart of the most developed areas in Arlington, such as the 2400 block of Clarendon Boulevard. At the meeting, it was suggested that zoning categories are easier to determine (and thus enforce) than some other methods of geographical determination, such as, for example, being within 500 feet of a metro station but it was unclear whether all alternatives had been exhausted. We suggest that:

- The Noise Code set lower dBA limits when a property in a commercial zoning district has a residential use.
- Staff explain in greater detail whether alternative methods of setting boundaries for noise emission, such as distance from metro stations, railroads, or arterial streets, are or are not workable alternatives to relying solely on zoning categories.

3. **Construction exception.** We note that an exception for construction noise in section 15-5.D allows by-right construction noise to be 90 dBA during the daytime (7 a.m. to 9 p.m.). We have several concerns about this exception.

FIRST, this exception could subject people in the area 14 hours of continuous, very loud noise. Arlington County has already recognized that there is a public interest in limiting construction noise after 5 p.m., through its years of site plan negotiations. We therefore suggest:

- That the by-right hours for when construction can exceed the normal noise limits be changed to conform to the hours that are part of a standard site plan condition for construction before enclosure: 7 a.m. to 5 p.m.

SECOND, 85 dBA is the level at which OSHA mandates noise protection gear. Also, as staff notes, 85 dbA is the maximum overall limit for noise in the Montgomery County, Maryland, which has similar characteristics to Arlington, and is even 10 dbA louder than the maximum overall limit in the City of Baltimore. We therefore suggest:

- That the maximum dBA for construction noise be lower than 85 dBA.

THIRD, that one of the loudest construction activities is pile driving, which can produce a very loud, impulsive noise that can travel a mile or more. Pile drilling provides a lower noise alternative, but often at greater cost. We therefore suggest:

- That all pile driving require a separate permit. (We believe the permit process will, at a minimum, provide an opportunity for notification to

neighbors, and may help identify potential impact on the adjacent structures and activities and potential remedies.)

4. **Outdoor landscaping power equipment.** Staff did not address the use of motorized outdoor landscaping power equipment such as lawn mowers, leaf blowers, and chainsaws. The City of Chevy Chase, Maryland (a sister jurisdiction abutting the District of Columbia and with similar characteristics to Arlington) has a noise ordinance provision covering these activities that may provide a good example. We therefore suggest:
 - That staff add a definition of outdoor landscaping power equipment to section 15-3, "Definitions," and that the definition include lawn mowers, chainsaws, leaf blowers, hedge trimmers, and other similar equipment.
 - That staff add a new item to section 15-6. Prohibited Acts: "L. It shall be unlawful for any person to use, operate, or to permit the use or operation of outdoor landscaping equipment during Nighttime."
5. **Public education campaign.** We believe that the public may become confused and frustrated by the various routes that enforcement will take. We therefore suggest:
 - Immediately upon adoption of the Noise Code revisions, that staff provide procedures and training that will ensure that the public knows *whom to call and when* and that complaints are handled in a timely and efficient manner.
6. **Uncontrolled exemptions.** Staff has proposed a new list of standing exemptions to the noise ordinance in section F. They are widely varied in character. Exemptions 6 and 7 are important to public safety. Exemption 5 (and to some extent 4) are beyond the power of Arlington to regulate. Exemption 3 (church bells) is discussed below. We are not sure why exemptions 1 and 2 have been created, but in response to our written questions staff suggested that these activities have not caused "recent problems." From staff's response to our written questions it is unclear whether the use of amplification for any of these activities is intended to fall within the scope of the exemption. Whether or not they are amplified, it seems to us foreseeable that a crowded nighttime school or sporting event could from time to time cause an unreasonable noise disturbance, perhaps even exceeding the maximum noise level allowed for construction. Therefore, we recommend that:
 - The Noise Ordinance limit exemptions 1-4 to noise that does not exceed 85 dBA (which is the maximum allowable for construction).

Additional Clarifications Needed

7. **Measurements.** Staff developed limits for impulsive and continuous

noise without first measuring the actual levels of different kinds of noise disturbances that the ACCF and others previously identified. We therefore recommend that:

- Staff should measure the decibel and frequency levels of common noise disturbances before finalizing the limits so we have assurance that the proposed limits will preclude those noise disturbances.

8. **Demonstrations.** Most people cannot relate to dBA, dB, and Hz levels without an example. We therefore recommend that:

- Staff should be prepared to demonstrate various Hz and dBA levels in Table I so the public will understand how loud the proposed limits will be before the limits are adopted.

9. **Motor vehicles.** Staff has recommended that measurements to determine whether a motor vehicle exceeds 90 dBA be taken at a distance of 50 feet rather than at the point of origin. We question the rationale for measuring the dBA at 50 feet rather than at the source, and assume that noise at the source point will be much greater. Given the impact of noise over 90 dBA, we recommend:

- That staff provide information about the rationale for the 50-foot measurement and the dBA level at the source of a vehicle that measures 90 dBA at 50 feet away from the source.

10. **Common areas.** The proposed ordinance has a new provision for measuring noise in “common areas” but that term is not defined. In response to our written questions, staff indicated that the term meant “spaces that are of common use *to the general public*, such as corridors, lobbies, and exterior courts or yards” [emphasis added]. However, such a definition could be seen as ambiguous as it pertains to, for example, a hallway in an access-controlled building. We therefore recommend that:

- Staff unambiguously define the term “common area” in the ordinance.

11. **Holidays.** In answer to our written question about the definition of “holiday” staff stated that Virginia Code section 2.2-3300 defines the word for purposes of the ordinance. We note that this definition does not correspond in several instances to when the federal government (Arlington’s largest employer) observes holidays. For example, Lee-Jackson Day and the Friday after Thanksgiving are not observed by the Federal government, and Veteran’s Day is observed by the Federal government the following Monday if November 11 falls on a weekend. Furthermore, Columbus Day – while observed by both Virginia and the Federal government – is not universally observed by many private employers, notably including construction companies. This is both a policy question and a matter of public education, since whatever definition used may not conform to the reasonable expectations of any given community

member. We therefore recommend that:

- Staff determine, as a policy matter, whether the community's expectation is that allowable noise should be lower on holidays not observed by the Federal government, and conversely, whether the community's expectation is that noise should be at normal weekday levels on holidays observed by the Federal government.
- For purposes of public notice, the ordinance should include the definition of "holiday" in the text of the ordinance (for example, by stating "as defined by Section 2.2-3300 of the Code of Virginia").

12. **Church bell exemption.** In answer to a question that we raised, staff indicated that the church bell and carillon exemption in section 15-5.F would be limited to unamplified bells and that the language would be adjusted accordingly. In our meeting with staff, we indicated that some churches have only amplified bell sounds. We therefore recommend that:

- Staff determine if we are correct, and if so, clarify whether churches and other similar institutions that amplify their bells are bound by the limits set forth Table I, given that some churches are on R property.
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