

XX-15-108.1
(See also XX-15-108 and XX-15-5
adopted simultaneously)

ADOPTION OF CHAPTER 108.1 (NOISE ORDINANCE)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium, Lobby Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, November 17, 2015, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted a new Chapter 108.1 (Noise Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA:

That a new Chapter 108.1 (Noise Ordinance) is adopted, as follows:

Amend the Fairfax County Code by adding a new Chapter 108.1, Noise Ordinance, to read as follows:

ARTICLE 1. General Provisions.

Section 108.1-1-1. Short title.

This Chapter may be referred to as the "Noise Ordinance" of the County of Fairfax.

Section 108.1-1-2. Declarations of findings and policy.

The Board hereby finds and declares that certain noise is a hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County; that the people have a right to and should be ensured of an environment free from sound that jeopardizes the public health, welfare, peace and safety or degrades the quality of life; and that it is the policy of the Board to prevent such noise to the extent such action is not inconsistent with Federal or State law.

ARTICLE 2. Definitions.

Section 108.1-2-1. Definitions.

(a) The following words and phrases, when used in this Chapter, shall for the purposes of this Chapter, have the meanings respectively ascribed to them in this Section, except in those situations where the context clearly indicates a different meaning:

(1) *A-weighted sound pressure level* shall mean the sound pressure level as measured on a sound level meter using the A-weighted network. The level so read shall be abbreviated as dBA.

(2) *Board* shall mean the Fairfax County Board of Supervisors.

(3) *Continuous sound* shall mean a sound whose intensity remains essentially constant during the period of observation. Continuous sound shall be defined for measurement purposes as sound which is measured by the slow response setting of a sound level meter.

(4) *Decibel* shall mean a unit which describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

(5) *Device* shall mean any mechanism which is intended to, or which actually produces sound when operated or handled.

(6) *Director* shall mean the Director of the Fairfax County Department of Planning and Zoning or his/her duly authorized agent.

(7) *Discernible* shall mean that the sound is sufficiently distinct such that its source can be clearly identified.

(8) *Dog Park* shall mean either a public or privately owned open space area that is primarily used by dogs not on a leash. A dog park shall not include areas that are located on individual single family residential dwelling lots or a recreational ground.

(9) *Dusk* shall mean thirty (30) minutes after sunset, which is defined as the moment each day when the top of the sun disappears below the western horizon.

(10) *Emergency work* shall mean any work performed for the purpose of preventing or alleviating physical injury or illness or property damage threatened or caused by an emergency, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety, or welfare of the community and the operation of police cars, fire trucks, ambulances, helicopters and other vehicles that are responding to emergencies.

(11) *Golf course* shall mean land area that is either publicly or privately owned and designed for the game of golf with a series of nine (9) or eighteen (18) holes each including a tee, fairway and putting green and often one (1) or more natural or artificial hazards. Any remaining portions of a property containing a golf course, including clubhouses, parking areas and other recreational facilities, shall for the purposes of this Chapter be deemed a recreational ground.

(12) *Impulse sound* shall mean a single or multiple sound event characterized by a rapid rise to a maximum sound pressure of high intensity, followed by a somewhat slower decrease in sound pressure. The duration of an impulse sound event, which includes a combination of rise time, peak amplitude and decay, shall be no more than one (1) second. Impulse sound shall be measured using unweighted peak dB levels and the fast setting of a sound level meter. Impulse sound may include, but is not limited to, sound from weapons fire, pile drivers or blasting.

(13) *Instrument* shall mean any musical instrument, radio, phonograph, compact disc player, amplifier or any other device which produces, reproduces or amplifies sound.

(14) *Landfill* shall mean a site used in a controlled manner by a person for the dumping of debris; or a disposal site operated by means of compacting and covering solid waste with an approved material. This term is intended to include both debris landfills and sanitary landfills as defined in Chapters 104 and 109.1 of the Fairfax County Code.

(15) *Mixed use area* means the parcel on which one (1) or more residential dwellings and at least one (1) other non-residential use are located and any contiguous rights-of-ways, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.

(16) *Motor vehicle* shall mean any vehicle which is self-propelled or designed for self-propulsion including but not limited to, automobiles, trucks, truck-trailers, semitrailers, campers, motorcycles, mini-bikes, motor scooters and motor boats. Motor vehicles shall not include lawn mowers or other lawn equipment and nothing herein shall conflict with state law.

(17) *Noise* shall mean the intensity, frequency, duration or character of sounds from a single source or multiple sources that may degrade the public health, safety or welfare.

(18) *Non-residential area* shall mean a parcel in a residential district that does not contain a residential dwelling and contains non-residential uses such as schools, parks, places of worship, fire stations and sewage treatment plants.

(19) *Person* shall mean any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successor, representative, agent, or agency thereof.

(20) *Plainly audible* shall mean the sound can be heard by the human ear with or without a medically approved hearing aid or device.

(21) *Powered model vehicles* shall mean any mechanically powered vehicle, either airborne, waterborne or landborne, which is not designed to carry persons including, but not limited to, model airplanes, boats, cars, drones and rockets.

(22) *Recreational grounds* shall mean any playground, athletic field, park, school or open space area that is publicly or privately owned, including land owned by a homeowner's or condominium association. Recreational grounds shall not include areas that are located on individual single family residential dwelling lots or dog parks.

(23) *Residential area* shall mean a parcel on which a residential dwelling is located and any contiguous rights of way, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.

(24) *Residential dwelling* shall mean any structure in which one (1) or more persons live on a permanent or temporary basis, including, but not limited to, single family dwellings, multiple family dwellings, hotels and motels.

(25) *Road right-of-way* shall mean any street, avenue, boulevard, highway, or alley which is open to the public.

(26) *Sound* shall mean 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.

(27) *Sound level meter* shall mean an instrument to measure sound pressure levels which shall meet or exceed the American National Standards Institute (ANSI) Standard S1.4 for a "Type Two" meter and shall be calibrated by the manufacturer or a company that can certify the calibration at least one (1) time each year.

(28) *Sound generation or to generate sound* shall mean any conduct, activity or operation, whether human, mechanical, electronic or other, including but not limited to, any animal or bird, and any instrument, machine or device, whether continuous, intermittent or sporadic, and

whether stationary or ambulatory in nature, which produces or results in a sound that is plainly audible and discernible to the human ear.

(29) *Transportation facility* shall mean bus and rail facilities to include stations, platforms, garages, maintenance and staging areas, associated parking areas, and other associated mechanical appurtenances such as traction power stations, communication rooms, train control rooms, tie-breaker stations and other similar facilities

(30) *Zoning administrator* shall mean the Fairfax County Zoning Administrator or his/her duly authorized agent.

(31) *Zoning district classification*: Refers to the scheme of land use classification contained in the Fairfax County Zoning Ordinance.

ARTICLE 3. Administration, Penalties and Authority and Duties.

Section 108.1-3-1. Administration and Enforcement.

(a) The provisions of this Chapter shall be administered and enforced by the Director and/or his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance, and the Department of Public Works and Environmental Services, and shall be assisted by other County departments as applicable.

(b) In addition, the provisions of this Chapter may also be enforced by the Police Department. If so enforced by the Police Department, the civil remedies referenced below shall not be applicable.

(c) The person operating, controlling or allowing the sound generation or source shall be guilty of any violation caused by that generation or source. If it cannot be determined which person is operating, controlling or allowing the sound generation or source, 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 sound generation or source.

(d) Except as hereinbefore provided in Subparagraph (a) of this Section, a warrant may be obtained from a magistrate for the violation of any provision of this Chapter only upon the sworn complaint of a police officer or two (2) persons who are not members of the same household alleging the specific violation complained of, that either or both of the complainants requested or made a reasonable attempt to request abatement of the violation, and that the violation continued after such request. Provided, however, that if there be no more than one (1) household within one half (½) mile of the sound source, a warrant may be issued upon the sworn complaint of one person making the foregoing allegations.

(e) For purposes of this Chapter, whenever a time parameter includes 12 a.m. or midnight, that time parameter shall be construed to end at the specified time on the following day.

(f) All sound requiring analysis or measurement under this Chapter shall be such sound that

traverses a property boundary or a partition between residential dwellings.

Section 108.1-3-2. Penalties.

(a) Any violation of any provision of this Chapter shall constitute a Class 2 misdemeanor and upon conviction thereof, shall be punishable up to no more than six (6) months in jail and a fine of not more than \$1,000, either or both. Failure to abate any such violation within the time period established by the Court shall constitute a separate Class 2 misdemeanor offense.

(b) In lieu of the criminal penalties set forth above, a violation of any provision of this Chapter may be punishable by a civil penalty of not more than \$250, or \$500 for each subsequent offense. However, this civil penalties provision shall not apply to noise generation in connection with business being performed on industrially zoned property, nor shall this provision apply to railroads or to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.

(c) In addition to, and not in lieu of, the penalties prescribed in this section, the Board may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this Chapter and may seek any other remedy or relief authorized by law.

Section 108.1-3-3. Authority and duties of the Director of Planning and Zoning.

In addition to any other authority vested in him by law, the Director or his/her duly authorized agent:

(a) May coordinate the sound control activities of all agencies and departments of the Fairfax County government and advise, consult, and coordinate sound control activities with other local governmental units, state agencies, inter-governmental agencies, the Federal government, and with interested persons and groups with respect to the provisions of this Chapter.

(b) Shall issue such orders, rules and regulations and measurement procedures and methodologies as may be necessary to effectuate the provisions of this Chapter and enforce the same by all appropriate administrative and judicial proceedings.

(c) May enter and inspect any property, premises or place at any reasonable time for the purpose of ascertaining compliance with any provision of this Chapter when granted permission by the owner, or some person with reasonably apparent authority to act for the owner. When permission is refused or cannot be obtained, a proper search warrant may be obtained from a Court of competent jurisdiction upon showing of probable cause to believe that a violation of this Chapter may exist.

(d) May obtain warrants for violations of any of the provisions of this Chapter and apply to any court of competent jurisdiction for such injunctive relief as shall be necessary to terminate continuing violations of this Chapter.

(e) May perform such other acts as may be necessary to carry out the functions of this Chapter and such other acts as may be specifically enumerated herein.

ARTICLE 4. Prohibited Sounds.

Section 108.1-4-1. Specific prohibitions.

The following are violations of this Chapter:

(a) Unless otherwise excepted by this Chapter, the use of a loudspeaker or other instrument that is mounted on the exterior of any structure or motor vehicle between 10 p.m. and 7 a.m. However, this prohibition shall not apply to loudspeakers that are required by State or Federal regulations or provide a public service announcement, such as train or bus arriving.

(b) Any action related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property in the outdoors between 9 p.m. and 7 a.m. on Sunday through Thursday, or between 9 p.m. and 9 a.m. on Fridays, Saturdays, and the day before a Federal holiday.

(c) Outdoor repairing or modifying; any motor vehicle or other mechanical device between 9 p.m. and 7 a.m.

(d) The operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.

(e) Outdoor collection of trash or recyclable materials in residential districts and/or within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(f) Any person that operates or permits to operate any motor vehicle, mechanical device, noise source, or any combination thereof, at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

(g) Outdoor loading or unloading trucks within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(h) Unless otherwise addressed by this chapter, the operation of power lawn equipment, including but not limited to lawn mowers, leaf blowers, chain saws, trimmers and edgers:

(1) Between 9 p.m. and 7 a.m. when operated within 100 yards from a residential dwelling, or

(2) Between 9 p.m. and 6 a.m. when operated 100 yards or more from a residential dwelling, or

(3) Between 9 p.m. and 5:30 a.m. for golf course maintenance when operated 50 yards or more from a residential dwelling; or

- (4) Between 9 p.m. and 7 a.m. for golf course maintenance when operated less than 50 yards from a residential dwelling.

Notwithstanding the above, the operation of leaf blowers and chain saws on all property, including on golf courses, is prohibited between 9 p.m. and 7 a.m.

(i) Unless otherwise excepted by this Chapter, the operation of mechanical devices within 100 yards of a residential dwelling for the cleaning of outdoor parking, pedestrian and/or loading areas between 9 p.m. and 7 a.m.

(j) Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed:

- (1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or
- (2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the residential dwelling is located in a mixed use area and the sound is emanating from a location that is not another residential dwelling.

In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.

(k) Any owner or person in control of any animal that allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound:

- (1) Between 10 p.m. and 7 a.m. that is plainly audible in any other person's residential dwelling with doors and windows closed and the source of sound generation shall be discernible regardless of whether such doors or windows are closed; or
- (2) Between 7 a.m. and 10 p.m. when the animal sound is plainly audible and discernible across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than five (5) consecutive or non-consecutive minutes in any ten (10) minute period of time. Animal sounds that can be heard for less than five (5) consecutive or non-consecutive minutes in any ten (10) minute period shall not be subject to this Chapter.

The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat; when the animal is a police dog that is engaged in the performance of its duties at the time of making the sound; or when part of a bona fide agricultural operation. This provision shall apply to all animal sounds emanating from the same property. Notwithstanding the provisions of this paragraph, animals located in a dog park shall be subject to the provisions of Par. (l) below.

(l) The use of dog parks between dusk and 7 a.m. Sunday through Thursday, or between dusk and 8 a.m. on Friday, Saturday and the day before a Federal holiday.

Section 108.1-4-2. Sound generation.

(a) Unless otherwise addressed by this Chapter, no person shall permit, operate, or cause any source of sound or sound generation to create a sound which exceeds the limits set forth in the following table titled "Maximum Sound Levels" when measured at the property boundary of the sound source or at any point within any other property affected by the sound. When a sound source can be identified and its sound measured in more than one (1) zoning district classification, the sound shall not exceed the sound limits set forth in the following table for the zoning district or area in which the source of sound is located, and the sound levels on the affected properties shall not exceed the sound levels set forth in the table for the affected property.

MAXIMUM SOUND LEVELS			
Use and Zoning District Classification	Time of Day	Continuous Sound (dBA)	Impulse Sound (dB)
Residential Areas (as defined herein) in Residential Districts	7 a.m. to 10 p.m.	60	100
Residential Areas (as defined herein) in Residential Districts	10 p.m. to 7 a.m.	55	80
Non-Residential Areas in Residential Districts	All	60	100
Mixed Use Area (as defined herein)	7 a.m. to 10 p.m.	65	100
Mixed Use Area (as defined herein)	10 p.m. to 7 a.m.	60	80
Commercial Districts	All	65	100
Industrial Districts	7 a.m. to 10 p.m.	72	120
Industrial Districts	10 p.m. to 7 a.m.	65	100

ARTICLE 5. – Exceptions.

Section 108.1-5-1. Exceptions.

No provisions of this Chapter shall apply to:

(a) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any such threat is no longer imminent.

(b) The emission of sound in the performance of emergency work.

(c) Activities for which the regulation of sound has been preempted by Federal or State law.

(d) Motor vehicles on road right-of-way.

(e) Operation of airplanes and helicopters.

(f) Trains traveling on tracks located in railroad right-of-way or easements, including trains serving an interstate area and trains serving the Washington metropolitan region, and railroad track maintenance.

(g) Back-up generators subject to the following:

(1) The operation of back-up generators during power outages resulting from storms and other emergencies.

(2) The routine testing and maintenance of back-up generators provided that such activity occurs between 7 a.m. and 9 p.m. and the routine testing shall not occur for more than two (2) consecutive or non-consecutive hours in any one (1) day. The testing and maintenance of such generators is prohibited for (i) more than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9 p.m. to 7 a.m.

(h) Mechanical equipment, to include heat pumps, air conditioners and swimming pool pumps, located on property containing single family detached or attached residential dwellings that is operating in accordance with the manufacturer's specifications and serves the dwelling and/or permitted accessory structure.

(i) Activities associated with the removal of snow and/or ice from walkways, parking areas and travel lanes.

(j) Impulse sound that does not exceed the maximum impulse sound levels contained in the Maximum Sound Levels Table contained in Sect.108.1-4-2 above.

(k) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property between 7 a.m. and 9 p.m., provided that such activity does not exceed 90 dBA in residential areas, and it shall be a violation of this Chapter to commence such activity before 9 a.m. on Saturdays, Sundays, and Federal holidays.

(l) Operation of power lawn equipment:

(1) Between 7 a.m. and 9 p.m. when operated within 100 yards from a residential dwelling; or

(2) Between 6 a.m. and 9 p.m. when operated 100 yards or more from a residential dwelling; or

(3) Between 5:30 a.m. and 9 p.m. for golf course maintenance when operated 50 yards or more from a residential dwelling; or

- (4) Between 7 a.m. and 9 p.m. for golf course maintenance when operated less than 50 yards from a residential dwelling.

Notwithstanding the above, the operation of leaf blowers and chain saws is not permitted prior to 7 a.m. on any property, including on golf courses.

(m) Operation of mechanical devices to sweep or clean outdoor parking, pedestrian and/or loading areas, except it shall be a violation of this Chapter to operate such devices when located within 100 yards of a residential dwelling between 9 p.m. and 7 a.m.

(n) Trash and recycling collection, except it shall be a violation of this chapter to collect trash or recyclable materials in the outdoors in residential districts and/or within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(o) Operation of a landfill, except it shall be a violation of this Chapter for any person to operate or permit to operate any motor vehicle, mechanical device, noise source, or any combination thereof, at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

(p) The testing of plainly audible and discernible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger, provided that such testing occurs between 7 a.m. and 9 p.m. and shall not occur for more than two (2) consecutive or nonconsecutive hours in any one (1) day. The testing of such signal devices is prohibited for (i) more than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9 p.m. to 7 a.m.

(q) Operation of transportation facilities between 7 a.m. and 9 p.m.

(r) Activity on recreational grounds customarily associated with its intended use shall not be subject to the provisions of this Chapter between 7 a.m. to 10 p.m. on Sunday through Thursday, or between 7 a.m. and 11 p.m. on Friday and Saturday or the day before a Federal holiday. The use of loudspeakers or instruments associated with such activities shall be prohibited between 10 p.m. and 7 a.m. and shall be subject to the Maximum Sound Levels Table in Sect. 108-1.4.2 between 7 a.m. and 10 p.m.

(s) The use of dog parks between 7 a.m. and dusk Monday through Friday, or between 8 a.m. and dusk on Saturday, Sunday and Federal holidays.

(t) Bells, carillons, and other calls to worship shall not be subject to this chapter between 7 a.m. and 10 p.m. provided that any such sounds do not occur for more than five (5) consecutive or nonconsecutive minutes in any one (1) hour.

ARTICLE 6. Waivers

Section 108.1-6-1. Waivers.

(a) Any person responsible for any noise source may apply to the Director for a waiver or partial waiver from the provisions of this Chapter. The Director may grant such waiver or partial waiver if he/she finds that:

- (1) The noise does not endanger the public health, safety or welfare; or
 - (2) Compliance with the provisions of this Chapter from which waiver is sought would produce serious hardship without producing equal or greater benefit to the public; and
 - (3) Reasonable efforts shall be made to minimize the adverse impacts of the noise on adjacent properties.
- (b) The waiver application shall be filed at least fourteen (14) days prior to the date on which the waiver or partial waiver is to take effect.

(c) In determining whether to grant such waiver, the Director shall consider the time of day when noise will occur, duration of the noise, its loudness relative to the required limits of this Chapter, whether the noise is intermittent or continuous, its extensiveness, ambient noise levels, the technical and economic feasibility of bringing the noise into conformance with this Chapter and such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this Chapter.

(d) No waiver or partial waiver issued pursuant to this Section shall be granted for a period to exceed one (1) year, but any such waiver or partial waiver may be renewed for like periods if the Director shall find that such renewal is justified after again applying the standards set forth in this Section. No renewal shall be granted except upon application therefor.

(e) Any person aggrieved by a decision of the Director made pursuant to this Section may obtain review of such decision by the County Executive by delivering a written statement of grievance to the Office of the County Executive within thirty (30) days from the date of the decision.

The County Executive shall review all statements of grievances and shall, within sixty (60) days from the date of the Director's decision, either affirm or set it aside, making such further order as shall be necessary to effectuate the provisions of this Section.

ARTICLE 7. Proffered and Development Condition Applicability

Section 108.1-7-1 Proffered and Development Condition Applicability.

The provisions of this Chapter shall not negate any applicable proffered condition, development condition, special permit or special exception condition pertaining to noise or sound. Any condition that refers to the Noise Ordinance shall be deemed to refer to the text of the Noise Ordinance in effect at the time the condition was approved.

ARTICLE 8. Severability

Section 108.1-8-1. Severability.

If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

This amendment shall become effective on February 17, 2016 at 12:01 a.m.

GIVEN under my hand this 17th day of November, 2015.

CATHERINE A. CHIANESE
Clerk to the Board of Supervisors