



County of Fairfax, Virginia

MEMORANDUM

DATE: August 15, 2014

TO: Board of Supervisors

FROM: Stella Koch, Chairman *Stella M. Koch*
Environmental Quality Advisory Council

SUBJECT: EQAC position on Noise Ordinance Modification Proposal

Recommendation

At its meeting on August 13, 2014, the Environmental Quality Advisory Council approved the following recommendation with respect to the proposed Noise Ordinance amendment:

- Specific sound pressure level limits should be included for outdoor construction during daytime hours.
- Specific sound pressure level limits should be included for lawn maintenance.
- An easily enforceable limit should be placed on pet noise

This recommendation was approved by a unanimous vote of the members present, with no abstentions or recusals. Voting in favor were: Larry Zaragoza (Vice Chairman, Mount Vernon); Linda Burchfiel (At-Large); Frank Crandall (Dranesville); George Lamb (At-Large); Robert McLaren (At-Large); David Smith (Braddock); Richard Weisman (Sully); Glen White (Mason); and Clyde Wilber (Springfield).

Brief examination of issues, concerns and suggestions

The Department of Planning and Zoning has developed a proposed amendment to the county's Noise Ordinance (Chapter 108.1 of the Fairfax county Code) in response to a Board of Supervisors' request. This proposal addresses many issues and would be a significant improvement over the existing ordinance. It would provide good protection from noise in the overnight hours while providing exceptions anytime for emergency needs. It also would retain a broad variance option to address conditions where compliance with the noise limits would produce serious hardship without producing equal or greater benefit to the public. However, EQAC is concerned about the extent to which the proposed amendment would relax the existing ordinance by providing additional exceptions to the ordinance during the daytime. People are impacted by noise in the daytime--in particular, shift workers who work at night and need to rest during the daytime exceptions period.

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In addition to emergency conditions, the existing ordinance allows the operation of power lawn mowers and chain saws between the hours of 7 a.m. and 9 p.m. Prior to 2013, the ordinance included a provision to prevent daytime noises that “constitute a noise disturbance.” The provision regarding “constitute a noise disturbance” was deleted in December 2013. A broader provision was added as a new Article 6 of Chapter 5 of the County Code (addressing excessive noise), stating that *no person in any residential area or dwelling shall permit or cause sound that is audible and discernible in any other person’s residential dwelling with the doors and windows to the other person’s residential dwelling closed.* A recent court decision has called into question the legality of noise ordinances that do not provide “ascertainable standards.” As a result, the proposed amendment relies on objective and/or quantitative numerical limits to meet the ascertainable standards test.

Under the modified ordinance as proposed, there would be no limitations on noise produced from lawn maintenance sources as long as the noise would be generated during the specified daytime period. In addition, all daytime noise restrictions would also be removed from construction activities, including repair, maintenance, remodeling or demolition, grading or other improvement of real property. The proposed provisions establishing total daytime exceptions for lawn maintenance and construction activities would be relaxations of the noise protections provided by the current ordinance.

It is EQAC’s view that the establishment of daytime limits on construction and lawn maintenance activities at property boundaries at the levels proposed for other sources would be impractical. It is also EQAC’s view that it is not appropriate to expect these activities to meet the noise restrictions generally applicable to other sources. However, having no limits is not acceptable.

It would be difficult to select a daytime limit for lawn maintenance and construction that would completely address the noise concerns of all potentially affected individuals. A modified ordinance could, for example, include limitations on lawn maintenance and construction at or near 75 dB at a distance of 50-200 feet from the source. 75 dB would typically be perceived at about three times the 60 dB noise level. There will be construction activities that will exceed such a criterion; however, the variance procedures provide a wide range of flexibility where required. Before adopting a specific noise level limit, it is recommended that the lawn equipment and construction industries be consulted.

Pet noise, and in particular barking dogs, can be a serious imposition on quality of life. Enforcement can be difficult. The following language is one possible approach that could be considered:

It shall be unlawful for any person who owns, possesses or harbors any animal or bird to allow that animal or bird to create an unprovoked frequent or unprovoked continued noise disturbance that is audible at least once per minute for twenty (20) 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.

cc: Edward L. Long, Jr., County Executive
David J. Molchany, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning
EQAC file, August 2014