

ORDINANCE NO. 09-07()

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE I, NOISE, AND ARTICLE II, NAMING OF ROADS AND NUMBERING OF PROPERTIES, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article I, Noise, and Article II, Naming of Roads and Numbering of Properties, are hereby amended and reordained as follows:

By Amending:

- Sec. 7-100 Purpose and intent
- Sec. 7-101 Administration and enforcement
- Sec. 7-102 Applicability
- Sec. 7-103 Definitions
- Sec. 7-104 Prohibited noise
- Sec. 7-105 Prohibited acts enumerated
- Sec. 7-106 Exempt sounds
- Sec. 7-107 Complaints of noise
- Sec. 7-108 Violation and penalty

Chapter 7. Health and Safety

Article I. Noise

Sec. 7-100 Purpose and intent.

~~The board of supervisors hereby finds and declares that excessive or unwanted sound is a serious hazard to the public health, safety, welfare, and quality of life, and that the inhabitants of the county have a right to and should be free from an environment of excessive or unwanted sound. Therefore, it is the policy of the county and the purpose and intent of this article to prohibit such excessive or unwanted sound as provided herein.~~

Comment: This section is significantly expanded over that in the current ordinance. Several courts have stressed the importance of a purpose and intent section that identifies the interests being protected and puts the regulations in an appropriate context. The introductory paragraph states the purpose and intent to regulate the time, place and manner of sound in a content-neutral manner to address First Amendment issues.

The purpose and intent of this article is to establish reasonable time, place and manner regulations pertaining to excessive or unwanted sound. Through content-neutral regulations, this article strikes an appropriate balance between the rights of individuals to engage in activities that create or disseminate sounds at reasonable levels, and the right of the public to a peaceful and healthful environment. It is not the purpose and intent of this article to interfere unduly with the rights of free speech or the exercise of religion and, further, it is not the purpose and intent of this article to implement these regulations in a manner that is based on the content of the sound. In establishing these regulations, the board of supervisors hereby finds the following:

A. *Threat to the public health, safety and welfare posed by excessive or unwanted sound.* Inadequately controlled sound presents a growing danger to the public health, safety and welfare. Studies have found that these dangers include hearing impairment, interference with spoken communication, sleep disturbances, cardiovascular disturbances, disturbances in mental health, impaired task performance, and unwanted emotional responses. These effects can lead to, among other things, a wide range of physical problems such as hearing disabilities, increased blood pressure, increased heart rates, abnormal heart rhythms and fatigue, mental health problems such as depression, anxiety, nervousness, stress, and emotional instability,

an increased risk of accidents and errors in task performance, and negative effects on learning, reading attention, work performance, school performance, and interpersonal relationships.

Comment: Subsection (A) identifies the public purpose to be protected by summarizing the general effects of excessive or unwanted sound.

B. Persons particularly vulnerable to excessive or unwanted sound. Studies have found that the elderly, medical patients, infants and children are particularly vulnerable to excessive or unwanted sound.

Comment: Subsection (B) identifies those persons most vulnerable to loud sound, which establishes the context for the regulation of noise sensitive zones in Section 7-105(C).

C. Public safety danger posed by excessive or unwanted sound created by or emanating from motor vehicles. Excessive or unwanted sound created by, or emanating from, motor vehicles interferes with the safe operation of other motor vehicles and motorcycles.

Comment: Subsection (C) acknowledges that there are traffic safety dangers created by vehicles that produce loud sound, either from the way they are operated or from music coming from the vehicle, which establishes the context for regulating specific acts pertaining to motor vehicles and motorcycles in Sections 7-105(A) and (B).

D. Right of public to be free from an environment of excessive or unwanted sound. The public has a right to and should be free from an environment of excessive or unwanted sound, and the board has a significant governmental interest in providing an environment free of excessive or unwanted sound.

Comment: Subsection (D) identifies the County's substantial interest in regulating excessive or unwanted sound.

E. Effects of increases in sound pressure levels. Studies have characterized the human reaction to increases in sound pressure levels over ambient levels, as measured in decibels (dB), as "intrusive" for increases of five (5) to ten (10) decibels, "very noticeable" for increases of ten (10) to fifteen (15) decibels, "objectionable" for increases of fifteen (15) to twenty (20) decibels, and "very objectionable to intolerable" for increases of twenty (20) or more decibels

Comment: Subsection (E) explains the effects of increases in sound levels on humans in order to establish the context of the 15 decibel standard in Section 7-105(D).

(§ 12.1-1, 9-10-80, § 1; Code 1988, § 12.1-1; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-101 Administration and enforcement.

The chief of police is hereby designated the agent of the board of supervisors in the administration and enforcement of this article. The chief of police may be assisted in the enforcement of this article by employees of the department of ~~building code and zoning services~~ community development, the department of ~~engineering and public works~~ general services, and other officers and employees of the county.

Comment: The amendments to this section would update the references to County departments.

(§ 12.1-3, 9-10-80, § 3; 11-14-84; Code 1988, § 12.1-3; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-102 Applicability.

This article shall apply to sound generated within the county, regardless of whether the complainant or the receiving property is within or without the county. This article shall be in addition to any sound or noise regulations set forth in ~~the zoning ordinance~~ chapter 18 of the Code.

(Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-103 Definitions.

The following definitions shall apply to this article: ~~The definitions of any sound related terms not defined herein shall be obtained from the American Standard Acoustical Terminology if defined therein.~~

Comment: The numerous definitions that would be added to the noise regulations are intended to address any claims that the regulations are vague or overbroad under the First Amendment or under the Due Process Clause.

(1) Audible. The term “audible” means a sound that can be detected by a person using his or her hearing faculties, provided that a sound shall be determined to be audible even if specific words or phrases cannot be discerned.

Comment: The definition of “audible” was obtained from a number of ordinances from around the country. Some localities use terms “plainly audible” or “clearly audible,” though the definition of the term is not substantially different than the definition above. A number of ordinances also define the term to clarify that sound is audible even if specific words or phrases cannot be discerned.

~~(2)~~ Emergency operation. The term “emergency operation” means any emergency service provided by any police, sheriff, fire or fire and rescue department, any ambulance service or any other emergency service requiring a prompt response, and any emergency repair of public facilities or public utilities.

(3) Hospital. The term “hospital” means any facility licensed pursuant to Virginia Code § 32.1-123 et seq. in which the primary function is the provision of diagnosis, treatment, and medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

Comment: The definition of “hospital” was obtained from the Virginia Code.

(4) Hotel. The term “hotel” means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

Comment: The definition of “hotel” was obtained from the Virginia Code.

(5) Impulse sound. The term “impulse sound” means any sound of short duration with an abrupt onset and rapid decay and includes, but is not limited to, sound produced by explosions, drum beats, drop forge impacts and one object striking another.

Comment: The definition of “impulse sound” is based on the definition in the noise regulations in the Zoning Ordinance.

(6) *Mixed-use site.* The term “mixed-use site” means a single unified development on one or more units or pieces of real property on which both commercial and residential uses exist.

Comment: The definition of “mixed-use site” is based on the definition of “multi-use property” in New Jersey’s Model Noise Ordinance, but is simplified. It will be applicable in many planned developments where a mixture of land uses are established on a single site.

(27) *Motorcycle.* The term “motorcycle” means any motorized vehicle, whether registered as a motor vehicle or not, designed to travel on not more than three (3) wheels in contact with the ground and any four (4)-wheeled vehicle weighing less than five hundred (500) pounds, excepting riding mowers, farm and lawn tractors. every motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and is capable of traveling at speeds in excess of thirty-five (35) miles per hour and includes, but is not limited to, those vehicles defined in Virginia Code § 46.2-100 as an “electric personal assistive mobility device,” “electric power-assisted bicycle,” “golf cart,” “moped,” “motorized skateboard or scooter” and “utility vehicle.”

Comment: The definition of “motorcycle” is based on the definition in the Virginia Code, expanded at the request of the Police Department to include the other specific types of vehicles listed because of the noise they can generate. The definition of “motorcycle” in the current ordinance is at least 28 years old.

(38) *Motor vehicle.* The term “motor vehicle” means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a road, except devices moved by human power or used exclusively upon stationary wheels or tracks every device in, on or by which any person or property is or may be transported or drawn on a highway and includes, but is not limited to, any device defined in Virginia Code § 46.2-100 as a “bicycle,” “electric personal assistive mobility device,” “electric power-assisted bicycle” and “moped” when operated on a street, but does not include devices moved by human power or used exclusively on stationary rails or tracks that is self-propelled or designed for self-propulsion, including any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle.

Comment: The definition of “motor vehicle” is based on the definition in the Virginia Code, expanded at the request of the Police Department to include the other specific types of vehicles listed because of the noise they can generate. The definition of “motor vehicle” in the current ordinance is at least 28 years old.

(9) *Multi-family dwelling unit.* The term “multi-family dwelling unit” means a structure composed of two (2) or more dwelling units including, but not limited to, apartments, condominiums, townhouses, and duplexes.

Comment: The definition of “multi-family dwelling unit” is based on the definition of “multi-dwelling unit building” in New Jersey’s Model Noise Ordinance, but is simplified.

(4) *Noise.* The term “noise” means any sound which is excessive or unwanted, but does not include any sound which is exempt pursuant to section 7-106.

(10) *Nursing home.* The term “nursing home” means any facility or any identifiable component of any facility licensed pursuant to Virginia Code § 32.1-123 *et seq.* in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

Comment: This is the definition of “nursing home” in the Virginia Code.

(11) Parcel. The term “parcel” means, as appropriate when the term is applied in conjunction with a reference to a property line, either: (i) a separate unit or piece of real property; (ii) any area within a multi-family dwelling unit that is beyond the vertical and horizontal boundaries of the dwelling unit of the complainant; or (iii) any area within a mixed-use site that is beyond the interface between the portion of the site owned or occupied by the complainant.

Comment: The definition of “parcel” is related to the definition of “property line” below, and is much broader than the common understanding of the word. In Sections 7-104 and 7-105, distances and locations are sometimes referred to as being measured “from the property line of the parcel on which the sound source is located.” This broad definition of “parcel” is intended to capture in a single word several possible situations to address sound that is moving from parcel to parcel, from dwelling unit to dwelling unit in multi-family dwelling units, and from use class (e.g., the commercial portion) to another (e.g., the residential portion) on mixed-use sites, as well as a number of all possible combinations.

(§12) Person. The term “person” means any natural person, association, partnership, corporation or other legal entity.

(13) Place of public entertainment. The term “place of public entertainment” means a building or other place used primarily as a cinema, theater, amphitheater, concert hall, public hall or other place of entertainment open to the public, regardless of whether the payment of money or other consideration is required for admission.

Comment: Although places of public entertainment are regulated in the current regulations, the term was not defined.

(14) Produce. The term “produce,” or any derivation of the word, means to produce or reproduce, to allow to produce or reproduce, to create or allow to be created, or to operate or allow to be operated.

(15) Property line. The term “property line” means either: (i) an imaginary line along the ground surface, and its vertical extension, that separates one unit or piece of real property from another, where the unit or piece is under different ownership; (ii) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-family dwelling unit building; or (iii) on a mixed-use site, the interface between the portions of the parcel on which different categories of activity are being performed.

Comment: This definition is from the New Jersey Model Noise Ordinance, with minor adjustments. See the explanation of the definition of “parcel” above also.

(16) Public property. The term “public property” means real property owned by a governmental entity including, but not limited to, any public street as defined in section 7-103(20)(i).

~~(6) Road.~~ The term “road” means a public or private thoroughfare which affords access to abutting property.

(17) School. The term “school” means a public school subject to title 22.1 of the Virginia Code, a private school serving children in one or more grades between kindergarten and grade twelve (12), a school for students with disabilities as that term is defined in Virginia Code § 22.1-319, a child day center as that term is defined in Virginia Code § 63.2-100, the University of Virginia and Piedmont Virginia Community College.

Comment: Schools are within the class of uses that are noise sensitive and addressed in Section 7-105(C), but the term is not defined in the current ordinance. This definition seeks to capture those schools where children (for the most part) are enrolled, since they are one of the classes of people vulnerable to noise. Excluded from this definition are schools that are typically thought of as commercial in nature such as driving schools, beauty schools, art schools, music schools and dance schools.

(18) Sound. The term “sound” means the sensation perceived by the sense of hearing.

(19) Sound source. The term “sound source” means any act or device that emits sound.

(20) Street. The term “street” means: (i) a public right-of-way which is part of the primary or secondary system of state highways, or is classified as a highway in the interstate system; or (ii) a privately owned and maintained travelway for motor vehicles serving two (2) or more single family detached dwelling units that are located on two (2) or more separate units or pieces of land, one or more multi-family dwelling units, a mixed-use site, or a site used for commercial or industrial purposes.

The meaning of any sound-related term not defined herein shall be obtained from the most recent version of the American Standard Acoustical Terminology, if the term is defined therein.

(§ 12.1-2, 9-10-80, § 2; 6-10-81; Code 1988, § 12.1-2; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-104 ~~Prohibited noise~~ General prohibition.

~~It shall be unlawful for any person to create or allow to be created any unreasonably loud, disturbing, raucous or unnecessary noise. Noise of such character, when its intensity and duration is detrimental to the life or health of any person, or which unreasonably disturbs or annoys the quiet, comfort or repose of any person, is hereby prohibited.~~

It shall be unlawful for any person to produce sound that meets or exceeds the following sound levels:

A. *Daytime.* Between the hours of 7:00 a.m. and 10:00 p.m.:

1. *Sound source on a street or on public property.* If the sound source is on a street or on public property, the sound is audible at a distance of one hundred (100) feet or more from the sound source and: (i) if the sound is not an impulse sound, the sound is audible for five (5) continuous minutes or more without an interruption of the sound for thirty (30) or more consecutive seconds during the five (5) minute period, in any one (1) hour period; or (ii) if the sound is an impulse sound, the sound is produced and audible more than once in any one (1) hour period.

2. *Sound source not on a street or on public property.* If the sound source is not located on a street or on public property, the sound is audible at a distance of one hundred (100) feet or more beyond the property line of the parcel on which the sound source is located and: (i) if the sound is not an impulse sound, the sound is audible for five (5) continuous minutes or more without an interruption of the sound for thirty (30) or more consecutive seconds during the five (5) minute period, in any one (1) hour period; or (ii) if the sound is an impulse sound, the sound is produced and audible more than once in any one (1) hour period.

B. *Nighttime.* Between the hours of 10:00 p.m. and 7:00 a.m. the following day, or between the hours during which a sound is not exempt under section 7-106:

1. *Sound source on a street or on public property.* If the sound source is on a street or on public property, the sound is audible at a distance of one hundred (100) feet or more.

2. *Sound source not on a street or on public property.* If the sound source is not located on a street or on public property, the sound is audible: (i) at a distance of one hundred (100) feet or more beyond the property line of the parcel on which the sound source is located; or (ii) from inside a dwelling unit or hotel at least four (4) feet from the wall, floor or ceiling nearest the sound source, with the doors and windows to the dwelling unit or hotel room of the complainant closed, where the dwelling unit or hotel is located on a different parcel than the parcel on which the sound source is located.

Comment: Section 7-104 establishes a general prohibition against noise. Section 7-105 establishes a prohibition of noise produced by specified acts. The First Amendment requires that regulations that may affect rights of speech and expression be content-neutral, reasonably regulate only the time, place and manner of the speech or expression, be sufficiently clear to inform a person of ordinary intelligence as to what acts are allowed or prohibited, and be narrowly tailored to achieve legitimate governmental purposes.

Sections 7-104 and 7-105 would regulate noise by establishing standards that are based on the following: (1) the duration of the sound; (2) the distance or location at which the sound is audible; and (3) the time of day during which the sound is being produced.

- **Duration:** The duration criterion for daytime noise is proposed to be 5 minutes of continuous sound within a 1 hour period. No durational time is proposed for nighttime noise. This recognizes that sound sensitivity is greater at night. The duration criterion for daytime noise is narrowly tailored to assure that during daytime hours, non-exempt sounds, however brief, do not become a violation. Impulse sounds, such as explosions, are addressed by prohibiting more than one impulse sound within a 1 hour period.
- **Location:** The distance criterion is composed of two parts: (1) audibility from a distance of 100 feet measured either from the sound source or from the property line of the parcel on which the sound source is located, depending on the circumstances specified in the proposed ordinance; or (2) audibility from within a dwelling unit or hotel room. The 100-foot distance criterion is one of the more commonly used distances in other localities' noise ordinances, and this distance has been approved by a number of courts as being a reasonable and objective standard that is narrowly tailored for its purposes. The courts have upheld ordinances establishing audibility as close as 50 feet. One court struck down a 25 foot distance because normal conversations can be heard at 25 feet and, therefore, the standard was overbroad. Staff is recommending that the Board adopt audibility at 100 feet as the standard. The dwelling unit or hotel room standard is intended to primarily address noise problems that may arise in multi-family dwelling units, on multi-use sites (as both those terms are defined in the proposed ordinance), and in areas where single family detached dwelling units are in close proximity to one another and the 100-foot distance criterion would not satisfactorily address the noise problem.

Few if any of the ordinances reviewed that use the "distance and location" approach to regulating noise include audibility from within a dwelling unit or other structure as a criterion. However, it commonly appears in noise ordinances based on sound levels based on decibels measured by sound meters. In those ordinances, the sound levels are measured from a distance of 4 feet from the wall, floor or ceiling closest to the sound source, a concept this proposed ordinance incorporates. Staff believes that the ordinance needs to include this criterion in order to properly address noise issues within multi-family dwelling units, on mixed-use sites, and for those sound-sensitive uses such as schools and hospitals.

Sound that is audible at a distance greater than 100 feet may not necessarily be excessive or unreasonable at that distance. Sound levels diminish by half each time the distance from the sound source is doubled. At least one court has observed that the greater the distance provided in the regulation, the more it is assured that at some lesser distance, the sound is, in fact, excessive.

- **Time of day:** The time of day criterion, again, recognizes that sound sensitivity is greater at night. The 7:00 a.m. and 10:00 p.m. hours are primarily used as the demarcation line for different standards, though certain activities such as solid waste collection, yard maintenance, and silvicultural activities are allowed slightly expanded hours (see Section 7-106) because of the nature of those activities. The 7:00 a.m. and 10:00 p.m. hours are used in the Zoning Ordinance's noise regulations to differentiate between daytime and nighttime standards.

(Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-105 ~~Prohibited acts enumerated~~ Specific acts prohibited.

~~The following acts are declared to be unreasonably loud, disturbing, raucous or unnecessary noise prohibited by section 7-104, but this enumeration shall not be deemed to be exclusive: In addition to the general prohibition in section 7-104, it shall be unlawful for any person to produce sound from the following acts that meets or exceeds the applicable sound levels:~~

Comment: See the comments under Section 7-104 for a discussion of the criteria used in this section.

A. ~~Motor vehicle or motorcycle operation. The operation, or permitting the operation, of any motor vehicle or motorcycle so as to create an unreasonably loud sound resulting from: The sound is produced by:~~ (i) ~~the removal~~ absence, alteration or failure to properly maintain its the muffler-exhaust or other noise-control equipment on a motor vehicle or a motorcycle; (ii) ~~jackrabbit starts, spinning tires, racing engines, or other operations~~ similar acts in a motor vehicle or on a motorcycle; or (iii) a refrigeration unit mounted on a motor vehicle, and:

1. On a street or on public property. The motor vehicle or motorcycle is operated or parked on a street or on public property, and the sound is audible from a distance of one hundred (100) feet or more from the motor vehicle or motorcycle.

2. On private property. The motor vehicle or motorcycle is operated or parked on private property, and the sound is audible: (i) from a distance of one hundred (100) feet or more from the property line of the parcel on which the motor vehicle or motorcycle is located; or (ii) from inside a dwelling unit at least four (4) feet from the wall nearest the motor vehicle or motorcycle, with the doors and windows to the dwelling unit or hotel room of the complainant closed, where the dwelling unit is located on a different parcel than the parcel on which the motor vehicle or motorcycle is located.

B. ~~Radios, tape players, televisions receivers, musical instruments, electronic sound amplification equipment, and electronic and similar devices other sound producing or reproducing devices. The operation, or permitting the operation, The sound is produced by a~~ of any radio, tape player, phonograph, compact disc player, MP3 player, television receiver, musical instrument, electronic sound amplification equipment, electronic or other similar device in such a manner intended primarily for the production or reproduction of sound (hereinafter, collectively and singularly a "device") and: (i) ~~as to annoy or disturb the quiet, comfort or repose of any person in a dwelling, hotel or other type of residence, when such device is not operated in or on a motor vehicle;~~ (ii) ~~as to annoy or disturb the quiet, comfort or repose of any person across any real property boundary when such device is operated in or on a motor vehicle which is parked;~~ or (iii) ~~as to be audible by someone of normal hearing, from outside a motor vehicle at a distance of 100 feet or more, when such device is located within a motor vehicle which is parked or is being operated on a road.~~

1. Device within or on a motor vehicle on a street or on public property. The device is within or on a motor vehicle that is operated or parked on a street or on public property, and the sound is audible from a distance of one hundred (100) feet or more from the motor vehicle.

2. Device within or on a motor vehicle on private property. The device is within or on a motor vehicle that is operated or parked on private property, and the sound is audible: (i) from a distance of one hundred (100) feet or more from the property line of the parcel on which the motor vehicle is located; or (ii) from inside a dwelling unit or hotel at least four (4) feet from the wall, floor or ceiling nearest the motor vehicle, with the doors and windows to the dwelling unit or hotel room of the complainant closed, where the dwelling unit or hotel is located on a different parcel than the parcel on which the device is located.

3. Device within a place of public entertainment. The device is located within a place of public entertainment, and the sound is audible for a duration of five (5) continuous minutes or more, without an interruption of the sound for thirty (30) or more consecutive seconds during the five (5) minute period, within any one (1) hour period: (i) from a distance of one hundred (100) feet or more from the property line of the parcel on which the place of public entertainment is located; or (ii) between the hours of 10:00 p.m. and 7:00 a.m. the following day from inside a dwelling unit or hotel at least four (4) feet from the wall, floor or ceiling nearest the place of public entertainment, with the doors and windows to the dwelling unit or hotel room of the complainant closed, where the dwelling unit or hotel is located on a different parcel than the parcel on which the device is located.

4. Device in other locations. The device is located other than within or on a motor vehicle or a place of public entertainment, and the sound is audible: (i) from a distance of one hundred (100) feet or more from the property line of the parcel on which the device is located; or (ii) from inside a dwelling unit or hotel at least four (4) feet from the wall, floor or ceiling nearest the device, with the doors and windows to the dwelling unit or hotel room of the complainant closed, where the dwelling unit or hotel is located on a different parcel than the parcel on which the device is located.

C. Places of public entertainment. The operation, or permitting the operation, of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound in any place of public entertainment in such a manner as to annoy or disturb the quiet, comfort or repose of any person not within the place of public entertainment.

DC. Noise near institutions Proximity to sound-sensitive institutions. The creation of any excessive noise sound is produced on any street adjacent to any school, institution of learning hospital, nursing home or court (hereinafter, collectively referred to as "institutions"), while such institution is in session, or adjacent to any hospital, which unreasonably interferes with the workings of such institution or disturbs or unduly annoys patients in the hospital; provided that conspicuous signs are posted and visible in such streets indicating on the street(s) adjacent to the institution stating that such the street is adjacent to a school, hospital, nursing home or court-street. and:

1. Schools and courts. The sound is audible from inside the school building or the court at least four (4) feet from the wall nearest the sound source, with the doors and windows closed, between the hours of 7:00 a.m. and 10:00 p.m. when the school or court is in session.

2. Hospitals and nursing homes. The sound is audible from inside the hospital or nursing home at least four (4) feet from the wall nearest the sound source, with the doors and windows closed.

Comment: As stated in Section 7-100(B), studies have found that the elderly, medical patients, infants and children are particularly vulnerable to excessive or unwanted sound.

ED. Sound level exceeding ambient sound level by 15 decibels. The creation of sound produced which causes a fifteen (15) dBA increase in the sound level above the ambient sound level, as determined pursuant to the zoning ordinance section 18-4.18 of the Code.

Comment: Subsection (D)'s "15 decibel" standard is the sole standard in the proposed ordinance based on sound levels described in decibels and measured using sound meters. It is anticipated that this standard would be rarely used. As stated in Section 7-100(F), studies have characterized the human reaction to increases in sound pressure levels over ambient levels, as measured in decibels (dB), as "intrusive" for increases of 5 to 10 decibels, "very noticeable" for increases of 10 to 15 decibels, "objectionable" for increases of 15 to 20 decibels, and "very objectionable to intolerable" for increases of 20 or more decibels. Thus, the 15 decibel standard prohibits noise that has been characterized as "very noticeable" or "objectionable."

State law reference--Va. Code § 15.2-1200.

Sec. 7-106 Exempt sounds.

The following sounds shall not be prohibited by this article:

Comment: The exemptions in this section would be reorganized in alphabetical order.

~~A. — *Emergency operations.* Sound generated in the performance of emergency operations including, but not limited to, audible signal devices which are employed as warning or alarm signals in case of fire, collision or imminent danger.~~

~~B. — *Silvicultural or agricultural activities.* Sounds generated during lawfully permitted bona fide silvicultural or agricultural activities including, but not limited to, logging activities and sounds caused by livestock.~~

~~C. — *Construction, demolition and/or maintenance activities.* Sounds generated from construction, demolition and/or maintenance activities between 7:00 a.m. and 10:00 p.m.~~

~~D. — *Transient sounds from transportation.* Transient sounds generated by transportation including, but not limited to, public and private airports (except as otherwise regulated), aircraft, railroads and other means of public transit.~~

~~E. — *School athletic contests or practices, and other school activities.* Sounds generated from school athletic contests or practices, and other school activities, but only if conditions are imposed which regulate the generation of sound including, but not limited to, conditions regulating the hours of the activity and the amplification of sound.~~

~~F. — *Parades, fireworks and similar officially sanctioned events.* Sounds generated from parades, fireworks or other similar events which are officially sanctioned, if required. This exemption shall not apply to private fireworks displays.~~

~~G. — *Yard maintenance activities.* Sounds generated from routine yard maintenance activities including, but not limited to, mowing, trimming, clipping, leaf blowing and snow blowing.~~

~~H. — *Public facilities.* Sounds generated from the operation of a public facility or public use.~~

~~I. — *Warning devices.* Sounds generated by a horn or warning device of a vehicle when used as a warning device, including back-up alarms for trucks and other equipment.~~

~~J. — *Church bells or chimes.* Sounds generated by church bells or chimes.~~

~~K. — *Firearms.* Sounds generated from the lawful discharge of a firearm.~~

~~L. — *Animals.* Sounds generated from animals including, but not limited to, barking dogs.~~

~~M. — *Protected expression.* Any other lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution, but not amplified expression.~~

A. — *Agricultural activities.* Sound produced during lawfully permitted bona fide agricultural activities.

Comment: The current regulations exempt agricultural and silvicultural activities in a single exemption. The two activities would be separated in the proposed ordinance because staff recommends that silvicultural activities be exempt from regulation only between the hours of 6:00 a.m. and 10:00 p.m.

B. *Animals.* Sound produced by animals including, but not limited to, barking dogs, which are subject to the animal noise regulations in chapter 4 of the Code.

Comment: Animal sounds are exempt under the current regulations in Chapter 7. The proposed ordinance would add a clause clarifying that animal noise is regulated under Chapter 4.

C. *Bells or chimes from place of religious worship.* Sound produced by bells, chimes or other similar instruments or devices from a place of religious worship.

D. *Construction, demolition and/or maintenance activities.* Sound produced by construction, demolition and/or maintenance activities between the hours of 7:00 a.m. and 10:00 p.m.

E. *Emergency operations.* Sound produced in the performance of emergency operations including, but not limited to, audible signal devices which are employed as warning or alarm signals in case of fire, collision or imminent danger.

F. *Firearms.* Sound produced by the lawful discharge of a firearm.

G. *Home appliances.* Sound produced by the normal use of home appliances such as generators, air conditioners, heat pumps, vacuum cleaners, washing machines, dryers and dishwashers, provided that the appliances are in good repair.

Comment: This is a new exemption. Although sounds from home appliances would be exempt the proposed regulations, they would be subject to the noise regulations under the Zoning Ordinance, except for air conditioners which are also exempt under the Zoning Ordinance.

H. *Parades, fireworks and similar officially sanctioned events.* Sound produced by parades, fireworks or other similar events which are officially sanctioned, if required. This exemption shall not apply to private fireworks displays.

I. *Protected expression.* Sound produced by any lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution, but not amplified expression; provided that the sound is not prohibited by section 7-105.

J. *Public facilities.* Sound produced by the operation of a public facility or public use.

K. *School athletic contests or practices, and other school activities.* Sound produced by school athletic contests or practices, and other school activities, but only if conditions are imposed which regulate the generation of sound including, but not limited to, conditions regulating the hours of the activity and the amplification of sound.

L. *Silvicultural activities.* Sound produced during lawfully permitted bona fide silvicultural activities between the hours of 6:00 a.m. and 10 p.m. including, but not limited to, logging activities.

Comment: The Police Department raised a concern about logging activities being completely exempt from noise regulation. Staff recommends that silvicultural activities be exempt from regulation only between the hours of 6:00 a.m. and 10:00 p.m. During non-exempt hours, sound from this activity would be subject to the nighttime standards in Section 7-104 unless it is occurring in a sound-sensitive zone under Section 7-105(C) or exceeds the decibel standard in Section 7-105(D).

M. *Solid waste collection.* Sound produced by the collection of solid waste between the hours of 6:00 a.m. and 10:00 p.m. within a residential zoning district established under chapter 18 of the Code, and between the hours of 5:00 a.m. and 10:00 p.m. within any non-residential zoning district established under chapter 18 of the Code, including any mixed-use site.

Comment: The current regulations do not expressly exempt sounds from solid waste collection so unless they are determined to fall under one of the existing exemptions, the activity would be subject to the general prohibition in Section 7-104. Staff is recommending that an exemption be added for solid waste collection during certain hours of the day because it is an essential activity. In developing this exemption, the regulations of several localities were reviewed. Some localities exempt the activity altogether; others exempt the activity during daylight hours typically beginning at 5:00 a.m. or 6:00 a.m., but some beginning as early as 4:00 a.m. Some localities establish different starting times depending on whether the collection activity is occurring in a residential zone or a non-residential zone, with an earlier starting time in the non-residential zone. This latter approach is recommended by staff. During non-exempt hours, sound from this activity would be subject to the nighttime standards in Section 7-104 unless it is occurring in a sound-sensitive zone under Section 7-105(C) or exceeds the decibel standard in Section 7-105(D).

N. *Telephones.* Normal sound produced by landline and wireless telephones.

Comment: This is a new exemption.

O. *Transportation.* Transient sound produced by transportation including, but not limited to, public and private airports (except as otherwise regulated), aircraft, railroads and other means of public transit, and sound produced by motor vehicles and motorcycles; provided that the sound from a motor vehicle or motorcycle is not prohibited by section 7-105(A).

Comment: This exemption was expanded to include the normal sounds produced by motor vehicles and motorcycles.

P. *Warning devices.* Sound produced by a horn or warning device of a vehicle when used as a warning device, including back-up alarms for trucks and other equipment.

Q. *Yard maintenance activities.* Sound produced by routine yard maintenance activities including, but not limited to, mowing, trimming, clipping, leaf blowing and snow blowing between the hours of 7:00 a.m. and 10:00 p.m. within a residential zoning district established under chapter 18 of the Code, and between the hours of 6:00 a.m. and 10:00 p.m. within any non-residential zoning district established under chapter 18 of the Code, including any mixed-use site.

Comment: The current regulations exempt yard maintenance activities, but the exemption is unlimited. Staff is recommending that this activity be exempt only during certain hours of the day. During non-exempt hours, sound from this activity would be subject to the nighttime standards in Section 7-104 unless it is occurring in a sound-sensitive zone under Section 7-105(C) or exceeds the decibel standard in Section 7-105(D).

(§ 12.1-7, 9-10-80, § 7; Code 1988, § 12.1-7; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-107 Complaints of noise.

No person shall be charged with a violation of the provisions of sections 7-104 or 7-105 unless the complainant appears before a magistrate and requests a summons to be issued. However, when a violation is

committed in the presence of a police officer, ~~he~~ the police officer shall have the authority to initiate all necessary proceedings.

(Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

Sec. 7-108 Violation and penalty.

Any person who violates any provision of this article ~~and/or creates a noise disturbance~~, shall be deemed to be guilty of a class 1 misdemeanor. The person operating or controlling a sound source shall be guilty of any violation caused by that source. If the sound source cannot be determined but its presence on a parcel can be determined, any owner, tenant or resident physically present on the property parcel where the ~~violation is occurring~~ sound is being produced is ~~rebuttably presumed to be~~ guilty of the violation.

(§ 12.1-8, 9-10-80, § 8; Code 1988, § 12.1-8; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 15.2-1200.

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____