

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

ADOPTION OF AN AMENDMENT TO
CHAPTER 5 (OFFENSES)
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 an amendment regarding Chapter 5 (Offenses) 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 Chapter 5 (Offenses), is amended by repealing Article 6, Excessive Sound Generation in Residential Areas and Dwellings, as follows:

Amend Chapter 5, Offenses, Article 6, An Ordinance to Regulate Certain Excessive Sound Generation in Residential Areas and Dwellings, by repealing it in its entirety.

~~**5-6-1. Declaration of findings and policy.**~~

~~The Board hereby finds and declares that certain audible and discernible sounds are a serious 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 an environment free from such sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the Board to prevent such sound to the extent such action is not inconsistent with a citizen's First Amendment rights.~~

~~**5-6-2. 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:~~

~~*Audible* means the sound can be heard by the human ear with or without a medically approved hearing aid or device.~~

~~*Discernible* means that the sound is sufficiently distinct such that its source can be clearly identified.~~

~~*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, 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.~~

~~*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 the amplification of sound.~~

~~*Residential area* means the 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.~~

~~*Residential dwelling* means any building or other structure, including multifamily and mixed use structures, in which one or more persons lives on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.~~

~~*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 or to generate sound means 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 audible and discernible to the human ear.~~

~~5-6-3. Administration and enforcement.~~

- ~~(a) The police department may issue a summons for enforcement of the noise control program established by this article and may be assisted by other County departments as required.~~
- ~~(b) Nothing in this section shall preclude a private citizen from obtaining a magistrate's summons based upon a probable cause determination by the magistrate's office.~~

~~5-6-4. 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 from the date of a prior conviction under this ordinance shall be guilty of a Class 2 misdemeanor.~~
- ~~(b) The person operating or controlling 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 or controlling 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.~~
- ~~(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 ordinance and may seek any other remedy or relief authorized by law.~~

~~5-6-5. Exceptions.~~

~~No provisions of this ordinance shall apply to:~~

- ~~(1) 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;~~
- ~~(2) The emission of sound in the performance of emergency work;~~
- ~~(3) Activities for which the regulation of noise has been preempted by federal or state law;~~

- (4) Motor vehicles travelling on a public right of way;
- (5) Back up generators operating during power outages resulting from storms and other emergencies;
- (6) Heat pumps and/or air conditioners located on property containing single family detached or attached dwellings that are operating in accordance with the manufacturer's specifications;
- (7) Operation of public transportation facilities;
- (8) Work authorized by a variance or partial variance pursuant to Article 6 of Chapter 108 of the Code.

~~5-6-6. Sound generation and residential dwellings.~~

- (a) ~~No person in any residential dwelling or residential area, including the common areas of multifamily dwellings or mixed use structures, shall permit, operate, or cause any source of sound or sound generation to create a sound that is audible in any other person's residential dwelling with the doors and windows to the other person's residential dwelling closed. In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.~~
- (b) ~~*Exemptions.* The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 9 p.m. from the prohibition set forth in section (a) of this section:~~
 - (1) ~~Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, except no such activities shall commence before 9 a.m. on Saturdays, Sundays, and federal holidays.~~
 - (2) ~~Gardening, lawn care, tree maintenance or removal, and other landscaping activities.~~
 - (3) ~~Refuse collection and sanitation services, except that refuse collection and sanitation services may begin at 6:00 a.m.~~
 - (4) ~~The testing of audible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger.~~
- (c) ~~The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 11 p.m. from the prohibition set forth in section (a) of this section:~~
 - (1) ~~Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds.~~
 - (2) ~~Bells, carillons, and other calls to worship provided that any such sounds do not occur for a duration of longer than 5 minutes per hour.~~
- (d) ~~*Prohibitions.*~~

- (1) ~~Use of a loudspeaker or other sound amplification device that is mounted in a fixed or movable position on the exterior of any structure between the hours of 11 p.m. and 7 a.m.~~
- (2) ~~Repairing or modifying any motor vehicle or other mechanical device in the outdoors between 9 p.m. and 7 a.m.~~
- (3) ~~Operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.~~
- (4) ~~Collection of trash in residential districts and/or within 100 yards of a residence between 9 p.m. and 6 a.m.~~
- (5) ~~Operation of power lawn equipment between 9 p.m. and 7 a.m.~~
- (6) ~~Loading or unloading trucks in the outdoors within 100 yards of a residence between 9 p.m. and 6 a.m.~~
- (7) ~~Sound generation in an area designated by the Board as a quiet zone.~~

~~5-6-7. 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.~~

~~5-6-8. Effect on Chapter 108.~~

- (a) ~~Article 5 of Chapter 108 of the Fairfax County Code is hereby repealed in its entirety. *But see* Article 6 of Chapter 5 of this Code.~~
- (b) ~~To the extent that anything in this Ordinance in regard to the regulation of certain sound generation in residential areas and dwellings, conflicts with any provision of Chapter 108 of this Code entitled "Noise," this article supersedes any such provision in Chapter 108. In addition, notwithstanding anything in this article, all development conditions and proffers of any nature that refer to the Noise Ordinance shall be deemed to apply to Chapter 108 and not this article, and all such development conditions and proffers are unaffected by this article and shall remain in full force and effect. Nor shall anything in this Ordinance be construed to exempt any use from any future development conditions or proffers related to noise.~~

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