

Clarke County Board of Supervisors



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To: Board of Supervisors

From: Chris Boies

Re: Noise Ordinance

Date: April 4, 2022

Attached you will find a revised noise ordinance prepared by the County Attorney. As you may recall, there was a landmark Virginia Supreme Court case in 2009 (Tanner v. City of Virginia Beach) which changed the legal standards for noise ordinances across the Commonwealth. The Clarke County ordinance was amended following that case to address the need for specific standards. In discussions with the Sheriff's Office, there are some sections of the current code which need more specificity in order to be enforced. The new version has been reviewed by the Sheriff's Office and Commonwealth's Attorney. If the Board wishes to adopt the new version, a public hearing will be required.

Initial Review: 04/19/2022
Set Public Hearing: 04/19/2022
Publication Dates: May 3 & May 10 Media: Winchester Star, County Website
Public Hearing: May 17, 2022 Code Update: _____
Approved on a motion by: _____

Chapter 120 Noise: The Clarke County Board of Supervisors shall consider amending Clarke County Code Chapter 120 Noise in its entirety.

Chapter 120 Noise

Article I Noise

The Board of Supervisors hereby finds and declares that excessive or unwanted sound is a serious hazard to the public health, safety, welfare, and quality of life, and that the inhabitants of Clarke County have a right to and should be free from an environment of excessive or unwanted sound. Therefore, it is the policy of the County and the purpose and intent of this article to prohibit such excessive or unwanted sound as provided herein.

State law reference—Va. Code § 15.2-1200.

§ 120-1. Administration and enforcement.

- (a) The Sheriff is hereby designated the agent of the Board of Supervisors in the administration and enforcement of this article. Employees of the Building Department, Planning Department, and other officers and employees of the County may assist the Sheriff in the enforcement of this article.
- (b) Nothing in this Section shall preclude a private citizen from obtaining a magistrate's summons based on a probable cause determination by the magistrate's office.

State law reference—Va. Code § 15.2-1200.

§ 120-2. Applicability.

This article shall apply to sound generated within the County, regardless of whether the complainant or the receiving property is within or without the County. This article shall be in addition to any sound or noise regulations set forth in the County Zoning Ordinance.

State law reference –Va. Code § 15.2-1200.

§ 120-3. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Audible and discernable means the sound can be heard by the human ear, and the sound is sufficiently distinct such that its source can be clearly identified.

Background noise level shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Emergency means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle shall be used.

Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

Motor carrier vehicle engaged in interstate commerce means any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Motorcycle means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500)

pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

Motor vehicle means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

Noise means any audible sound which disturbs or tends to disturb humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Public area means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks, and buildings.

Residential dwelling means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound generation means any conduct, activity or operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

§ 120-4. Violations.

- (a) Any person who violates any provision of this article shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this

article within one (1) year after a previous conviction under this article shall be guilty of a Class 2 misdemeanor.

- (b) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident, or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the noise source.
- (c) In addition to and not in lieu of the penalties prescribed in this section, the County may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article and may seek any other remedy authorized by law.

§ 120-5. Use of sound level meters.

The decibel level of any noise regulated on a decibel basis by this article shall be measured by a sound level meter. The test results shall be prima facie evidence if administered in accordance with Virginia Code § 19.2-270.7. In order to implement and enforce this article effectively, the Sheriff shall promulgate standards and procedures for using and testing sound level meters used in the enforcement of this article.

§ 120-6. Maximum Sound Levels/Residential Dwellings.

- (a) Nighttime. No person shall permit, operate, or cause any source of sound to create a sound level that can be heard in another person's residential dwelling during the hours between 10:00 p.m. and 7:00 a.m. in excess of 55 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
- (b) Daytime. No person shall permit, operate or cause any source of sound to create a sound level in another person's residential dwelling during the hours between 7:00 a.m. and 10:00 p.m. in excess of 65 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
- (c) Measurements in multifamily dwellings or mixed use structures. In a structure used as a multifamily dwelling or a mixed use structure, the Sheriff's Office may take measurements to determine sound levels from indoor common areas or other dwelling units within the structure, when requested to do so by a residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling, or floor nearest the noise source, with doors and windows to the receiving area closed.
- (d) Exemptions. The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:
 - 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 officially sanctioned activities in County parks or facilities.

3. Activities related to the construction, repair, maintenance, remodeling or demolition, grading, or other improvement of real property.
4. Gardening, lawn care, tree maintenance or removal, and other landscaping activities.
5. Agricultural activities.
6. Church bells, carillons, or calls to worship by other sound-producing devices.
7. Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution.
8. Public transportation, refuse collection and sanitation services.
9. Sounds generated from the lawful discharge of a firearm. Sport shooting ranges shall also be exempt from these regulations to the extent the range is exempt from these noise regulations pursuant to Va. Code § 15.2-917.

§ 120-7. Motor Vehicle Maximum Sound Levels; Amplified Sound from Vehicles.

- (a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the operation of the motor vehicle or motorcycle, when measured at a distance of one-hundred (100) feet or more is audible and discernable or exceeds the level set forth in the following table:

Vehicle Class	Sound level in dBA	
	Speed limit 35 MPH or less	Speed limit over 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86	90
Any motorcycle	82	86
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

- (b) This section shall not apply to any motor carrier vehicle engaged in interstate commerce.
- (c) Notwithstanding any other provisions of this section or article, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of, any radio, tape player, compact disc player, loud speaker, or other electronic device used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the County, including any public or private street or alley, in such a manner as to be audible and discernable at a distance of one hundred (100) or more feet from the vehicle in which it is located.

The provisions of this subsection shall not apply to motor vehicles driven in a duly authorized parade, nor to motor vehicle alarms or other security devices, nor to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

§ 120-8. Sound Levels/Restaurants.

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during the hours between 7:00 a.m. and 11:00 p.m. in excess of eighty (80) dB(A), or between 11:00 p.m. and 7:00 a.m. in excess of seventy-five (75) dB(A) when measured from any public area including, but not limited to, any public streets or sidewalks, or other private property.

§ 120-9. Specific Prohibitions.

The following acts are declared to be violations of this article. This enumeration shall not be construed to limit, in any way, the general prohibitions contained in section 120-6:

- (a) Vehicle horns, signaling devices and similar devices. Sounding any horn, signaling device, or similar device on any automobile, motorcycle or other vehicle on any right-of-way or in any public space continuously or intermittently for more than ten (10) consecutive seconds, except when the sounding of any such device is intended as a danger warning.
- (b) *Nonemergency signaling devices.* Sounding or permitting the sounding of any amplified signal continuously or intermittently from any bell, chime, siren, whistle, or similar device intended primarily for nonemergency purposes from any one location for more than ten (10) consecutive seconds in any hourly period; provided, however, that this subsection shall not apply to the sounding of such devices by religious users or by public bodies or agencies for testing, traffic control, or other public purposes.
- (c) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, *siren*, whistle, or similar device, for a period in excess of ten (10) minutes in any residential area and fifteen (15) minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.
- (d) *Audio and audio-visual devices, musical instruments, amplified sound etc., excluding those in motor vehicles.* The playing or operation of any television, boombox, stereo, phonograph, radio, tape player, compact disc player, MP3 player, video player, musical instrument, drum, amplifier or any other device that *produces*, reproduces or amplifies sound except for those located in motor vehicles, where the sound, when measured in any public area including but not limited to any public street or sidewalk, or from other private property between the hours of 7:00 a.m. and 11:00 p.m. exceeds eighty (80) dB(A), or between the hours of 11:00 p.m. and 7:00 a.m. exceeds seventy-five (75)

dB(A); provided, however that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the County or for which the County has granted a permit.

- (e) *Noise-sensitive areas.* The making of any unreasonably loud and raucous noise within two hundred (200) feet of any *school*, place of worship, court, hospital, nursing home, or assisted-living facility while the same is being used as such, that substantially interferes with the workings of the institution.
- (f) *Construction equipment.* The operation of any bulldozer, crane, backhoe, front loader, pile driver, *jackhammer*, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m. except as provided in section 23-67 above, or as specifically deemed necessary and authorized by a written document issued by the County Administrator or his designee.

§ 120-10. General Exceptions.

No provisions of this article shall apply to (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the County; or (4) activities for which the regulation of noise has been preempted by federal law.

§ 120-11. Severability.

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.