

ARTICLE V. - NOISE^[5]

Footnotes:

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Editor's note—Ord. No. 09-O-129, adopted November 24, 2009, repealed and reenacted article V in its entirety to read as herein set out. Formerly, article V, divisions 1 and 2, pertained to similar subject matter, and derived from the Code of 1970, §§ 16A-1—16A-11; an ordinance of February 16, 1988; an ordinance of October 31, 1989; an ordinance of February 19, 1991, and Ord. No. 00-O-079, adopted June 27, 2000. This article shall become effective on February 1, 2010.

Cross reference— Outdoor concerts, § 6-30; permitting animals or fowls to create a public nuisance prohibited, § 10-6; noise from automobile graveyards, § 19-86; ice cream vendor noisemaking devices, § 19-195; church and hospital quiet zones, § 66-4; unnecessary noise in the operation of motor vehicles, § 74-27; sound trucks, § 74-406 et seq.; muffling devices for motorboats, § 86-7.

DIVISION 1. - POLICY AND DEFINITIONS

Sec. 26-121. - Declaration of policy.

It is declared to be the public policy of the city, in cooperation with federal, state and local governments and regional agencies, to promote an environment for its citizens free from noise that jeopardizes their health or welfare or degrades quality of life. Nothing contained in this article shall be construed to authorize or direct any action which shall result in any substantial increase in noise levels from any noise source in the city.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-122. - Definitions.

The following words, when used in this article, shall have the following respective meanings, unless the context clearly indicates a different meaning:

Administrator means the city manager designees, including without limitation, the chief of police and the zoning administrator, or their respective designees, each of which shall have full authority to administer and enforce this article. The city manager may designate additional administrators as deemed appropriate.

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of Code of Virginia (1950), as amended.

Powered equipment means any machine, tool, or device powered by electric, gasoline, diesel, propane, battery or by any other means, including without limitation, saws, drills, pneumatic hammers, lawn mowers, lawn edgers and leaf blowers.

Public property or *public place* means any real property owned or controlled by the city or any other governmental entity.

Plainly audible means capable of being perceived by a person of normal hearing ability, including persons dependent upon functioning hearing aid devices.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, alley or any other area of passage owned or controlled by the city or any other governmental entity.

Real property boundary or *boundaries* means the property line along the ground surface, and its vertical extension, which separates the real property owned by one person or entity from that owned by another person or entity.

Residential means single-family, two-family, townhouse, multi-family, residential planned unit development, and residential dwellings in mixed-use district classifications.

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

Sound level means the sound pressure level obtained by the use of a sound level meter and the A-Frequency weighting network for overall sound levels and flat rated for octave band sound levels, as specified in American National Standards Institute specifications for sound level meters.

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

(Ord. No. 09-O-129, 11-24-09)

DIVISION 2. - PROHIBITED NOISES—GENERALLY AND PROHIBITED ACTS

Sec. 26-123. - Prohibited noise—Generally.

It shall be unlawful for any person, including any officer, employee, department, agency or instrumentality of any political subdivision, to make or continue to make or to cause any noise prohibited by this article within the city limits, or to allow the creation of any such noise upon property such person owns, leases, occupies or otherwise controls, within the city limits.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-124. - Noise—Prohibited acts 10:00 p.m.—6:30 a.m.

The following acts are declared to be prohibited if conducted between the hours of 10:00 p.m. and 6:30 a.m. the following day and generating sound plainly audible i) across real property boundaries; ii) through walls or partitions common to two units within a building; or iii) at a distance of 50 feet or more from the source of the noise:

- (1) Using or operating a loudspeaker or other amplification machine or device in a fixed or movable position exterior to any building, but not subject to regulation as a sound truck under section 74-406 et seq. of this Code, for the purpose of commercial advertising; attracting attention to any performance or event; giving instructions, information, directions, talks, addresses, lectures; or providing entertainment to any persons or assemblage of persons.
- (2) Using or operating any drum, musical instrument, television, phonograph, compact disc player, cassette tape player, MP3 player, video player or any other machine or device for producing or reproducing sound, including using and playing such machines and devices within a motor vehicle operated or parked on public or private property or on public right-of-way, including streets, highways, roads and alleys.
- (3) Construction, erection, demolition, alteration, repair, excavation or demolition work on public or private property, or in any building, structure, street, road, highway or alley.
- (4) Operation of any lawn mower blower, power fan, steam engine or other powered equipment.
- (5) Repairing, rebuilding, modifying, testing, revving the engine or unlawfully blowing the horn of any motor vehicle, motorcycle, all-terrain vehicle, mini-bike, moped, scooter bike or similar vehicle powered by an internal combustible engine.
- (6) Operating any motor vehicle, motorcycle, all-terrain vehicle, mini-bike, moped, scooter, bike or similar vehicle, or any machine or device powered by an internal combustible engine without a functional device to muffle the engine noise.
- (7) Any yelling, shouting or singing.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-125. - Noise—Prohibited acts adjacent to residential uses.

The following acts are declared to be prohibited if conducted between the hours of 10:00 p.m. and 6:30 a.m. the following day, if generating sound plainly audible on any property used or zoned for residential purposes located a distance of 50 feet or more from the source of the noise:

- (1) Operating on any private property a street sweeper or similar item of machinery or equipment designed to clean streets, driveways, curbs, gutters, drive aisles, loading areas and parking areas.
- (2) Collecting trash or refuse on property not used or zoned for residential purposes.
- (3) Loading or unloading of trucks and trailers and the handling of containers, boxes, crates and similar items.

Notwithstanding the foregoing, no owner or operator of a business at which the activities proscribed in this section take place shall be found in violation of this article if such owner or operator, or authorized agent thereof, is able to show that prior to the date of violation (i) a copy of this section was mailed or delivered to the contractor or service provider responsible for committing the violation, and (ii) a legible sign was posted, and at the time of the violation remained, in a prominent location on the premises at which the violation occurred listing the activities prohibited by this section.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-126. - Noise prohibited acts—Animals.

It shall be unlawful to own, keep, possess or harbor any animal which howls, barks, meows, squawks or makes such other noise for more than ten consecutive or non-consecutive minutes in any 30-minute period of time, between the hours of 10:00 p.m. and 6:30 a.m. the following day, if throughout the ten-minute period, the noise generated by the animal is plainly audible (i) across real property boundaries, (ii) through partitions common to two dwelling units, or (iii) at a distance of 50 feet or more from the source of the noise.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-127. - Citizen enforcement.

Any citizen having sufficient evidence of violation of one or more of the prohibitions set out in sections 26-124 through 26-126 above may present such evidence and make affidavit to the Chesapeake Magistrate and request issuance of a summons or warrant based thereon. Corroboration of the alleged violation by the police department or the administrator shall not be necessary in order for a citizen to pursue a summons or warrant against another person for such violation. In no event shall this section be construed as a limitation or restriction of any person's right to access the courts or to seek the abatement of violations of this article by any lawful means.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-128. - Reserved.

DIVISION 3. - STANDARDS, MEASUREMENTS, AND PENALTIES

Sec. 26-129. - Noise violations measured by sound level meter.

In addition to the per se violations of sections 26-124 through 26-126 above, certain other noises violate this article due to the source, timing, duration, character, location, frequency and volume of noise. A sound level meter shall be used to determine the sound pressure levels for the purpose of determining when noises other than those described in sections 26-124 through 26-126 above constitute a violation of this article.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-130. - Measurement procedure; maximum permitted levels.

(a) During the course of an investigation of a noise complaint under this division, the administrator shall employ the use of a type 1 or type 2 sound level meter that meets the specifications of the American National Standards Institute publications, Sections 1.4-1983 (R 2006) and 1.11-1986 (R 1998) thereof or such other equipment as may be prescribed by the Virginia Division of Purchases and Supply ("division") to determine the decibel level of sound. The chief of police shall be responsible for ensuring that all such equipment and devices meet or exceed the standards established by the division and shall maintain, inspect, calibrate, and test for accuracy all such equipment and devices on a schedule and in accordance with standards established by the division. The results obtained by any law-enforcement officer using a sound level meter deemed proper pursuant to the division standards 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.

Unless otherwise required by the standards established by the division, the administrator shall make a sound level measurement utilizing the A weighting scale and the fast meter response. Decibels shall be measured and sound meters calibrated using the following reference value for dBAs and dBs: 2×10^{-5} N/m(2). In any court or legal proceeding in which a 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.

Unless otherwise specifically stated herein, a measurement exceeding the noise spectra limit set forth in the maximum overall sound pressure level in the dBA column (Column 1) or the maximum octave band sound pressure level in the dB column of Table 1 below shall be deemed a violation of this article. The maximum octave band sound pressure levels in decibels (Column 3) shall be measured in conjunction with the octave band limits set out in the middle column of Table 1 (Column 2).

- (b) Notwithstanding anything to the contrary in subsection (a) of this section, no person shall operate or cause to be operated any source of sound at any location within the city or allow the creation of any noise on property he or she owns, leases, occupies or otherwise controls, which causes the sound level, measured on any other property, to exceed the maximum dBA (Column 1) or maximum dB (Column 3) sound pressure levels set out in Table 1 below.
- (c) Should the administrator determine the noise to be of an impulsive character (such as hammering, riveting or amplified bass music) or contain a steady, pure tone (such as a whine, screech or hum), the standard limits set forth in the maximum dB (Column 1) of Table 1 shall be reduced by five (5) dB.
- (d) Sound pressure levels shall be measured from the property at which a complaint is filed or from any property from which the noise can be heard, using the closest point of such property to the source of the noise. The area zoning classification used to determine a violation of the maximum sound pressure levels set out in Table 1 shall refer to the zoning classification or use, or in the case of mixed use areas and planned unit developments, the land use designation of the property from which the complaint is made or the sound is heard.
- (e) The city manager or designee shall develop and implement standard measurement procedures for use in operating a sound level meter, which procedures may be revised by the city manager or designee from time to time as deemed necessary. The procedures shall conform with the standards established by the division as provided in subsection (a) above. Unless incorporating a requirement of state law, the procedures shall serve as guidance and shall not be deemed a part of this article.

Table 1. Maximum Sound Pressure Levels

	Column 1	Column 2	Column 3

Area Zoning Classification or Land Use Designation in Mixed Use and Planned Unit Developments	Maximum dBA or Measurement of Overall Sound Pressure Level	Octave Band Limit Center Frequency (Hertz (Hz))	Maximum dB or Measurement of Maximum Sound Pressure Level in Each Octave Band
Residential	55	31.5	<u>70</u>
		63	69
		125	64
		250	59
		500	53
		1,000	47
		2,000	<u>42</u>
		4,000	<u>38</u>
		8,000	35
Commercial	60	31.5	75
		63	<u>74</u>
		125	69
		250	64
		500	<u>58</u>
		1,000	52
		2,000	47
		4,000	43
		8,000	40
Agricultural	60	31.5	75
		63	<u>74</u>
		125	69

		250	64
		500	<u>58</u>
		1,000	52
		2,000	47
		4,000	43
		8,000	40

(Ord. No. 09-O-129, 11-24-09; Ord. No. 10-O-064, 6-8-10)

Sec. 26-131. - Penalty.

(a) *Civil penalty.* A violation of this article may be deemed an infraction and punished by a civil penalty of \$250.00 for the first offense and \$500.00 for each subsequent offense arising out of the same set of operative facts. The summons shall be issued on summons forms or tickets approved by the General District Court of the city ("court") and may be personally served on the person or entity charged by the administrator or designee. Service of the summons may also be accomplished by certified mail, return receipt requested, to the last known address of the person or entity charged or by any other method of service permitted by law.

The summons or ticket shall provide that the person or entity summonsed for a violation of this article may elect to pay the civil penalty by making an appearance in person or in writing by mail to the city treasurer, or designee, at least 72 hours prior to the time and date fixed for trial and by such appearance may enter a waiver of trial, admit liability and pay the civil penalty established for the offense. Such summons or ticket shall also provide that a signature to an admission of liability shall have the same force and effect as a judgment of the court; however, an admission shall not be deemed a criminal confession for any purpose. If a person or entity charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the same manner and with the same right of appeal as other civil matters heard by the court. A finding of liability shall not be deemed a criminal conviction for any purpose.

Notwithstanding the foregoing, civil summonses for violation of this article shall not be issued in the following cases:

- (1) Noises generated by railroad operations.
 - (2) Noises emanating from any area permitted by the Virginia Division of Mines, Minerals and Energy, or any division thereof.
 - (3) Noises generated in connection with business operations on industrial property.
- (b) *Criminal sanctions.* The violation of this article shall be deemed a class 4 misdemeanor punishable by a fine of not more than \$250.00 per violation. Each occasion of violation shall constitute a separate offense.
- (c) *Other remedies.* Nothing herein shall preclude the administrator from pursuing other available remedies, such as injunctive relief, to correct a continuing or frequent violation of this article. Nothing herein shall preclude law enforcement officers from exercising any and all remedies under chapter 10 of this Code relating to animal noises constituting a public nuisance.

(Ord. No. 09-O-129, 11-24-09; Ord. No. 10-O-064, 6-8-10)

Secs. 26-132—26-140. - Reserved.

DIVISION 4. - EXEMPTIONS AND SPECIAL PERMITS

Sec. 26-141. - Exemptions.

The following activities shall be exempt from this article:

- (1) Sound which is necessary for the protection or preservation of the health, safety, life or limb of any person, as determined by the administrator.
- (2) Noises generated from safety signals and warning devices, radios, sirens, horns and bells on police, fire or other emergency response vehicles and emergency pressure valves.
- (3) Noises resulting from any public emergency vehicle at any time or resulting from other authorized emergency vehicles when responding to an emergency call or acting in time of emergency.
- (4) Noises generated by authorized parades, fireworks and other special events or activities for which all required permits have been issued by the city, provided that the permit designates the hours of the event or activity as a condition of issuance.
- (5) Noises generated by organized athletic and recreational activities conducted on or in municipal and school property and facilities, provided that such athletic or recreational activity is lawfully conducted and has been authorized by the owner of such public property or facilities or its agent.
- (6) Noises generated by fire alarms, automobile alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.
- (7) Noises generated by locomotives and other railroad equipment.
- (8) Noises generated by all aircraft under the jurisdiction the Federal Aviation Administration.
- (9) Noises generated by the striking of clocks, including the chiming or ringing of church bells by recording or synthesizer.
- (10) Noises resulting from emergency work necessary to restore property to a safe condition following a public calamity or weather event, or work required to protect persons or property from an imminent danger, as determined by the administrator.
- (11) Noises created by the operation of any and all equipment and machinery as an integral part of the planting, tending or harvesting activities of a bona fide agricultural business operation, such as tractors and threshing machines.
- (12) Noises generated by farm animals kept as part of a bona fide agricultural operation.
- (13) Noises created by the operation of any power generation facility, provided that such power generation facility is located within an industrial district, that the operation of such facility is conducted less than 2,000 cumulative hours per calendar year and causes no harm to adjacent properties or residents.
- (14) Noises created by the operation of generators during power outages or under other emergency or necessary circumstances.
- (15) Noises generated by the operation of heating, ventilation and air conditioning units (HVAC units) attached to a building or structure.
- (16) Noises generated by city waste collection, including public recycling and waste removal services rendered by the city's agent, contractor or designee.
- (17) Noises generated by the lawful operation of a motor vehicle with a functioning muffler on public streets and highways, including without limitation, the sounding of any horn or signaling device of a motor vehicle as a warning of danger in accordance with state and local law. This exemption shall not apply to noises generated by revving engines, racing motor vehicles, test driving motor vehicles under repair and similar use of a motor vehicle for purposes other than as a lawful mode of transportation.
- (18)

Noises resulting from the emanation of music from a building occupied by a church or other religious organization as a place of worship during worship services and other religious activities.

- (19) Noises resulting from lawful activities in the M-1 Light Industrial, M-2 General Industrial and M-3 Waterfront Industrial Districts.
- (20) Noises resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city in accordance with section 26-142 of this article.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-142. - Undue hardship; special permits; review of grievances.

- (a) Any person responsible for any noise source may apply to the city manager for relief in the form of a special permit from any of the provisions of this article. The city manager or designee may grant such relief upon finding that:
 - (1) The noise does not endanger the public health, safety or welfare; and
 - (2) Compliance with this article from which relief is sought would produce serious hardship without producing equal or greater benefit to the public; or
 - (3) Additional time is necessary for the applicant to alter or modify his or her activity or operation to comply with this article and the applicant is making every good effort to comply with this article.
- (b) In determining whether to grant such relief, the city manager or designee shall consider the following:
 - (1) Conformance with the standards of this article;
 - (2) Time of day when noise will occur;
 - (3) Duration of the noise;
 - (4) Volume of the noise relative to the limits of this article;
 - (5) Character of the noise, e.g., whether intermittent or continuous;
 - (6) Extensiveness of the noise;
 - (7) The technical and economic feasibility of bringing the noise into conformance with this article; and
 - (8) 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 this article.
- (c) At the time of granting any relief sought, the city manager or designee shall prescribe such conditions, requirements or penalties as are deemed necessary to minimize any adverse effects upon the community or surrounding neighborhood.
- (d) A special permit granted pursuant to this section shall not confer upon the permit holder any property rights. The permit shall be effective until the date of termination as indicated by the permit or until revoked by the city manager or designee as a result of i) violation of the conditions and requirements imposed under the permit, ii) a change in circumstances that poses a threat to the public health, safety and welfare, or iii) discovery of a material misrepresentation or omission of fact in the application for the permit.
- (e) An application filed under this section shall be on forms designated by the city manager or designee and shall include an administrative fee of \$45.00. Such fee may be waived or reduced by the city manager or designee in the event of an emergency relating to public health or safety.
- (f) Any person aggrieved by a decision of the city manager or designee made pursuant to section 26-142 of this Code may obtain review of such decision by the city council by delivering a written statement of grievance to the city clerk within 30 days from the date of the city manager's decision. The city council shall review all statements of grievances and shall, within 60 days from the date the statement is filed with the city clerk, affirm, set aside, or modify the city manager's decision. The city council shall have the authority to take such further action as deemed necessary to effectuate the provisions of this section.

(Ord. No. 09-O-129, 11-24-09)

Sec. 26-143. - 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.

(Ord. No. 09-O-129, 11-24-09)

Secs. 26-144—26-220. - Reserved.