

ARLINGTON COUNTY STAFF RESPONSES to the Arlington Civic Federation's Questions and Comments Regarding Revisions to the Noise Control Ordinance

Specific Items in the Draft Revised Noise Code

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1. Noting the definition that "Impulsive noise" means noise characterized by brief bursts (usually less than one (1) second in duration) of sound pressure which significantly exceed the sound pressure of the ambient environment sound pressure.
 - What standards will be used to determine that an impulsive noise is a violation? Specifically:
 - What duration is considered to be a violation?

Sounds that are characterized as a brief burst of less than one second would be considered noise and would be subject to the compliance standards of the ordinance.
 - How many bursts will be allowed over what specified period of time is considered to be a violation?

This has not been predefined within the code. Enforcement agents are permitted and expected to exercise discretionary authority in the performance of enforcement activities. The duration of an activity, cause of incident and previous history at site or with a particular actor may impact the enforcement decision.
 - When the impulsive noise does meet the noise disturbance standard (dB, dBA, Hz, duration, and frequency), in order to be cited must it be observed by a Code Enforcement Inspector during the weekend daytime period and a police officer during the weekends or weekday nighttime period?

No, but observation and measurement by a Code Enforcement Inspector or Police Officer will be the preferable method of enforcement, especially from a decibel-measurement perspective. As highlighted in the Board Report, Code Enforcement Inspectors have flexibility to address recurrent, predictable occurrences, no matter the time of day. Police officers may witness and address potential violations of the noise control ordinance in all other instances. While Code Enforcement will have principal enforcement responsibility during the day on weekdays and the Police will have principal enforcement responsibility at all other times, they have overlapping authority.

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2. Noting the definition that "Daytime" means the local time of day between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 10:00 a.m. to 9:00 p.m. on Saturdays, Sundays and legal holidays.
 - What constitutes a "legal holiday" for purposes of defining "Daytime"? Arlington County and the federal government observe different holidays. Also, on some occasions, both the federal government and Arlington County recognize a holiday to occur on one day but be "observed" on another.

"Legal holiday" is defined by Code of Virginia § 2.2-3300.

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3. It is unclear how motorcycle or truck noise will be addressed.

- Will the officer measure the noise from the motorcycle as it is travelling down the roadway?

Possibly. In accordance with § 15-5.C.2, noise measurements from motor vehicles, such as motorcycles, shall be measured from a distance of at least 50 feet from the noise source. Typically the enforcement agent would be stationary, but not necessarily, as in the case of officers involved in a pursuit. Table II (page 19) provides maximum decibel limits above and below 35 miles per hour for motorcycles, and other motor vehicles. The motors propelling motor vehicles traveling at higher speeds typically produce more sound, but the levels diminish as the source sound moves away from the receiver, reducing the exposure to the noise source and limiting the negative impact.

- How will modifications to motorcycles that are designed to amplify noise be addressed?

Federal and state laws mandate the required equipment and operating standards for motorcycles and other motor vehicles, including noise-suppression devices like mufflers. Mufflers and similar devices are designed to reduce the level of noise from the motor; removal of a muffler does not amplify noise per se, but merely fails to reduce the noise to the manufacturer standards established by federal and state laws. Because County Police are empowered to enforce federal, state and local laws, they may address altered or removed noise-suppression devices when requisite cause exists.

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4. We see the new and innovative standards for noise measurements in multi-unit structures.

- What constitutes a “common area” for purposes of these measurements?

For the purposes of this ordinance, the term “common area” means spaces that are of common use to the general public, such as corridors, lobbies and exterior courts or yards.

- We do not see specific standards for measurements in common areas such as distance from noise source, doors open or closed. Was this intentional?

Yes, the same standards will be used for the common area measurements as are prescribed for individual units within multi-unit structures.

5. Noting the 90 dBA limit for construction noise:

- Did you consider limiting the 90 dBA to shorter hours than the entire 14 hours of “daytime”? For example limiting construction noise to 70 dBA outside of typical and customary loud construction hours of 8 am to 5 pm; or

Staff did not consider reducing the daytime hours during which construction noise may exceed the decibel limitation in a specified zoning district or lowering the decibel maximums during the daytime outside of traditional business hours. Staff believe that either modification would be impractical for the following reasons.

Construction activity generates noise. The greatest amount of construction-related noise is generated during demolition, followed by the establishment of a foundation. In the timeline of traditional construction activity, both demolition and the establishment of a foundation are short-term activities. The daytime hours during which construction noise is permitted are similar to the expectations in other communities in the Washington area. Restricting those hours beyond the standards for the D.C. area would lengthen construction timelines, increase the cost of construction, and reduce the competitiveness of Arlington to attract new businesses and developments. Modifications that lower the decibel limit by four hours during the daytime period would have a similar effect on the

length of construction projects, construction costs, and regional competitiveness for businesses and developments.

- Did you consider limiting construction noise if the construction is close to residences?

No. There were no new revisions introduced to address construction activity within or near residential parcels. Developments subject to Site Plans and near zoned residential districts may include site-specific conditions, approved by the County Board, which limit hours of construction.

- What levels does pile driving usually produce?

Pile driving does not produce a standard level of noise. Pile driving noise varies widely based on the location of the activity, its proximity to the listener or sound-measuring device, the type of construction equipment used, whether dampeners are present, and the geological makeup of the soil at the site.

- Did you consider requiring a special permit for pile driving?

- This might allow the County to ensure that pile driving is avoided when cost-effective alternatives are available on a particular site, as well as ensure community notification and perhaps limit the hours of pile driving.

Staff did not consider introducing a special permit for pile driving. Pile driving is considered an efficient, cost-effective method to establish foundations. New designs have reduced the amount of noise generated by the equipment used to power the pile-driving device. Construction techniques are not typically regulated as uses.

6. Noting that many site plans have allowed developers to do after-hours construction (such as interior painting or carpet laying), subject to the requirement that it occurs behind closed doors and does not “disturb reasonable persons of normal sensitivities.”

- Is it still going to be possible to make this accommodation for developers because they consent to such wording, or will we prohibit indoor construction?

The standard Site Plan condition that you reference is being reexamined in light of the proposed amendments to the noise ordinance. Site plan conditions can continue to restrict after-hours construction activity.

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7. Noting the exemptions for church bells and carillons and that the Netherland's Carillon — a gift to America from the Dutch people for aid provided during and after World War II — is on federal property next to the Iwo Jima Memorial and Arlington Cemetery:

- Is there another carillon other than the Netherland's Carillon to which this wording applies?

This exemption applies to all existing and future carillons within the County.

- Did you consider extending exception to other unamplified religious activities, such as the Muslim call to prayer — or would these be considered to be covered by other portions of F. Exemptions?

Staff consider the “noise” generated by unamplified religious activities to be exempt pursuant to the exemptions in subsections 15-5.F.4. and 5.

8. Noting that exemptions in F. Exemptions do not address amplification:

- Is the exception meant to include only *unamplified* church bells, carillons, and other noise sources? If not, did you consider amplification limits?

The exemptions in subsection 15-5.F. apply only to unamplified noise sources. Staff will revise the proposed new language in subsection 15-5.F. to make that clear. If amplification devices were used, staff would apply decibel limitations.

9. Noting that exemptions in F. Exemptions do not include daytime or nighttime hour limits or limits on decibel levels:

■ Was this intentional?

Yes

■ Do the exemptions extend to all daytime and nighttime hours?

Yes

■ Did you consider that, without limits, the following may occur continuously or at levels that disturb nearby residents or businesses?

- Loudspeakers at school or sporting events
- Fire alarm testing
- Religious or political events (such as "occupy Courthouse Plaza")

Yes. With the proposed changes to the noise ordinance, staff has attempted to balance the many noise-related aspects of urban living. There has been no recent history of problems with loudspeakers during the nighttime in the County. Fire alarm system testing is practically scheduled during daylight hours and religious and political events are subject to Constitutional protections. Some activities may be addressed through means other than noise enforcement, depending on their character.

10. Noting the following wording in #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: There is an "and" after #5, which implies that #7 was added at the last minute.

Thank you. Staff will move the "and" at the end of item 15-5.F.5 to the end of section 15-5.F.6. Subsection 15-5.F.7. was not added at the "last minute".

■ Why is there no exception for single-family residential properties to use temporary or portable power generation systems during an emergency?

The power generation systems used at commercial properties (identified and exempted in Section 15-5.F.7) have special building systems imposed by the Virginia Uniform Statewide Building Code. The Building Code requires these building systems to have an established alternative power source such as an emergency back-up generator as a condition of use and continued occupancy.

Single-family structures have no code requirement within the Virginia Uniform Statewide Building Code for back-up generation systems, and are subsequently not exempted from noise compliance standards.

- The earlier code referenced an emergency process that could be invoked with permission of the County Manager, however such process was not implemented.

The County Manager retains the discretionary authority to suspend or limit the ordinance.

■ Why is there no exception for commercial gas generators to be used for residential properties?

- These are offered by natural gas companies. Such generators are likely to make the same level of noise as air conditioning compressors, which have limited placement options in part to avoid sending noise to adjacent properties.

In accordance with the requirements of the Virginia Uniform Statewide Building Code, a natural-gas-powered electricity generation system would at a minimum require a permit and be subject to the placement standards of the zoning ordinance and maintenance requirements of the Virginia Maintenance Code. The Virginia Uniform Statewide Building Code does not require power generation systems at single-family residential properties. Staff believe that such systems should not be exempt from the noise ordinance.

- When we inquired about residential installed gas generators a few years ago, we were told that there was no policy developed yet. Has that changed?

No additional standards or policies have been established by the County at this time.

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11. Noting Table 1 noise limits in various Zoning Districts:

12.

- Looking at the R, R-A & S-3A portion of Table 1, there is no limit for 8000 Hz. Was this an intentional omission?

As part of the revisions forwarded to the Board, staff realigned Table 1 for better readability. There is an omission in the current ordinance for the Continuous Center Octave Band nighttime limits in R, RA, and S3A district. The error will be corrected in the updated draft to illustrate 8000 hz and 35 db in R, RA, and S3A district during the Nighttime; values currently misaligned to a Noise Sensitive Zone designation.

- and Hz levels of noises that previously have been identified as noise disturbances? Some examples are:

- Amplified music from a live band bursting from a restaurant with a live entertainment permit when the doors are opened to serve outdoor patrons
- Dumpsters being emptied during nighttime hours
- Loud parties such as people playing alcohol games, such as beer pong (without amplified music)

No special noise studies were performed for the aforementioned activities.

- When different Zoning Districts abut each other, which district takes precedence for determining limits — the district in which the noise is generated or the adjacent district that receives the noise?

See § 15-5.A. The zoning of the property from which the noise is emitted determines the applicable noise limits.

13. Noting Table 2 noise limits:

- What was the rationale for requiring motorcycles and vehicles <10,000 GTW to meet stricter standards than the impulsive noise limits (95 dBA daytime and 90 dBA nighttime)?

This question is not clearly understood. The decibel limitations for motor vehicles are not affected by the time of day.

- Would it be accurate to conclude that the noise from moving vehicles is functionally the same as impulsive noise?

No, motor vehicles with internal combustion engines generate continuous noise.

14. We note that the Board Report indicates:

"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."

■ Will the Police enforce the Noise Code when Code Enforcement is not on duty?

Yes. Police will investigate noise-related complaints whenever Code Enforcement inspectors are not available, as well as all potential violations related to motor vehicles (given the Police's role in enforcing all laws pertaining to motor vehicles). Outside of regular weekday business hours, Code Enforcement inspectors may inspect noise complaints that are recurrent, predictable disturbances. Police and Code Enforcement will work together to ensure that all noise-related complaints are addressed regardless of the day of the week or the time of day when they are made.

■ Will Code Enforcement change its current Code Inspector work schedule — generally daytime on Monday - Friday.

No, there are no plans to modify the work schedules of field inspectors.

15. In the past — and again after the Noise Code draft was released — the Police Department indicated that officers will be neither trained nor equipped to use noise measurement equipment.

■ How will the noise limits in Table 1 and Table 2 be enforced without noise measurement equipment?

County staff's primary objective on noise-related complaints is to gain voluntary compliance by the person responsible and only take enforcement action when that is not achieved. County staff have focused on the development of practical standards that address our most commonly investigated noise concerns using prohibited acts or the audible standard found in Section 15-6.F. Noise calls occurring during weekends and nighttime periods are often the results of other negative activities that may be addressed by state and local law. In addition to local ordinance standards, motor vehicles may be subject to inspection if requisite suspicion or cause exists for an investigation.

Pages 19–20

16. Noting the list of prohibited acts, the revised language states in F:

"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 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."

■ Is it correct to assume that the standard applied for F is "be heard" *per se* whether or not the noise meets the limits set in Table 1?

Yes.

■ Please clarify when the 20-foot limit and the 50-foot limit will be applied. For example, is the intent to address noise heard inside (with the 20-foot limit) versus noise heard outside (with the 50-foot and property boundary limit)?

Yes. The minimum 20-foot distance from the source of sound is applied within an adjacent dwelling unit, such as the interior of a house, condominium or apartment. The minimum 50-foot distance is for exterior applications of the audible noise measurement standard.

- Did you consider adding additional prohibited acts, particularly at night? For example prohibiting the nighttime use of leaf blowers, lawnmowers, chain saws, and pneumatic equipment?

No. Staff found little value in restricting specific equipment types within the ordinance, electing rather to focus on the decibel limitations in certain zoning districts, without further definition of the sound source.

- How did staff arrive at the “once per minute for 10 consecutive minutes” standard for animal noise?

Animal noises, like barking dog noises, are often less about volume of noise and more about the annoyance of the repetitive incessant sound. The previous standard required staff to use a noise meter at the boundary, which often further incited the animal to continue to bark. Even if the decibel limits were not exceeded, complainants often felt that staff failed to adequately address the barking dog noise. Large pet-friendly urban communities like New York City use a temporal frequency test such as that which staff has introduced in the revised ordinance. The new process does not require the use of a noise control meter to perform the test, and can be accomplished in a simple ten minute visit. Most importantly, pet owners and neighbors alike are given the standards that would lead to violation, allowing for the opportunity to self correct before contacting the County for enforcement action.

17. We note that rooftop sports bars and covered or uncovered patios in commercial areas are new sources of noise that sometimes flows blocks away into adjacent residential neighborhoods. Sometimes the noise is created by amplified music or televisions, but sometimes the noise just comes from a crowd of people talking or yelling.

- Will the revised ordinance prohibit or otherwise regulate noise from rooftop bars?

The ordinance does not specifically address roof top bars; they may be addressed through decibel limits or the ordinance's enumerated prohibited acts.

- How will this address amplified music or other amplified sound at these establishments?

The ordinance may address amplified sound through decibel limitations and prohibited acts. Additionally, live entertainment venues are regulated by use permit conditions, which are typically more restrictive than the noise control ordinance.

- If the outdoor noise is created for the purpose of entertaining existing patrons and not “for the purpose of commercial advertising or of attracting the attention of the public” will it be allowed?

Possibly. An investigation may be required to determine real estate parcel boundaries and whether a noise disturbance or prohibited act is occurring.

18. What is the expectation for addressing malfunctioning fire alarms or other malfunctioning safety equipment? If a fire alarm continues (erroneously) to sound all night or for days on end, what remedies are available?

Complainants are advised to contact the Arlington County Police at the non-emergency number (703-558-2222). The Police administer and enforce Chapter 33 (Security Alarms) of the County Code. A separate ordinance effectively addresses false and malfunctioning alarms, which typically are employed to indicate an immediate need for emergency

services. The False Alarm Reduction Unit can investigate and fine property owners with defective alarm systems or systems that generate repeated non-emergency calls. Alarms may also be addressed as noise disturbances, if they exceed the decibel limitations or otherwise constitute a prohibited act.

19. We note that noise complaints can be directed to either Code Enforcement via the Web or phone during working hours or the Police Department via the non-emergency number. Code Inspectors work in two different sections (building code and zoning), and since the Virginia Supreme Court decision in April 2009, it's been difficult to get the police to respond to noise complaints.

- Will noise complaints be assigned to Code Inspectors based on their section?

Only those Code Enforcement Inspectors assigned to the Code Enforcement Section of the Inspection Services Division will be assigned to investigate noise complaints that involve Chapter 15 of the County Code. Inspectors assigned to the Zoning Enforcement Section will not be assigned Chapter 15 violations in general but may be assigned noise complaints that stem from zoning or other land-use regulations. Police officers will enforce Chapter 15 as discussed elsewhere in these responses and in the Board Report submitted by County staff to the County Board.

- Will Code Inspectors, the Police, or both be expected to respond to complaints about prohibited acts?

With the exception of violations caused by operation of motor vehicles, either Police or Code Enforcement may respond to complaints based on the prohibited acts, dependent mainly on time of day at which a complaint is received.

- Has staff prepared a flow chart of how various types of noise complaints will be directed to help ensure timely response day, night, and on weekends?

Staff will coordinate efforts to ensure timely response at all times.

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20. We note that our review of the Zoning Ordinance found only one reference to noise, which is in SECTION 26. "C-2" SERVICE COMMERCIAL--COMMUNITY BUSINESS DISTRICTS. The language reads:

"Use of a public address system or loudspeaker shall comply with the standards and regulations in Chapter 15, Noise Control Ordinance, or the Arlington County Code, except that use of such system shall not be permitted after 9:00 p.m., daily."

We further note that some restaurants are piping their indoor music to outdoor speakers on their property.

- Is staff planning to revise Section 26?

No. Noise is referenced in other parts of the Zoning Ordinance besides section 26 and may be addressed through special exception conditions rather than Zoning Ordinance code provisions.

Overarching Questions

21. What is the overall expectation for practical investigation and enforcement of disturbances that occur at night? What training, equipment, response time and follow-up actions are anticipated for:

- Someone or a group of people screaming and yelling for an extended period outside in a residential area

Police will investigate such disturbances than often involve not only noise, but also other activities, like public intoxication, that are readily addressed by other codes or ordinances.

■ Use of loud mechanical equipment

Violators typically respond well to a warning, after being advised of the expectations in the law. Defective equipment, such as broken air conditioning systems, that are identified during the night-time by police will be witnessed and referred to Code Enforcement for investigation of the equipment, which may be addressed using the standards of the Virginia Maintenance Code, in addition to the noise control ordinance.

22. What is the basis for the particular decibel limits currently being recommended?

■ Does staff believe that 90 dBA is a “safe” level of noise for an extended period of time?

Yes. The 90-decibel maximum countywide limit for continuous noise is unchanged and is consistent with the maximum limits found in the comparator jurisdictions used for our comparative study.

■ There are many apartment buildings, condominiums and townhouses located in “C” and “C-O” zones. Is 65 dBA an appropriate nighttime limit within and around those residential buildings?

Yes. The ambient noise along the east-west arteries of the Rosslyn-Ballston corridor, a commercial district, averaged 62 decibels on a Thursday evening during this past spring. Residents moving into mixed-use developments in the County’s commercial corridors enjoy many conveniently located amenities and should realistically expect densely populated areas to have higher ambient sound levels. It would not be practical to establish zoning decibel limits that are below ambient noise levels.

23. Will staff provide a demonstration of the decibel limits proposed for various times and zoning categories for the public and/or the County Board?

Staff is not planning a noise demonstration, as that is not expected to yield an objective basis for decision making.

24. Does staff believe that the land use zoning categories are fully sufficient to define the geographic areas of the County where there is greater or lesser sensitivity to noise? For example, should there be stricter requirements within a certain distance of a hospital or nursing home?

Yes, staff believes that the zoning designation decibel limits are acceptable and consistent with those communities used in our comparative study.

No, it would be impractical to establish and enforce a noise-sensitive district around a hospital or nursing home. A more cost-effective solution may be to reduce sound transfer at interior spaces within our health centers or within the structures’ exterior envelope.