

**BOARD OF SUPERVISORS  
PUBLIC HEARING**

**SUBJECT:** Proposed Amendments to Chapter 654.02 of the Codified Ordinances of Loudoun County, Unreasonable Noise

**ELECTION DISTRICT:** Countywide

**CRITICAL ACTION DATE:** At the pleasure of the Board

**STAFF CONTACTS:** Captain Greg Brown, Loudoun County Sheriff's Office  
Sheriff Michael L. Chapman, Loudoun County Sheriff's Office

**PURPOSE:** To seek public comment on proposed amendments to Chapter 654.02 of the Codified Ordinances of Loudoun County which will make the County's noise regulations compliant with the holding of the Virginia Supreme Court in the case of *Tanner v. Virginia Beach*, and enable the Loudoun County Sheriff's Office to begin enforcement of noise violations.

**RECOMMENDATIONS:**

**Board of Supervisors:** Staff recommends the Board of Supervisors (Board) approve the proposed amendments to Chapter 654.02.

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**BACKGROUND:** During the April 5, 2016 Business Meeting the Sheriff recommended that the Board direct Staff to advertise the proposed amendments to Chapter 654.02, Unreasonable Noise, for inclusion on the Board's public hearing agenda for May 11, 2016. During that meeting, Board members raised questions concerning the discharge of firearms and the times during which construction activities were permitted, and the Board voted (9-0) to forward the item to the Transportation and Land Use Committee (TLUC) Meeting on May 13, 2016 for further discussion.

On May 13, 2016 the TLUC reviewed and approved the proposed ordinance to be forwarded to the full Board's Business Meeting on June 7, 2016 to be considered for inclusion on the public hearing agenda for July 13, 2016.

On June 7, 2016 the full Board voted (9-0) to place the ordinance amendments, including revised language exempting the lawful discharge of firearms and prohibiting construction sounds after 9:00 p.m., on the July 13, 2016 Board Public Hearing Agenda.

Loudoun County's noise ordinance, adopted in 1982, declares that certain unreasonable noises are a detriment to the public health, comfort, safety and welfare. Some provisions of the current

version of Chapter 654.02 (“unnecessary,” “unusually loud,” or “unreasonable”) require enforcement based on a subjective “reasonable person” standard. In 2009 the Supreme Court of Virginia found the noise ordinance of the City of Virginia Beach to be unconstitutionally vague as it relied on a “reasonable person” standard. The current version of Chapter 654.02 contains very similar language to that which was struck down in the 2009 case, *Tanner v. Virginia Beach*. Consequently, the Sheriff’s Office ceased enforcing the provisions of Chapter 654.02. As a result of the *Tanner* decision, many jurisdictions throughout Virginia have amended their noise ordinances or are currently in the amendment process, in order to remove “reasonable” standards. Staff has reviewed the updated ordinances from a number of jurisdictions, and the proposed amended language is designed to comply with the *Tanner* decision.

After careful study, the Sheriff is not recommending that the amendments include measurable decibel levels to define excessive noise. As such, the overall goals of the proposed amended ordinance are to:

- Recognize that there will always be certain levels of sound that occur in the normal course of daily living.
- Allow certain levels of daytime sound so that people can live, work, and play during the day without disturbances caused by excessive sound; and
- Minimize nighttime sound so residents have an appropriately quiet environment in their homes at night.

The proposed amendments to the ordinance will prohibit certain sound-generating activities and exclude other such activities from regulation (Attachment 1). Activities exempted from the proposed regulation include agricultural operations; sounds from places of worship (e.g. bells, chimes); emergency operations and work (e.g., sirens, loud speakers, power generators, radios); parades and fireworks and similar county approved events unless zoning regulations apply; lawful activities in pursuit of the 1st Amendment provided they are not amplified; operations of a public facility; school or organized youth athletic or contests, or practices or school activities; warning devices (e.g., backup alarms or other equipment); activities sponsored by the County; any activity preempted by federal or state law; and transportation.

Some of the proposed prohibitions are based on time of day or duration of sound. This includes, among others, sound generated by the collection of refuse, waste and recycling in residential areas and/or within 100 yards of a residence between the hours of 9 p.m.-6 a.m.; the operation of power lawn or landscaping equipment between the hours of 9 p.m.-7 a.m.; the operation of powered model vehicles outdoors between the hours of 9 p.m.-7 a.m.; and construction, demolition and/or maintenance activities which produce the sound between the hours of 9 p.m.-7 a.m. (or until 9 a.m. on Saturdays, Sundays and federal holidays). These hours represent a change from the initial draft of the amendments reviewed by TLUC, which permitted construction noise until 10:00 p.m. Sounds emanating from musical instruments, machines, or devices for producing sound (e.g., amplifiers and speakers) may not be plainly audible and discernable within 100 feet or more from the sound’s source from any non-sponsored federal, state or local government event between the hours of 11 p.m. and 7 a.m.; and the sounding of any horn or signaling device/alarm on any motor

vehicle, motorcycle, bicycle, or other vehicle on a street or public place of the county continuously or intermittently for more than 20 consecutive seconds except as a danger warning or as permitted by law. The signaling device/alarm sound emitting vehicle may be towed, if the owner cannot be located, and if the horn or signaling device/alarm sounds continuously for 15 consecutive minutes. Other prohibitions include spinning of tires, racing of engines, or other noise or other similar acts in a motor vehicle or motorcycle, as well as the emission of noise created by the absence of a muffler and/or exhaust system conforming to the provisions of Virginia State Code Chapter 46.2.

Violations range from a Class 3 misdemeanor for a first offense to Class 1 misdemeanor for a person who violated a provision of the ordinance two prior times and within one year of the second conviction. The person operating or controlling the sound generation or source shall be guilty of any violation caused by that generation or source. If a person is unable to be identified, there shall be a rebuttable presumption that any owner, tenant, resident, manager or authorized user of the premises physically present on the property where the violation is occurring is operating or controlling the sound generation or source. In addition to the penalties prescribed in the ordinance, the Board may apply to the Circuit Court for an injunction against any continuing violation of any of the provisions of the ordinance, and may seek any other remedy or relief as authorized by law. This ordinance does not prevent an aggrieved citizen from applying to the Magistrate for the issuance of any warrant for any violation of this chapter.

**ISSUES:** The current noise ordinance is unenforceable and therefore deputy Sheriffs are only able to act as intermediaries when responding to citizen complaints about noise. During the years 2010-2015 the Sheriff's Office received a total of 6,946 calls for service related to noise. The proposed amendments will assist the Sheriff's Office in mitigating and responding to these complaints, and effectively address issues that negatively impact the quality of life of residents, businesses, and visitors of Loudoun County. The proposed amendments will allow the Sheriff's Office to lawfully enforce noise-related complaints when acting as an intermediary does not resolve the issue.

At the April 5, 2016 Board meeting, some Board members discussed adding the sound produced by the discharge of firearms to the list of exemptions in the proposed amendments to the ordinance. In the past, the Sheriff's Office has received noise complaints regarding the discharge of firearms. With respect to sport shooting ranges, Virginia Code § 15.2-917 provides that no local ordinance regulating noise may subject a sport shooting range to noise control standards that are more stringent than those in effect at the effective date of the range. As the proposed amendments to the County's noise ordinance are more stringent than the previous version, any outdoor sport shooting range approved by the County prior to the adoption of the proposed amendments will not be subject to these revised standards. This would not apply, however, to private ranges that have not been subject to any approval process. The TLUC did not recommend adding any additional exemptions to the proposed ordinance and forwarded the item back to the full Board. An exemption for the lawful discharge of firearms was included in the proposed amendments to Chapter 654.02 provided to the Board at the June 7, 2016 meeting. The Board directed staff to advertise the proposed amendments, including this change, as part of July 13, 2016 Board Public Hearing Agenda.

**FISCAL IMPACT:** None. The Sheriff's Office will begin enforcement activities pursuant to the amended ordinance utilizing current patrol deputies.

**ALTERNATIVES:**

1. The Board may decide to not make changes to the current Noise ordinance, which would perpetuate the Sheriff's Office inability to take enforcement action against excessive sound in residential areas in the County.
2. The Board may direct Staff to establish specific sound decibel measurements to constitute violations.
3. The Board may elect to include other language to amend the current ordinance.

**DRAFT MOTIONS:**

1. I move that the Board of Supervisors **forward** Proposed Amendments to Chapter 654.02 of the Codified Ordinances of Loudoun County, Unreasonable Noise as set forth in Attachment 1 of the July 13, 2016 Public Hearing Staff Report, to the Board of Supervisors' September 6, 2016 **Business Meeting** for action.

OR

- 2a. I move that the Board of Supervisors **suspend the rules.**

AND

- 2b. I move that the Board of Supervisors **adopt** the amendments to Chapter 654.02 of the Codified Ordinances of Loudoun County as shown in Attachment 1 of the July 13, 2016 Public Hearing Staff Report.

**ATTACHMENT:**

1. Proposed amendments to Chapter 654.02 of the Codified Ordinances of Loudoun County

654.02 ~~UNREASONABLE NOISE.~~ **EXCESSIVE SOUND IN RESIDENTIAL AREAS AND DWELLINGS**

(a) **Purpose Policy.** The making, creation or maintenance of **certain audible and discernable sounds** ~~excessive, unnecessary or unusually loud noises which are prolonged, unreasonable or unusual in their time, place and use, affect and are a detriment hazardous to the public health, comfort, safety, and welfare, peace and safety, as well as the quality of life of the citizens of Loudoun County and its inhabitants.~~ It is **the policy of the Board of Supervisors to prevent such sounds, while appropriately preserving each citizen's First Amendment rights, and to ensure the people of the County are provided with an environment free from the type of sound that may jeopardize the public health, welfare, peace and safety, or degrade the quality of life.** ~~It is therefore hereby declared that the provisions of this section are enacted in pursuance of and for the purpose of securing and promoting the public health, comfort, safety and welfare of the County and of its inhabitants.~~

(b) **Prohibition.** ~~No person shall make, continue, or cause to be made or continued, any excessive, unnecessary or unusually loud or otherwise unreasonable noise, which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of other persons in the County.~~ **Definitions. The following words, terms and phrases used in this section shall have the meanings ascribed to them as set forth herein, except where the context clearly indicates a different meaning:**

(1) ~~Operating or using any musical instrument, radio, television, phonograph, tape player, loudspeaker, amplifier or other similar machine or device, between 11:00 p.m. and 7:00 a.m. of the following day, in such a manner as to be audible at any point beyond the property line of the premises from which such noise is emanating or, if the noise is emanating from a vehicle, at a distance of fifty feet from such vehicle;~~ ***Agricultural operation* means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.**

(2) ***Audible* means the sound that can be heard by the human ear, with or without a medically approved hearing aid or device.**

(3) ~~Operating, using or permitting the operation or use of a steam engine or combustion engine, including, but not limited to, motor vehicles, motor boats and tractors, between 11:00 p.m. and 6:00 a.m. of the following day, in such a manner as to disturb the peace, quiet, repose or comfort of neighboring inhabitants; and~~ ***Discernible* means that the sound is sufficiently distinct so as to clearly identify its source.**

(4) ~~Operating, using or permitting the operation or use of any other machinery, equipment, pump, fan or similar mechanical device, not covered by paragraph (b)(2)~~

hereof, whether for industrial, business or household purposes, between 11:00 p.m. and 7:00 a.m. of the following day, in such a manner as to disturb the peace, quiet, repose or comfort of neighboring inhabitants. **Emergency** means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

(5) **Emergency operation** means any emergency service provided by law enforcement, fire/rescue or any other emergency service requiring a prompt response.

(6) **Emergency work** means any work performed for the purpose of preventing or alleviating the physical injury/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.

(7) **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 under various names such as hotels, motels, travel lodges, tourist homes, or hostels.

(8) **Instrument, machine or device** means and refers to any musical instrument, radio, phonograph, compact disc player, MP3 player, cassette tape player, amplifier, or any other machine or device for producing, reproducing, broadcasting or the amplification of sound.

(9) **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.

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

(11) **Restaurant** means any building or structure where in the normal course of business, food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

(12) **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.

**(13) *Sound generation or to generate sound*** means any conduct, activity or operation, whether human, mechanical, electronic or other, including, but not limited to, 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.

~~Acts in violation of this section include, but are not limited to, the following:~~

~~(c) Exceptions. This section does not apply to noise emanating from an agricultural operation, as defined in the Right to Farm Act, Chapter 4.5 of Title 3.1 of the Code of Virginia, as amended, or to an emergency vehicle which causes noise in the performance of emergency work.~~ **General Prohibition. No person shall permit, operate, or cause any source of sound or sound generation to create a sound that is audible and discernible in any other person's residential dwelling with the doors and windows to that other person's residential dwelling closed.**

**(d) Specific Prohibitions. The sounds generated by the following acts, among others, are declared to be plainly audible noise in violation of this section, and are specifically prohibited:**

**(1) The sound generated by the collection of refuse, waste, or recycling in residential areas and/or within 100 yards of a residence between the hours of 9:00 p.m. and 6:00 a.m.**

**(2) The operation of power lawn or landscaping equipment between the hours of 9:00 p.m. and 7:00 a.m.**

**(3) The operation of powered model vehicles outdoors between the hours of 9:00 p.m. and 7:00 a.m.**

**(4) The spinning of tires, racing of engines or other noise, or other similar acts in a motor vehicle or motorcycle, as well as the emission of noise created by the absence of a muffler and/or exhaust system conforming to the provisions of Virginia Code §§ 46.2-1047 and 46.2-1049 on a motor vehicle or motorcycle.**

**(5) The using, operating, or permitting to be played, used or operated, any instrument, machine or device for the producing or reproducing of sound in such a manner where the sound is plainly audible to any person other than the player(s) or operator(s) of the instrument, machine or device and those who are voluntarily listening to the sound and is plainly audible and discernable at a distance of 100 feet or more from the source of the sound; provided, however, that the provisions of this**

subsection shall not apply to any event sponsored by the county, state or federal government. The operation of any such instrument, machine or device between the hours of 11:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of 100 feet from the source of the sound shall be prima facie evidence of a violation of this section.

(6) The sounding of any horn or signaling device/alarm on any motor vehicle, motorcycle, bicycle, or other vehicle on any street or public place of the county, continuously or intermittently for more than twenty consecutive seconds, except as a danger warning or as permitted by state law. If such signaling device/alarm sounds continuously for 15 minutes after the arrival of a law enforcement officer and the owner cannot be located, such officer may arrange for the vehicle to be towed.

(7) Construction, demolition and/or maintenance activities which produce sound between the hours of 9:00 p.m. and 7:00 a.m. (or until 9:00 a.m. on Saturdays, Sundays, and federal holidays).

(e) Exemptions. Sounds produced by the following activities are not prohibited by this article:

(1) Agricultural operations.

(2) Bells, chimes or other similar instruments or devices from a place of worship.

(3) Emergency operations including but not limited to, audible signal devices which are employed as warning or alarm signals (other than vehicle alarms) in the event of an emergency, including sirens, loud speakers, or sound produced by power generators during power outages and other emergency situations.

(4) Emergency work, including the sound of emergency communications radios in public safety vehicles.

(5) Parades, fireworks or other similar events which are approved by appropriate County authorities, unless other regulations or terms of a zoning permit apply.

(6) Lawful activities which constitute protected expression pursuant to the First Amendment to the United States Constitution, but not amplified expression.

**(7) Operation of a public facility or a public use including, but not limited to, any sound which would not be an exempt sound if it was produced by the operation of a non-public facility or non-public use.**

**(8) School or organized youth athletic or contests or practices, and other school activities.**

**(9) Warning devices such as back-up alarms on trucks and other equipment.**

**(10) Activities sponsored by the County of Loudoun.**

**(11) Any activity for which the regulation of noise has been preempted by state or federal law.**

**(12) Transportation, including, but not limited to, public and private airports (except as otherwise regulated), aircraft and other means of public transit.**

**(13) Lawful discharge of firearms.**

~~Abatement of Nuisance. In addition to the penalty provided in Section 654.99, the playing, use, operation or maintenance of any device, instrument, vehicle, machinery or equipment in violation of any of the provisions of this section, thereby resulting in the production of noise which causes discomfort or substantial annoyance to persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the vicinity of the source of such noise, shall be deemed and is hereby declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction~~

**(f) Violations.**

**(1) Any person who violates any provision of this section shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this section within six months after a previous conviction under this ordinance shall be guilty of a Class 2 misdemeanor. Any person who violates a provision of this section within one year of a previous conviction under this ordinance shall be guilty of a Class 1 misdemeanor.**

**(2) The person operating or controlling the sound generation or source shall be guilty of any violation caused by that generation or source. If such person cannot be identified, there shall be a rebuttable presumption that any owner, tenant, resident, manager, or authorized user of the premises physically present on the**

**property where the violation is occurring is operating or controlling the sound generation or source.**

**(3) 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.**

**(4) Nothing herein shall serve to prevent a citizen aggrieved by any violation of this Chapter from applying to a Magistrate for the issuance of a warrant for any such violation.**