



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of October 20, 2012

DATE: October 15, 2012

SUBJECT: Request to Advertise for Public Hearing on December 8, 2012, an Ordinance to Amend, Reenact and Recodify Chapter 15 (Noise Control) of the Code of Arlington County, Virginia (“Code”) (**Attachment B**), to be effective upon adoption.

C. M. RECOMMENDATION:

Authorize advertisement for a public hearing at the December 8, 2012, County Board meeting an Ordinance to Amend, Reenact and Recodify Chapter 15 (Noise Control) of the Code of Arlington County, Virginia (“Code”), to be effective upon adoption.

ISSUES: As part of the County’s typical process for ordinance amendments, the County Board is being asked to authorize the advertisement of a public hearing concerning proposed amendments to the County Code. No known issues have been identified.

SUMMARY: In 2009, the Supreme Court of Virginia struck Virginia Beach’s noise control ordinance due to its use of a reasonable person standard to determine whether certain noise violated the ordinance. The reasonable person standard is used in part in Arlington County’s noise control ordinance, which is codified at Chapter 15 of the County Code. Following the high court’s decision, County staff began a detailed examination of the County’s ordinance to eliminate subjective standards like the reasonable person and better define enforcement protocols and penalties for violations. There is broad interest in examining noise control issues and staff’s efforts have focused on improving the enforceability of the current ordinance within the framework of existing standards like decibel limits and prohibited acts. Staff proposes amendments to Chapter 15 in order to eliminate subjective standards and increase equitable enforcement of noise control regulations.

BACKGROUND: In an April 17, 2009, decision, the Supreme Court of Virginia unanimously ruled the noise control ordinance of the City of Virginia Beach unconstitutionally void due to its vagueness. As detailed in its opinion in *Tanner v. City of Virginia Beach*, the Court ruled that the Virginia Beach ordinance’s use of the reasonable person standard invited arbitrary enforcement and, given the subjective tolerances, perceptions and sensibilities of listeners, failed to give fair notice to citizens, which is a requirement of due process. The Court chose not to

County Manager:

County Attorney:

BRC

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Staff: Gary Green, Department of Community Planning, Housing and Development

sever the voided language from the rest of the ordinance, and instead it struck the Virginia Beach ordinance in its entirety.

The Supreme Court's decision caused Arlington and other Virginia jurisdictions to reexamine their noise control ordinances to determine their validity in light of *Tanner*. Arlington's noise control ordinance uses the reasonable person standard in a few instances and includes a severability clause that provides for the severance of provisions found to be invalid while allowing the remainder of the ordinance to remain in effect.

Arlington's noise-control effort is an inter-departmental collaboration that involves County staff from the Community Planning, Housing and Development Department's Inspection Services Division / Code Enforcement Section and officers from the Police Department. Code Enforcement administers the ordinance and conducts investigations during regular business hours with some flexibility to investigate recurrent noise sources that occur on a scheduled basis, regardless of the time of day. Outside those hours, Police officers investigate noise complaints that occur during the nighttime and on weekends or holidays. Police officers may be routed to all potentially violative noise that requires immediate remedy, regardless of the time of day. The Police Department exclusively investigates all noise produced by motor vehicles. As a local law, the noise control ordinance is preempted from regulating noise sources regulated by state and federal agencies. The ordinance does not address noises sourced from aircraft and railroads, state roads, federally owned parcels, or military installations and reservations.

Although the reasonable person standard was held void in *Tanner*, the County's remaining standards objectively define a noise disturbance as that which exceeds the respective maximum permissible decibel limits or constitutes a prohibited act. A noise meter, a special sound measurement tool, is required to determine many noise violations. The use of prohibited acts in the ordinance allows for the determination of a violation without a meter device in some cases.

Environmental Noise in Arlington: Following the adoption of the Federal Noise Control Act in 1972, Arlington, like many other growing urban communities empowered by state enabling legislation, adopted its own noise control ordinance. By regulating noise our community established a definition, a control, and common expectations for limiting environmental noise.

Exposure to noise has deleterious effects on humans, animals and property. Humans exposed to long-term increased noise levels exhibit numerous psychological conditions including hypertension, severe or compound headaches, an inability to sleep, increased irritability, and stress. Through its noise control ordinance, Arlington endeavors to control noise levels to protect the public's health, safety, and general welfare.

Few ordinances are as challenging to enforce as one that regulates noise, because individuals' personal perceptions of noise vary widely, as do tolerances towards the noise sources. In Arlington, most violators positively responded to an initial warning to abate noise sources or noise producing activities.

Noise Complaints, Involved Agencies, and Enforcement: Arlington's top four noise-related complaints, as reported to Code Enforcement and the Police Department, relate to:

- Loud Parties or Gatherings
- Construction Noise
- Animal Noises, and
- Live Entertainment Venues

Loud Parties or Gatherings: The primary noise-related complaint reported to Police is loud or raucous parties and gatherings. The noise issues associated with parties and gatherings are typically reported during the night and alcohol is often involved. Heavy alcohol consumption at large gatherings and events can sometimes lower inhibitions and disable behavioral controls and lead to misdemeanor activity such as public swearing, public intoxication, and occasionally assaults. Police typically address these negative behaviors when conducting investigations and the noise that stems from that conduct is readily abated.

Warnings are often issued by the Police to provide violators notice of the general disturbance to others in the community and to provide an opportunity for the violator to informally rectify its violative conduct. Ultimately, the issuance of a summons or an arrest is likely if noise disturbances continue unabated. Criminal violations of the ordinance are basic misdemeanors with a low (\$ 25.00) penalty which fails to provide a sufficient deterrent to violators.

County staff's special events committee prescribes limits on noise from certain scheduled public events, where an event's potential noise is evaluated and specific standards are imposed to limit any deleterious effects.

Construction Noise: Construction noise complaints are equally split between residential and commercial sites throughout the County. In commercial zones adjacent to residential districts and mixed-use districts the report is often sourced around heavy vehicles and the assembly of construction equipment at a site. Pre-dawn construction, pile driving and clanging of metal parts in metal Dumpsters round out the concerns. To reduce construction-related noise complaints, County staff has increased outreach to the development community regarding environmental noise and the County's community expectation about its control. The Inspection Services Division has developed a noise ordinance brochure for issuance with all new construction permits.

Code Enforcement staff also attend pre-construction meetings to communicate expectations and answer questions regarding construction noise. Developments subject to approved Site Plans may also use the noise control ordinance as a base standard for construction restrictions limiting approved hours of construction to reduce noise impact on the community. Code Enforcement staff may investigate construction noise during regular business hours and the Police investigate it during non-business hours, weekends and holidays. A special zoning enforcement unit addresses Site Plan conditions related to construction activity.

Animal Noises: Staff has received an increasing number of barking dog-related noise complaints over the last decade. The County's effort to embrace its residents' pets is evident by the County's eight community canine areas and other allowances for pets in our community; however, exceptions occur when incessant barking or other noise negatively impacts community members.

To determine a violation, the current ordinance requires the use of sound meters to measure the level of sound produced by the noise source. While barking is an innate behavior of dogs, incessant barking or other continuous animal noises may also be symptomatic of a safety or security problem with the animal, its environment or owner.

Staff has identified a new assessment process that uses a plainly audible test, over a specified period of time, to determine whether a violation occurs. This new standard is expected to more effectively address animal noise complaints and, because it does not require the use of a sound meter, is a more efficient enforcement tool for our community.

Live Entertainment Venues: Sound that originates from live entertainment venues, where music is played or dancing occurs, is effectively regulated by the County's Zoning Ordinance through special exception use permits. Where approved, the noise control ordinance serves as a base standard for live entertainment venues, with a use permit's conditions used as a direct tool to control the volume, type, location and time of the sound and sound-producing activity to regulate community expectations for operation.

Through the zoning process, a set of public meetings allows for community input, where residents and County staff concerns may be vetted. Controls and limits are often applied prior to approval of the live entertainment venue, with periodic reviews scheduled to ensure compliance. The County is able to cite violations and revoke the approval of live entertainment establishments that fail to follow the approved guidelines.

The Zoning Enforcement Section of the Community Planning, Housing and Development Department's Zoning Division conducts investigations of live entertainment venues and is responsible for ensuring compliance with use permit conditions.

Noise Enforcement In Other Jurisdictions: As part of the process of reviewing the noise ordinance, County staff reviewed the ordinances of ten communities across the country and dozens of Virginia localities regarding noise limitations and enforcement protocols. Twenty-one elements common to noise control ordinances were identified for comparison. Staff examined measures such as maximum decibel limits standards, animal noise complaints, agencies used for enforcement and the types of enforcement utilized which included maximum fines and penalties. Best practices were identified, and where legally and practically appropriate, incorporated to ensure our community expectations regarding environmental noise comprehensively addressed. The review included large urban centers and other comparable jurisdictions in the Commonwealth of Virginia (See **Attachment A** for notable comparators).

The following principal comparators were identified:

Alexandria, Virginia
Baltimore, Maryland
Fairfax County, Virginia
Los Angeles, California
Montgomery County, Maryland

New York, New York
Philadelphia, Pennsylvania
Richmond, Virginia
Virginia Beach, Virginia
Washington, District of Columbia

DISCUSSION: The noise control ordinance was adopted effective January 1, 1975, to address environmental noise in Arlington County. When the ordinance was first adopted, Arlington had approximately 163,441 residents. Arlington's population has increased 21 percent since the adoption of the noise ordinance. In light of Arlington's greatly increased population and changed physical environment, especially in the Metro corridors, strengthened and definitive noise ordinance language, coupled with clarified enforcement protocols, will allow for more effective enforcement of the ordinance. There has not been a comprehensive review of the ordinance since the mid-1970s. Minor amendments were made to the ordinance in 2006 to address noise sources created by County-facilitated activities (i.e. trash and recycling contractors) and County-owned or -managed properties (e.g. the Trades Center).

Why Amend the Noise Control Ordinance: Elimination of the reasonable person standard removes a vague, subjective standard from the ordinance. The Supreme Court struck Virginia Beach's noise ordinance because it relied on a subjective standard to determine whether or not a noise violation occurred. Arlington's ordinance used three standards: a measured standard of that which is injurious to humans or animals, a reasonable person standard, and a measured standard based on the maximum permissible decibel limits in particular zoning districts.

Despite the language of the current ordinance, Code Enforcement staff in Arlington had not used the reasonable person standard for ten years preceding the Supreme Court's decision, electing to measure violations through designated decibel limitations or through the defined set of prohibited acts.

Although Arlington's ordinance contained a reasonable person standard, the ordinance has remained in effect during the period while County staff developed the revisions which are now proposed to be advertised for public hearing. Amending the ordinance now provides an updated law for more effective and equitable enforcement of the ordinance.

What Are The Significant Changes To The Noise Ordinance?

New Language

- Adds new definitions for
 - Motor Cycles
 - Motor Vehicles
 - Multi-unit structures

New Measurement Standards

- Noise Disturbances at properties
 - Adds language that clarifies how sound level meters are to be used to determine violations at adjoining properties and for flexibility in addressing noise sources and noise impacted areas that are elevated above grade.
- Noise created by motor vehicles
 - Modifies language to allow measurement in affected areas, as long as the measurement is taken a minimum distance from the noise source.
- Noise created at multi-unit structures
 - Expands measurement standard to practically address and determine the violation status within multi-unit structures.
- Construction Activities
 - Clarifies emergency repairs and public utility work conducted by local, state and federal government
 - Strengthens requirements to have developers and owners determine and provide industry-standard sound mitigation solutions for noise sources at construction sites.
- Exemptions
 - Introduces a number of limited exemptions to practically align the ordinance with expectations for equitable enforcement and compliance with constitutional standards.
- Prohibited Acts
 - Introduces revisions to enable ordinance enforcement that is equitable and done without the use of sound measurement devices. New language is added to address violations of approved noise exemptions.
- Criminal Penalties
 - Increases criminal penalty fines from \$25.00 to not less than \$100.00 or more than \$2500.00 upon conviction. Additionally, imprisonment is possible in the Arlington County Jail for a period of up to thirty (30) days. Each calendar day in violation constitutes a separate offense for which fines and penalties may be imposed.
- New Civil Penalties
 - Introduces civil penalties which may be assessed after notice is delivered to the owner or responsible party or is posted at the premises. Civil penalties of up to \$250 may be assessed for a first violation and penalties up to \$500 may be assessed for all subsequent violations. The County may also pursue civil relief in the Courts for non-compliance with the ordinance.
- Civil Appeal Processes
 - Clarifies procedures for appeals, which shall be filed with the Director of the Department of Community Planning, Housing and Development within five days of delivery of the citation. Processes for hearings are clearly defined through the ordinance. As a protection to the community during the period of appeal, a civil citation remains in full force and effect pending the final outcome of the appeal.

FISCAL IMPACT: The advertisement of the public hearing on the revisions to the ordinance is not expected to have any fiscal impact other than the cost of the advertisements themselves. The revisions to the ordinance are expected to result in an increase in complaints and in turn require additional County resources.

The public hearings and documents associated with the approval of the revisions to the noise control ordinance will educate the community and are expected to result in an increase in complaints based on environmental noise. An increase in noise complaints of up to twenty percent (20%) is expected in the first year after adoption, with smaller increases anticipated over the ensuing three-year period.

The new civil penalties, which follow a warning, are expected to reduce repeat offenses and increase the likelihood of efficient resolution of violations. The increased civil penalties are not expected to be a significant source of revenue for the County.

Because the revisions and penalties for non-compliance increase the potential for equitable enforcement, additional Code Enforcement and Police staff hours will be required to effectively address complaints. The additional staff hours required to administer and enforce the revised noise control ordinance are estimated at less than 1.0 FTE for Code Enforcement (CPHD) and less than 1.0 FTE for the Police Department. Staff is not requesting additional FTEs but will adjust other duties to accommodate this during the first year after adoption.

ATTACHMENT A: COMPARATORS

COMMUNITY STATE TYPE POPULATION LAND DENSITY

ARLINGTON	VA	COUNTY	207627	25.9	7993.6
Washington	DC	City	601723	61.1	9856.5
Alexandria	VA	City	139966	15.0	9314.3
Fairfax	VA	County	1081726	390.9	2766.8
Richmond	VA	City	204214	59.8	3414.7
New York	NY	City	8175133	302.6	27012.5
Baltimore	MD	City	620961	80.9	7671.5
Virginia					
Beach	VA	City	437954	249.0	1758.9
Philadelphia	PA	City	1526006	134.1	11379.5
Los Angeles	CA	City	3792621	468.7	8092.0
Montgomery	MD	County	971777	491.3	1978.2

COMMUNITY STATE JURISDICTION REASONABLE DECIBEL PROHIBITED
 RULE PERSON STANDARD ACTS
 STANDARD

ARLINGTON	VA	Dillon	No	Yes	Yes
Washington	DC	Home	Yes	Yes	Yes
Alexandria	VA	Dillon	Yes	Yes	Yes
Fairfax	VA	Dillon	Yes	Yes	Yes
Richmond	VA	Dillon	No	No	Yes
New York	NY	Home	No	Yes	Yes
Baltimore	MD	Home	No	Yes	Yes
Virginia					
Beach	VA	Dillon	No	Yes	Yes
Philadelphia	PA	Home	No	Yes	Yes
Los Angeles	CA	Home	Yes	Yes	Yes
Montgomery	MD	Home	No	Yes	Yes

COMMUNITY	STATE	MAXIMUM DECIBEL RATIO	RESIDENTIAL DECIBEL MAX DAY	RESIDENTIAL DECIBEL MAX NIGHT	COMMERCIAL DECIBEL MAX	INDUSTRIAL DECIBEL MAX
ARLINGTON	VA	90 db	60 db	55 db	65 db	70 db
Washington	DC	-	60 db	55 db	65 db	70 db
Alexandria	VA	90 db	55 db	55 db	60 db	70 db
Fairfax	VA	90 db	55 db	55 db	60 db	72 db
Richmond	VA	-	75 db	65 db	75 db	75 db
New York	NY	90 db	plus 6 db	plus 6 db	74 db	-
Baltimore	MD	75 db	56 db	61 db	64 db	75 db
Virginia Beach	VA	-	65 db	55 db	80 db	-
Philadelphia	PA	-	plus 3 db	plus 3 db	plus 10 db	plus 10 db
Los Angeles	CA	-	plus 5 db	plus 5 db	plus 5 db	plus 5 db
Montgomery	MD	85 db	65 db	55 db	67 db	67 db

COMMUNITY	STATE	EXEMPTIONS GRANTED	CONSTRUCTION EXEMPTIONS	SPECIAL EVENT EXEMPTIONS	PUBLIC FACILITY EXEMPTIONS
ARLINGTON	VA	Yes	Yes	Yes	Yes
Washington	DC	Yes	Yes	-	-
Alexandria	VA	Yes	Yes		Yes
Fairfax	VA	Yes	Yes	-	-
Richmond	VA	-	Limited Hours	Yes	Yes
New York	NY	Yes	Yes	-	-
Baltimore	MD	Yes	Yes	Yes	Yes
Virginia Beach	VA	-	-	Yes	Yes
Philadelphia	PA	-	Yes	Yes	Yes
Los Angeles	CA	Yes	Yes	Yes	Yes
Montgomery	MD	Yes	Yes	Yes	Yes

COMMUNITY	STATE	SMALL POWER EQUIPMENT	IDLING VEHICLES	REFUSE COLLECTION	BARKING DOGS	HONKING HORNS
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ARLINGTON	VA	Limits	Limited	Limited	Yes	Yes
Washington	DC	Limits	No	No	No	Yes
Alexandria	VA	Limits	-	Limited	Yes	Yes
Fairfax	VA	-	-	Yes	Yes	
Richmond	VA	Limits	-	-	Yes	Yes
New York	NY	Yes	-	Yes	-	Yes
Baltimore	MD	Yes	No	No	No	Yes
Virginia						
Beach	VA	Yes	No	No	No	Yes
Philadelphia	PA	Yes	Yes	-	Yes	Yes
Los Angeles	CA	Yes	Yes	Yes	Yes	Yes
Montgomery	MD	Limits	Yes	Yes	Yes	Yes

COMMUNITY	STATE	PENALTIES	CIVIL PENALTIES	CRIMINAL PENALTIES	ENFORCING AGENTS
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ARLINGTON	VA	CIVIL/CRIMINAL	\$250/\$500	UP TO \$2500/JAIL	CODE/POLICE
Washington	DC	Civil/Criminal	for Injunctions	Up to \$1000/Jail	Environmental/Police
			\$50/\$100/\$500		
Alexandria	VA	Civil/Criminal	max	Up to \$1000/Jail	Environmental/Police
Fairfax	VA	Criminal	-	Up to \$1000/Jail	Zoning/Police
Richmond	VA	Criminal	-	Up to \$2500/Jail	Police
New York	NY	Civil	up to \$24,000	-	Environmental
Baltimore	MD	Civil/Criminal	for Injunctions	Up to \$ 1000	Health/Police
Virginia					
Beach	VA	Civil/Criminal	for Injunctions	Up to \$2500/Jail	Police
Philadelphia	PA	Civil	\$100/\$700 max	-	Police/Health/Code
			\$100/for		
Los Angeles	CA	Civil	Injunctions	-	Police/Code/Humane
Montgomery	MD	Civil	for Injunctions	-	Police/Code

ATTACHMENT B

A REQUEST TO ADVERTISE THE FOLLOWING ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 15 (NOISE CONTROL) OF THE CODE OF ARLINGTON COUNTY, VIRGINIA, CONCERNING THE CONTROL AND REGULATION OF ENVIRONMENTAL NUISANCE NOISE AND ITS SOURCES AT THE DECEMBER 8, 2012, COUNTY BOARD MEETING IN ORDER TO ELIMINATE SUBJECTIVE STANDARDS AND INCREASE EQUITABLE ENFORCEMENT OF NOISE CONTROL REGULATIONS.

AN ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 15 OF THE ARLINGTON COUNTY CODE, RELATING TO NOISE CONTROL

BE IT ORDAINED by the County Board of Arlington County, Virginia, that:

- (1) *Chapter 15 of the Arlington County Code is amended, reenacted, and recodified as follows:*

**Chapter 15
NOISE CONTROL**

- § 15-1. Short Title.
- § 15-2. Findings, Authorization and Declaration of Policy.
- § 15-3. Definitions.
- § 15-4. Duties and Powers of the County Manager.
- ~~§ 15-5. [Reserved.]~~
- ~~§ 15-6. Maximum Noise Levels.~~
- § 15-7. Prohibited Acts.
- § 15-8. Noise-Suppression Devices.
- § 15-9. Inspections.
- § 15-9. Criminal Penalties.
- § 15-10. Enforcement, Civil Penalties; Appeals Therefrom.
- § 15-11. Emergency Procedures.
- § 15-12. Exemptions Issued by the County Manager.
- ~~§ 15-13. Penalties.~~
- § 15-14. Severability.
- § 15-14. Conflict of Ordinance.
- § 15-15. Exemption for County Activities.

§ 15-1. Short Title.

This chapter shall be known and may be cited as the “Noise Control Ordinance of Arlington County, Virginia.”

[1-1-75; 8-14-76]

§ 15-2. Findings, Authorization and Declaration of Policy.

The County Board of Arlington County hereby finds and declares that at certain levels noise can be detrimental to the public’s health, safety, welfare and quality of life and, therefore, it is in the public’s interest that noise be restricted. For these reasons, there is hereby established in the Arlington County of Arlington, Virginia, a noise control program this Noise Control Ordinance of Arlington County for the purpose of promoting the public’s health, safety and welfare, and to foster the comfort of its inhabitants the public. To the maximum extent possible, such noise control program shall be conducted in coordination with any similar programs of other local jurisdictions, the Council of Governments (COG), and of the state and federal governments. Any noise disturbance is a nuisance, and all powers of the County regarding the abatement of nuisances shall apply to noise disturbances.

[1-1-75; 8-14-76; 8-25-81]

§ 15-3. Definitions.

For the purpose of this chapter, the words used in the present tense include the future; words in the singular number include the plural number and vice versa; the word “shall” is mandatory and not directory; and the following phrases and terms shall have the following meanings unless the context clearly indicates otherwise:

“Acoustical terminology” is as defined in ANSI S1.1-1994 "Acoustical Terminology" (1974 revised 2004).

“ANSI” means the American National Standards Institute or its successor bodies.

“Ambient noise” means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

“Continuous noise” means a noise whose intensity remains essentially constant during the period of observation. Continuous noise for measurement purposes shall be defined as noise which is measured by the slow response setting of a sound-level meter.

“County Board” means the County Board of Arlington County, Virginia.

“County Manager” means the County Manager of Arlington County, Virginia, or any of his designee or her duly-authorized deputies or agents.

“Daytime” means the local time of day between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and ~~from~~between the hours of 10:00 a.m. to 9:00 p.m. on Saturdays, Sundays and legal holidays.

“Decibel (dB)” means the unit of sound magnitude equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure being measured to a reference sound pressure, twenty (20) micronewtons per square meter (20 micropascals).

“Decibel-A-weighted (dBA)” means the sound level, in decibels, measured with a sound ~~level~~ meter using the A-weighting network or scale as specified in ANSI S1.4-~~1974~~1983 specification for sound-~~level~~level meters.

“Impulsive noise” means noise characterized by brief ~~excursions~~bursts (usually less than one (1) second in duration) of sound pressure which ~~significantly exceed~~ the sound pressure of the ambient environment ~~sound pressure~~.

“Motorcycle” shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended, except that for the purposes of this chapter the definition shall include~~mean an enclosed motor vehicle having two (2) or three (3) wheels, and includes, but is not limited to,~~ motor scooters and, minibikes and mopeds.

“Motor vehicle” shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended.

“Multi-unit structure” means a structure containing three (3) or more separate units, whether residential, commercial, or mixed-use.

“Nighttime” means those times of day ~~excluded from~~not included in the definition of “Daytime”.

“Noise” means the intensity, frequency, duration and~~or~~ character of ~~undesired~~ sounds from a single source or ~~number of~~multiple sources.

“Noise disturbance” means any sound which:

- (a) — ~~Endangers or injures the safety or health of humans or, animals, or property; or~~
- (b) — ~~Annoys or disturbs a reasonable person of normal sensitivities; or~~
- (c) — ~~Exceeds the applicable maximum permissible noise levels as they appear~~set forth in Tables I and II of § 15-5 of this chapter.

“Stationary source” means any equipment or activity capable of generating noise, operating or occurring on any parcel of property or public space.

“Zoning district ~~classification or districts~~” means the ~~scheme~~ classifications ~~contained~~ described in Section ~~§ 2B2.B.7~~ of the Arlington County, Virginia, Zoning Ordinance ~~as contained in the appendix of the Arlington County Code, or similar classifications contained in zoning districts in adjoining jurisdictions.~~

[1-1-75; 8-14-76; 8-25-81]

§ 15-4. Duties and Powers of the County Manager.

A.—The administration and enforcement of this chapter shall be the duty of the County Manager, who is hereby authorized to take such actions, including the promulgation of rules and regulations necessary to enforce the provisions of this chapter.

B.—~~In addition to any other powers vested in him by law, the County Manager shall:~~

- ~~1.—Conduct studies, investigations and research relating to noise and its prevention, abatement and control.~~
- ~~2.—Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.~~
- ~~3.—Hold hearings relating to any aspect of or matter in the administration of this chapter.~~
- ~~4.—Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.~~
- ~~5.—Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of noise.~~
- ~~6.—Advise, consult and cooperate with other local governmental units, agencies of the state, industries, interstate or interlocal agencies and the federal government and with interested persons or groups.~~
- ~~7.—Review those matters having a bearing upon excessive noise referred by public agencies.~~
- ~~8.—Collect and disseminate information and conduct educational and training programs relating to excessive noise, its effects and its control.~~

9. — ~~Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.~~
10. — ~~Do any and all acts which may be necessary for the successful prosecution of the intent of this chapter and such other acts as may be specifically enumerated herein.~~
11. — ~~Allocate police department resources, as shall be required to assist his duly authorized agent upon request by same, in the enforcement of this chapter.~~

[1-1-75; 8-14-76]

~~§ 15-5. Reserved.~~

§ 15-6.5. Maximum Noise Levels.

A. *Noise sources other than motor vehicles.* ~~Noise levels from stationary sources other than motor vehicles, and mobile sources while stationary unless exempt pursuant to §§ 15-5.F. or 15-15, shall not exceed those the noise limits presented set forth in Table I below for each of the zoning districts listed there indicated during the time of day indicated. The maximum permissible noise level shall be that associated with the zoning district classification of the receiving property, except for vehicles on public or private streets from which the noise is emitted.~~

B. *Small power equipment: Motor vehicle noise sources.* Motor vehicle noise sources are subject to the noise limits set forth in Table II below.

1. — ~~Any small power equipment which exceeds the permissible noise levels established in § 15-6.A may only be operated during the daytime.~~
2. — ~~Noise measurements made to determine compliance with §§ 15-6.A and 15-6.B.1 shall be made not less than four (4) feet above the ground and not closer to the noise source than the boundary of the property on which the noise source is located.~~

C. *Mobile sources.* ~~Mobile sources are noise levels generated by moving vehicles which conform to the standards set forth in Table II.~~

D. — *Measurement standards.*

1. Noise measurements made to determine compliance with § 15-6.CA. shall be taken on a level surface at a distance of not less than fifty (50) feet from the 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. of this section.

2. Noise measurements made to determine compliance with subsection B. of this section shall be taken at a distance of at least fifty (50) feet from the noise source.
3. Noise measurements made to determine compliance with Table I in any structure utilized as a multi-unit structure shall be taken from common areas within or outside the structure, or from any other unit within the respective multi-unit structure when the owner or tenant of the unit from which the measurement is to be taken consents to measurement from his, her or its unit. Within such unit, the measurement shall be taken at a point at least four (4) feet from the wall, ceiling, floor, or window closest to the noise source, with doors to the receiving unit closed and windows in a position typical for the then-current season of the year.

~~E.~~ *Noise sensitive zones:*

1. ~~Whenever the protection of the public health and welfare so require, the County Manager, after a duly advertised public hearing conducted by the county board, with the approval of the county board, may designate any geographical area of Arlington County as a noise sensitive zone. Such designation shall include a description of the subject area and the reasons for determination as a noise sensitive zone.~~
2. ~~In noise sensitive zones, noise levels originating from stationary sources shall not exceed those presented in Table I of this chapter.~~

F.D. *Construction noise:*

1. Any construction activities which produce noise levels which exceeds the ~~maximum permissible noise levels~~ limits established in Table I shall be permitted only during the ~~daytime~~ Daytime. This section shall not apply to emergency repairs to public utilities and infrastructure performed by the public utilities themselves or by local, state, or federal governments, or their contractors. For the purposes of this subsection, “public utility” shall have the meaning set forth in § 56-88 of the Code of Virginia, 1950, as amended.
2. All feasible procedures and measures customarily used in the industry shall be undertaken by those responsible for operating or creating any source of sound, in order to minimize noise generated by construction activities. In no ~~instance~~ event shall noise levels originating from construction sites exceed ninety (90) dBA. Measurements of construction-

related noise are to be taken in accordance with the procedures established in § 15-65.BC.2.

~~G.E.~~ *Special events.* Short-term or seasonal activities which have been reviewed and permitted through the Arlington County government's special-event review process sponsored by a County agency or any organization, which have been reviewed and approved through the special event review process may not exceed ninety (90) dBA for the duration of the event and associated clean-up. In the event of a discrepancy between 90 dBA and the applicable Daytime maximum noise set forth in Tables I and II, the 90-dBA limit shall control. Such events and their associated clean-up may not exceed the applicable noise set forth in Tables I and II if they extend beyond later than 9:00 p.m. on Sunday through Thursday, and later than 10:00 p.m. on a Fridays, Saturdays and/or legal holidays.

F. *Exemptions.* In addition to the exemptions procedure set forth in § 15-12, the following activities or sources of noise shall be exempt from the prohibitions set forth in this § 15-5, Tables I and II of this section, and § 15-6:

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; and
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.

TABLE I
MAXIMUM PERMISSIBLE NOISE LEVELS FROM STATIONARY SOURCES ALL
SOURCES
OTHER THAN MOTOR VEHICLES

<u>Zoning District</u>	<u>Time of Day</u>	<u>Continuous Noise (dBA)</u>	<u>Impulsive Noise (dB)</u>	<u>'Continuous' Center-Octave</u> <u>Octave Band-Center</u> <u>Frequency (Hz) dBAcomponent</u>	
CM & M	All	70	120	31.5	85
				63	84
				125	79
				250	74
				500	68
				1,000	62
				2,000	57
				4,000	53
				8,000	50
C & C-O	All	65	100	31.5	80
				63	79
				125	74
				250	69
				500	63
				1,000	57
				2,000	52
				4,000	48
				8,000	45
R, R-A & S-3A	Daytime	60	95	31.5	75
				63	74
				125	69
				250	64
				500	58
				1,000	52
				2,000	47
				4,000	43
				8,000	40
FR, R-A & S-3A	Nighttime	55	90	31.5	70
				63	69
				125	64
				250	59
				500	53
				1,000	47
Noise Sensitive Zones	All			8,000	35

TABLE II
MAXIMUM PERMISSIBLE NOISE LEVELS FROM MOBILE SOURCES MOTOR
VEHICLES

<u>Class of Source Vehicle</u>	<u>Up to 35 miles per hour MPH</u>	<u>Above 35 MPH miles per hour & above</u>
Motorcycle	80 dBA	84 dBA
Mobile sources with gross weight less than <u>Total GVW < 10,000 lbs.</u>	70 dBA	79 dBA
Mobile sources with gross weight more than <u>Total GVW ≥ 10,000 lbs.</u>	86 dBA	90 dBA

[1-1-75; 8-14-76; 8-25-81; Ord. No. 04-24, 9-18-04]

§ 15-76. Prohibited Acts.

A. It shall be unlawful for any person, group of persons, or entity to make or continue, or cause to be made or continued, any noise disturbance as that term is defined above.

B. In addition, the following prohibited acts set forth in this § 15-6 are prohibited regardless of the zoning district classification of the property from which noise is emitted or the decibel level of that noise.

~~AC.~~ It shall be unlawful for any person to sound a vehicular horn or other audible signal device except as an emergency warning signal permitted pursuant to § 15-5.F.6.

~~BD.~~ It shall be unlawful for any person to sell anything by outcry during the ~~Nighttime~~. The selling by outcry of merchandise, food and beverages at licensed entertainment events is excluded from the prohibition of this subsection.

~~CE.~~ It shall be unlawful for any person to use any machine or device during the ~~Nighttime~~ for the production or reproduction of sound which is cast upon public streets or lands for the purpose of commercial advertising or of attracting the attention of the public to any building, structure or activity during the nighttime. If such machine or device is used only intermittently for announcing or paging an individual, or signals the ringing of a telephone, danger from smoke, fire, or burglary, or the commencement or conclusion of work or school, or is permitted by § 15-5.F., it shall be exempt from the prohibition of this subsection.

~~DE.~~ It shall be unlawful for any person to use, operate, or play, or to permit the use, operation or playing of, any radio, television, phonograph, record, compact disc or tape player, drum, musical instrument, loudspeaker, sound amplifier or similar device or machine which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance 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. It shall be unlawful for any person or group of persons to unreasonably make, continue or cause to be made or continued any noise disturbance.~~

~~FG.~~ It shall be unlawful for any person to collect refuse with a refuse vehicle during the ~~n~~Nighttime, subject, however, to the exemption set forth in § 15-15.

~~GH.~~ It shall be unlawful for any operator to run the propulsion engine of a commercial motor vehicle for more than ~~threeten (310)~~ thirteen (13) minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons, except when the propulsion engine provides auxiliary service other than heating, or air conditioning.

~~HI.~~ It shall be unlawful for any person who owns, possesses or harbors any animal or bird to permit that animal or bird to create a ~~frequent or continued noise disturbance~~ that it is 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 or within a nearby dwelling unit.

~~J.~~ It shall be unlawful for the holder of any exemption issued pursuant to § 15-12 to exceed or otherwise violate the terms of that exemption.

[1-1-75; 8-14-76; 8-25-81]

§ 15-87. Noise-Suppression Devices.

A. No person shall cause, suffer, allow or permit the removal, disconnection or disabling of any noise-suppression system or device which has been installed on any noise source:

1. ~~In~~ In accordance with federal-~~or~~, state or local laws or regulations, ~~or~~
2. ~~As~~ As a requirement for obtaining a permit to construct, modify-~~or~~, install or operate such noise source.

B. No person shall defeat the design purpose of any noise-suppression system or device by installing therein or thereon any part or component which does not meet the minimum design specifications for that system or device.

C. No noise source shall be operated with its noise-suppression system or device removed or otherwise rendered inoperable.

[1-1-75; 8-14-76]

§ 15-98. Inspections.

A. The County Manager is hereby authorized and directed to make or cause to be made inspections (1) in response to complaints regarding that an alleged violations of the provisions of this chapter, so long as the County Manager or of applicable rules or regulations pursuant thereto which may exist when he has valid reason to believe that a violation of this chapter has been or is being committed, or (2) as part of a systematic survey program.

B. The County Manager ~~shall have authority~~ may, with the consent of the respective owner, occupant, operator or agent, to enter and inspect all premises subject to the provisions of this chapter for the purpose of determining whether there is compliance with ~~it~~ this chapter's requirements.

C. If any owner, occupant, operator or agent fails to allow or refuses free access and entry to the premises, or any part thereof, where a noise source is located, or any part thereof, and with respect to which an inspection authorized by this chapter is sought to be made, the County Manager may, upon a showing that probable cause exists for the inspection, petition and obtain process or an order or warrant from a magistrate or court of competent jurisdiction authorizing such an inspection.

D. ~~All evidence which may be discovered or obtained in the course of an inspection made pursuant to this section shall not be disclosed except as may be necessary in the judgment of the County Manager or the Attorney for the Commonwealth for the proper and effective administration and enforcement of the provisions of this chapter and regulations issued pursuant thereto.~~

[1-1-75; 8-14-76]

§ 15-109. Enforcement Criminal Penalties.

A. Any violation of this chapter may be charged as a misdemeanor, and any violator may, upon conviction, be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or by imprisonment in the Arlington County jail for a period of not more than thirty (30) days, or both, for each offense. Each calendar day of violation shall constitute a separate offense.

~~AB. Whenever the County Manager or his designee determines that any noise source fails to meet the requirements set forth in this chapter or in applicable regulations issued pursuant thereto, he may obtain a warrant or summons for the prosecution of such violation. In addition, if the designee agent investigating a potential violation of this chapter is a duly-qualified law enforcement officer of Arlington County and he or she has probable cause to do so, he or she may issue a summons to, or arrest without a warrant, any person who, in the presence of the officer, violates any provision of this chapter.~~

C. The imposition of a criminal penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this section shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

~~Furthermore, the County Manager or his designee may issue a notice of violation setting forth the alleged failures and advising the owner, occupant, operator or agent that such failures must be corrected. Such notice shall:~~

- ~~1. Be in writing,~~
- ~~2. Set forth the alleged violations of this chapter or of applicable regulations issued pursuant thereto,~~
- ~~3. Describe the premises where the violations are alleged to exist and/or other identifications of the noise source,~~
- ~~4. Set forth a reasonable time within which any violation alleged is required to be corrected,~~
- ~~5. Be served upon the owner, occupant or operator of the noise source, or upon the agent of any of the foregoing, by:
 - ~~a. Personally delivering the same to such person; or~~
 - ~~b. Mailing the same to such person by certified mail, return receipt requested, addressed to the last known place of residence of such person; or~~
 - ~~c. Posting the same in or about the premises described in the notice if service under § 15-10.A.5a. or b.~~~~

~~B. At the end of the period of time allowed for correction of any violation alleged, the County Manager shall reinspect the noise source described in the notice.~~

~~C. Reserved.~~

~~D. Reserved.~~

~~E. Reserved.~~

~~F. Referral to Commonwealth's Attorney, injunction, etc. If the County Manager determines that the violation has not been corrected, the County Manager may:~~

1. ~~Refer the matter to the Commonwealth's Attorney for prosecution pursuant to § 15-13.A; or~~
2. ~~Apply to a court of competent jurisdiction for any and all injunctive relief as the court may deem proper to enforce the provisions of this chapter; or~~
3. ~~Extend the time for compliance for a reasonable time.~~

[1-1-75; 8-14-76]

§ 15-10. Civil Penalties; Appeals Therefrom.

A. Any person who commits, permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil violation and may, upon the issuance of a citation by the County Manager, be punished by a civil fine of not more than two hundred fifty dollars (\$250.00) for the first violation, and not more than five hundred dollars (\$500.00) for a second or other subsequent violation. Each calendar day of violation shall constitute a separate offense.

B. The issuance of a citation for a civil violation of this chapter may occur only after a notice of violation has been issued that sets forth the alleged violation or violations and advises the owner, occupant, operator or agent that such violation or violations must be corrected. Such notice of violation shall:

1. be in writing;
2. describe the alleged violation or violations;
3. name, by street address or RPC number, the premises where the violation or violations are alleged to exist;
4. state a deadline by which the violation or violations must be corrected; and
5. be delivered to the owner, occupant, operator or party responsible for the noise, or upon the agent of any of the foregoing, by:
 - a. hand delivery to any such person or entity;
 - b. mailing to such person or entity by U.S. certified mail; or
 - c. posting at the premises named in the notice.

C. The imposition of a civil penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

E. The appeal of any civil citation issued by the County Manager pursuant to this section shall be by notice of appeal, made in writing, signed by the appealing party, and state an address at which the appealing party will receive notices.

1. The notice of appeal shall be filed with the Director of the Arlington County Department of Community Planning, Housing and Development or his or her designee, not later than five (5) business days after the date on which the civil citation was delivered to the cited party. The notice of appeal shall clearly and specifically state the citation appealed from and all reasons why the decision is claimed not to be in accordance with this chapter. Any notice of appeal which is not timely filed or does not contain the required information shall be denied.
2. After filing the notice of appeal, the appealing party will be entitled to a prompt hearing before the Director of the Arlington County Department of Community Planning, Housing and Development. The date, time and location of the hearing will be determined by the Director. The Director shall provide notice of the hearing's date, time and location to the appealing party by certified mail.
3. The appealing party will have the right to present this case at the hearing. The Director will consider documentary evidence and statements offered by the appealing party and County staff. The hearing need not utilize technical rules relating to evidence and witnesses, provided, however, that the Director only need consider relevant documentary evidence and statements. The Director may affirm, modify, or reverse the civil citation from which the party appeals. The Director's determination shall be final.
4. During the pendency of any appeal, the civil citation of the County Manager shall remain in full force and effect.

[previously § 15-13; 1-1-75; 8-14-76; Ord. No. 91-34, 9-18-91]

§ 15-11. Emergency Procedures.

A. Whenever, in the judgment of the County Manager, an emergency exists which requires immediate action to protect the public health, safety or welfare, the County Manager may issue an order ~~may be issued~~, without notice, conference or hearing, directing the owner, occupant, operator ~~or~~, agent and/or responsible party of and/or for the noise source or premises where the noise source is located to take such action as is appropriate to correct or abate the emergency. If circumstances warrant, the County Manager may act to correct or abate the emergency.

B. The owner, occupant, operator ~~or~~, agent and/or responsible party of and/or for the noise source and/or the premises where the noise source is located shall be granted a conference on the matter upon his, her or its request, as soon as practicable, but such conference shall in no case stay the correction or abatement ~~or correction~~ of such emergency.

C. Any person aggrieved by an order of the County Manager, issued pursuant to any provision of this chapter, may appeal that order to a court of competent jurisdiction.

[1-1-75; 8-14-76]

§ 15-12. Exemptions Issued by the County Manager.

A. Any person responsible for any noise source may apply to the County Manager for an exemption or partial exemption from the provisions of this chapter. The application shall be accompanied by such information and data as the County Manager may require. The County Manager may grant such exemption or partial exemption if he or she finds that:

1. The potential danger to the community is outweighed by the benefit to the public interest during the period of exemption, or
2. Compliance with the provisions of this chapter from which exemption is sought would produce serious hardship without equal or greater benefits to the public.

B. No exemption or partial exemption issued pursuant to this section shall be granted for a period ~~to exceed~~ longer than one (1) year; but any such exemption or partial exemption may be renewed for ~~like periods~~ a period of up to one (1) additional year at a time if, after being duly considered at a hearing held by the County Manager, ~~he~~ the County Manager finds that renewal is justified ~~under~~ pursuant to the factors set forth in § 15-12.A. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Any renewal granted pursuant to this section shall be on the same grounds and subject to the same limitations and requirements as provided in § 15-12.A.

C. An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be at the discretion of the County Manager. The recipient of any exemption or partial exemption shall post a copy of the exemption or partial exemption to be posted withat the source of the noise.

D. ~~Audible signal devices which are employed as warning or alarm signals in case of fire, collision or imminent danger are specifically exempt from the provisions of this chapter.~~

E.——Nothing in this section, and no exemption, partial exemption or renewal granted pursuant hereto, shall be construed to prevent or limit the application of the emergency provision and procedures of § 15-11A. of this chapter to any person or his, her or its property.

[1-1-75; 8-14-76; 8-25-81]

~~§ 15-13. Penalties.~~

A.——All violations of this chapter shall be misdemeanors and shall, upon conviction, be punished by a fine of not less than twenty five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or both, for each offense; and each day of violation shall constitute a separate offense.

B.——The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue.

C.——Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any action or other appropriate proceeding therefor.

[1-1-75; 8-14-76; Ord. No. 91-34, 9-18-91]

~~§ 15-1413. Severability.~~

Should any section, subsection, sentence, clause or phrase of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, such ~~decision~~declaration shall not affect the validity of the chapter in its entirety or of any part thereof other than that separt declared to be invalid.

[1-1-75; 8-14-76]

§ 15-~~15~~14. Conflict of Ordinance.

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of the applicable provision of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the ~~people~~public shall prevail. In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of a provision of this chapter which established a less stringent standard for the promotion and protection of the health and safety of the ~~people~~public, the provisions of this chapter shall be deemed to prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

[1-1-75; 8-14-76]

§ 15-~~16~~15. Exemption for County Activities.

The provisions of this chapter shall not apply to operations at County facilities ~~as designated by the County Manager and~~or engaged in by County employees or County contractors, or to County residential refuse and leaf collection programs if such programs are operated by the County or by an entity under contract ~~to~~with the County.

[Ord. No. 06-02, 2-28-06]