



BOARD APPROVED

DATE 10-15-19

KING GEORGE COUNTY BOARD OF SUPERVISORS' AGENDA

Meeting Date: October 15, 2019
Item Number: **10-09B**

Subject: Proposed Amendments to King George County Noise Ordinance, County Code Section 10-8.

Recommended Action: Authorize staff to schedule and advertise a public hearing concerning the proposed amendments to the King George County Noise Ordinance, County Code Section 10-8, to prohibit the discharge of firearms in non-hunting activities between the hours of 10:00 p.m. and 6:00 a.m., where the decibel level is above 65dBA.

Summary of Information: In 2013, the Board of Supervisors promulgated amendments to the County Noise Ordinance in order to impose enforceable prohibitions on certain types of noise that included objective sound measurement standards for daytime and nighttime hours. These amendments were, in part, a response to the Virginia Supreme Court case of *Tanner v. City of Virginia Beach*, 277 Va. 432, 674 S.E.2d 848 (2009).

The 2013 amendments also included a fairly broad exemption for "the lawful discharge of firearms," as did many similar noise ordinance amendments adopted in Virginia before and after the *Tanner* case. This exemption was included in recognition of certain state law limitations on the local regulation of firearms and shooting and in deference to the 2nd Amendment of the Constitution of the United States, lawful activities such as hunting, and the County's rural character. The Sheriff is responsible for enforcement of the Noise Ordinance and acquired the necessary sound measuring equipment for this purpose in 2013, in compliance with the ordinance and applicable provisions of state law.

Unfortunately, it appears that the exemption for the lawful discharge of firearms is now inhibiting the County's ability to enforce the Noise Ordinance so as to prevent the regular and persistent discharge of firearms at night that is becoming a nuisance and cause for complainants from the public. To our knowledge, there is no particular state law that prohibits the discharge of firearms at night that would authorize local enforcement. Any reasonable person would not be discharging firearms at night to the detriment of one's neighbors, but there are unique situations that may necessitate a reasonable response in the form of prevention through regulation. But any such regulation should be narrowly tailored to achieve the desired goal.

To that end, it is recommended that the Board authorize staff to advertise and schedule a public hearing for the Board to receive public comment and consider proposed amendments to the County's Noise Ordinance to restrict the exemption for "the lawful discharge of firearms" by providing that the exemption shall not apply to non-hunting activities between the hours of 10:00 p.m. and 6:00 a.m. to the extent that such noise/sound rises above 65dBA. The proposed amendment is narrowly tailored to achieve the desired end and is consistent with applicable state law that implies that local regulation of noise resulting from shooting firearms must not be more stringent than is applied to other activities. I have discussed the proposed amendments

with Sheriff Dempsey and Deputy Commonwealth's Attorney Charlie Clarke and they agree that the proposed amendments should provide adequate enforcement authority.

As with any ordinance, if problems or concerns develop with its application or enforcement, the Noise Ordinance can be amended to address such concerns. Pending further input from the public hearing and further direction from the Board, staff recommends adoption of the DRAFT Noise Ordinance Amendments, as presented.

Legal Review X **Complete** _____ **N/A**

Attachments X **Yes** _____ **No**

Attachment:

- DRAFT Proposed Amendments to the King George County Noise Ordinance



A RESOLUTION
TO APPROVE AND PROMULGATE AMENDMENTS
TO THE COUNTY NOISE ORDINANCE,
SECTION 10-8 OF THE COUNTY CODE

WHEREAS, Section 15.2-1200 of the *Code of Virginia* empowers local governing bodies, such as the King George County Board of Supervisors, to “adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth”; and,

WHEREAS, in 2013, the Board of Supervisors approved and promulgated amendments to the Noise Ordinance, Section 10-8 of the County Code to incorporate the use of objective standards and sound measuring devices, consistent with the Virginia Supreme Court case of *Tanner v. City of Virginia Beach*, 277 Va. 432, 674 S.E.2d 848 (2009); and,

WHEREAS, the 2013 amendments provided an exemption for the “lawful discharge of firearms” in deference to limitations on local authority, applicable case law, the Second Amendment to the Constitution of the United States, lawful hunting activities, and the County’s rural character; and,

WHEREAS, notwithstanding this exemption, it has become apparent that further, narrowly tailored, regulatory measures are necessary to prohibit the discharge of firearms in non-hunting activities at night, in order to secure and promote the health, safety, and general welfare of County inhabitants; and,

NOW, THEREFORE, BE IT RESOLVED by the King George County Board of Supervisors that Section 10-8 of the Code of the County of King George, Virginia, is hereby amended and reenacted to read as follows:

Sec. 10-8. - Noise ordinance.

- (a) *Title*. This section may be referred to as the "Noise Ordinance" of King George County.
- (b) *Declaration of findings and policy*. The board of supervisors hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of King George County to prevent such excessive sound.
- (c) *Applicability*. The provisions of this section shall apply within the corporate boundaries of King George County.

(d) *Declaration of policy and purpose.* It is hereby declared to be the policy of the county and the purpose of this ordinance to promote an environment for its residents free from noise that jeopardizes their health or welfare or degrades the quality of life.

(e) *Definitions.* The following words and phrases, when used in this section, shall have the meaning assigned to them, as follows:

Agricultural production means the production of crops, livestock and livestock products, but not land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products.

Agricultural products means crops, livestock and livestock products which shall include, but not be limited to, the following:

- (1) Field crops, including corn, wheat, oats, rye, barley, hay, tobacco, peanuts, potatoes and dry beans;
- (2) Fruits, including apples, peaches, grapes, cherries and berries;
- (3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions;
- (4) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
- (5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs and furs.

A-weighted sound pressure level means the sound pressure level as measured on a sound level meter using the A-weighted scale and programmed to slow response. The level so read shall be prescribed dB(A) or dBA.

dBA means the sound pressure level as measured on a sound meter set to slow response and to the A-weighted scale to approximate the frequency response of the human auditory system.

Decibel means a unit which describes the sound pressure level or intensity of sound. The sound pressure level in decibels is 20 times the logarithm to the base ten of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

Emergency work means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service authorities or companies when emergency inspection, repair of facilities or restoration of services is required for the immediate health, safety or welfare of the community.

Horticultural products include commercial flowers, nursery stock, ornamental shrubs, ornamental trees and Christmas trees.

Holiday includes federal and state-recognized holidays, including but not limited to New Year's Day, Memorial Day, Labor Day, Christmas Day, Thanksgiving Day, Independence Day, Martin Luther King, Jr. Day, and Lee-Jackson Day.

Lav (dBA) means the average A-weighted sound pressure level measured over any continuous four-hour period.

Noise means any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.

Noise source includes any equipment, any on or off road motor vehicle, facility, fixed or movable, or animal capable of producing sound audible beyond the property boundary of the property on which the equipment is used or animal is located.

Person means any individual, corporation, cooperative partnership, firm, association, trust, estate, private institution, group, agency or any legal successor, representative, agent or agency thereof.

Public right-of-way means any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.

Silvicultural products include, but are not limited to, lumber, pulpwood, posts, firewood, and other wood products for sale or for farm use.

Sound means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

Sound level meter means an instrument to measure sound pressure levels which shall meet or exceed performance standards for a "type two" meter as specified by the American National Standards Institute.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

Zoning district refers to the scheme of land use classification contained in the King George County Zoning Ordinance.

(f) *Prohibited noise generally.* It shall be unlawful for any person to create any noise and/or sound which exceeds the maximum permissible levels as follows:

Maximum dBA:

Between 6:00 a.m. and 10:00 p.m.: 75 dBA

Between 10:00 p.m. and 6:00 a.m.: 65 dBA

There is an exception from generally applicable maximum permissible levels and the maximum permissible levels under the following circumstances shall apply:

Friday nights between 10:00 p.m. and 12:00 a.m.: 70 dBA

Saturday nights between 10:00 p.m. and 12:00 a.m.: 70 dBA

Nights preceding federal and state-recognized holidays between 10:00 p.m. and 12:00 a.m.: 70 dBA

(g) *Exceptions and exemptions.* The provisions of this chapter shall not apply to the following activities or conditions:

(1) Emergencies and emergency work.

(2) Authorized repair, restoration, maintenance, replacement and/or alteration of public property, facilities, and equipment.

(3) The production of agricultural, horticultural and silvicultural products.

(4) Sawmill operations, between the hours of 6:00 a.m. and 10:00 p.m.

(5) Public and/or permitted ceremonies, celebrations, parades, sporting and other events, between the hours of 6:00 a.m. and 10:00 p.m.

(6) The lawful discharge of firearms, except that this exemption shall not apply to the discharge of firearms in non-hunting activities, between 10:00 p.m. and 6:00 a.m.: 65 dBA (maximum permissible noise and/or sound level).

(7) Sound from churches, synagogues and other places of worship, including church bells.

(8) Sound traditionally associated with sporting events.

(9) Sound from events conducted, authorized, or permitted by the Department of Parks and Recreations and School Division.

- (10) Sound produced by or emanating from the lawful operation of public or private landfills, utilities, and electrical power generation and transmission facilities.
 - (11) Sound produced by or emanating from any lawfully operating area permitted by the Virginia Department of Mines, Minerals and Energy.
 - (12) Sound produced by or emanating from United States military facilities.
 - (13) Sound produced by electrical power generators during electrical power utility outages.
 - (14) Sound produced by home improvement, lawn maintenance, and gardening activities, including but not limited to sound produced by power equipment utilized for these purposes, between the hours of 6:00 a.m. and 10:00 p.m.
- (h) *Responsibility of the property owner.* In addition to the person and/or persons creating or causing noise and or sound under this ordinance, it shall be unlawful for a property owner to knowingly allow noise and/or sound prohibited by this chapter, within the boundaries of his or her property; and such person may also be charged under this section in addition to or in the alternative of the person creating the noise.
- (i) *Enforcement.* The provisions of this section shall be enforced by the sheriff and/or Virginia State Police, who may issue orders and regulations and prescribe measurement procedures for such enforcement.
- (j) *Measurement.*
- (1) Any person authorized to enforce this ordinance may use equipment deemed proper pursuant to Code of Virginia, § 2.2-1112(C), as amended from time-to-time, to determine the decibel level of any sound, including noise. The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue.
- In any court or legal proceeding in which any question arises about the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for accuracy of the equipment, and when and by whom the calibration or test was made, shall be admissible as evidence of the facts therein stated. No calibration or testing of such equipment shall be valid for longer than 12 months.
- (2) The measurement shall be taken at any point within the receiving property affected by the noise.
- (k) *Penalties.* Any person who violates this section shall be subject to a civil fine of \$250.00 for the first offense and a civil fine of \$500.00 for a second offense committed within a one-year period. A third offense committed within a one-year period, shall constitute a Class 2 misdemeanor, and the offender shall be subject to penalties applicable under state law. The judge or court hearing the matter also shall have the authority to order abatement of the noise or activity causing the noise or other appropriate remedies, including injunctive relief.
- (l) *Severability.* If any portion or part of this section or its subsections, paragraphs, sentences, clauses, or phrases shall be declared unconstitutional, invalid, or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect the validity of the section in its entirety or any of the remaining portions, parts, subsections, paragraphs, sentences, clauses, or phrases of the section.

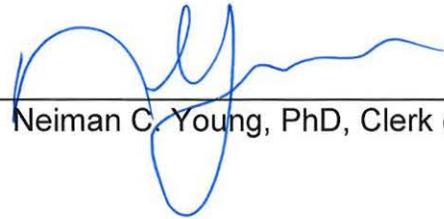
(Ord. of 12-18-2007; Ord. of 8-20-2013; *Ord. of 10-15-2019*)

State Law reference— Code of Virginia §§ 2.2-1112; 15.2-1200; 18.2-11.

Adopted on a motion by Supervisor BRABO and seconded by Supervisor GRANGER and pursuant to a roll-call vote of the Supervisors, as recorded below, at their regularly scheduled meeting on the 15th day of OCTOBER, 2019:

Chairman Jeff Bueche:	<u>AYE</u>
Vice-chair Cathy Binder:	<u>AYE</u>
Richard Granger:	<u>AYE</u>
Ruby Brabo:	<u>AYE</u>
John Jenkins:	<u>AYE</u>

ATTEST: _____



Neiman C. Young, PhD, Clerk of the Board