



October 22, 2012

Arlington County Board  
2100 Clarendon Boulevard  
Arlington, VA 22201

Re: County Board Item #23

Dear Chairwoman Hynes and Members of the County Board:

I am writing on behalf of the Arlington County Civic Federation to request that you postpone action on the proposed advertisement of the noise ordinance until there has been additional opportunity for community input.

The County noise ordinance is a matter of frequent concern and discussion for neighbors, neighborhood organizations, and the Federation. On numerous occasions in the past, leaders of our member organizations and the Federation's Planning and Zoning Committee have reached out informally to County staff to ask questions about the ordinance, get information about its meaning, inquire about possible revisions, and provide suggestions for its improvement.

In light of these many years of inquiries, it was a bit shocking to find a complete overhaul of the ordinance was proposed for advertisement by the Manager on October 17, with a request for action without discussion on the consent agenda just four days later. This timetable has provided no opportunity for the Federation to meet and consider the proposal, understand its purposes and goals, ask about its implementation, or debate its merits.

A formal advertisement is your legal expression to the public that you intend to pass this ordinance as currently drafted, potentially without revision. You should not advertise this if you are not seriously considering, as one option, adopting the ordinance exactly as advertised. As outlined, below, the current language does not seem likely to be something that you would, in fact, adopt without changes. Therefore, you should not advertise it yet.

These revisions are not mere technical or conforming changes. Quite the opposite – they fundamentally change the overall approach to the ordinance. Specifically, the proposed revision would remove the “reasonable person” standard from our current law, by deleting this provision:

*It shall be unlawful for any person or group of persons to unreasonably make, continue or cause to be made a continued any noise disturbance.*



Also, the proposed revision would delete the following as one of the definitions of “noise disturbance:”

[Any sound which] *annoys or disturbs a reasonable person of normal sensibilities;*

We fully recognize that the Virginia Supreme Court has ruled these (some would say common-sense) provisions unconstitutional. But even though these changes are not within the County’s control, they are sweeping and profound – not merely technical. It means that the police and code enforcement officers can no longer intervene to abate an obviously unreasonable or disturbing noise unless either they have measured it with a decibel meter, or else law otherwise specifically prohibits the underlying conduct that is creating the noise.

The staff’s approach to this change correctly recognizes that enforcement with noise meters alone can be impractical in some circumstances. Many obvious disturbances cannot be easily measured with a noise meter, and some sounds that would exceed a noise meter reading are nonetheless reasonable. Thus, the revised ordinance language now contains new enumerated prohibitions and also exceptions and exemptions to the proposed restrictions on decibels.

With this approach, the scale and scope of both the prohibitions and exemptions in the ordinance become critically important, and so you should not advertise language that is too far from what you will ultimately approve. To do so would needlessly alarm some, while lulling others into a false sense of security.

Here are four examples of areas where the current language may not have been fully considered or intended, but are a direct result of the fundamental change away from the “reasonableness” standard:

- For broad categories of activities – including any public or private school activity, religious activities, and sporting events on County property – a complete (24-hour) exemption to the noise ordinance is provided, even if the noise exceeds the decibel level that would, for example, cause physical injury or property damage.
- For private late-night backyard parties (unless there is amplified music), the police would be powerless to address the disturbance unless it is actually measured using a noise meter.
- For by-right construction activity, noise to the maximum level (90dBA) would be allowed continuously from 7 a.m. to 9 p.m. for an indefinite period.
- There are no specific prohibitions or restrictions on common noise irritants such as pneumatic equipment, chain saws, leaf blowers, lawnmowers and the like – meaning that an officer would only be



able to address them if equipped with a noise meter, no matter what the time of day. Likewise, pile driving, which commonly exceeds acceptable noise limits, is not separately addressed from normal construction noise.

It is unknown whether the Federation or others will seek to have those provisions modified, but advertisement of the current language might result in a great deal of time wasted addressing what amount to mere staff oversights instead of focusing on the areas of noise policy that merit more extended discussion or debate about how best to cope with the loss of the “reasonable person” standard. Such areas could include:

- Are the zoning categories in Table I properly divided given the County’s move toward more mixed-use zoning? What is expected to happen along the zoning boundary lines?
- Does the new language strike the right balance by prohibiting outright and at all times amplified music audible inside a dwelling 50 feet away?
- Will the decibel limits in the table sufficiently restrict the various types of noise disturbances that the reasonable person standard may have addressed in the past?
- Are the new procedures for measuring noise in multi-unit structures appropriate? Should there be any differences in how suspected violations are measured from common areas vs. individual units?

The Manager’s report acknowledges that there is “broad interest in examining noise control issues.” We are therefore extremely perplexed that the report nonetheless was prepared without any community outreach, but stated that “no known issues have been identified.” We would respectfully suggest that the issues should be identified before advertisement of such a sensitive ordinance change, and not afterward.

Thank you for your consideration of this letter.

Sincerely,

James Schroll  
President