Subject: DRAFT Amended Noise Ordinance

Recommended Action: Conduct public hearing and consider adoption of Noise Ordinance, as amended.

Summary of Information: In 2009, the Supreme Court of Virginia, in the case of Tanner v. City of Virginia Beach, 277 Va. 432, 674 S.E.2d 848 (2009), held that the Virginia Beach Noise Ordinance was unconstitutional for reasons of vagueness because it employed subjective "reasonable person" standards, thus inviting arbitrary and capricious enforcement. The court implied that such noise ordinances must employ objective, measurable standards if they were to withstand constitutional scrutiny. As a result, many Virginia localities, including King George County, were left with noise ordinances that were unenforceable because they employed the same "reasonable person" standard.

Since 2009, many Virginia localities have adopted amended noise ordinances that employ objective, measurable standards based upon decibel levels and the use of sound monitoring equipment. The Commonwealth of Virginia passed legislation providing for the standardization and calibration of these devices for use by local law enforcement.

At the direction of the Board of Supervisors, County staff reviewed the existing County Noise Ordinance and reviewed amended noise ordinances from other Virginia localities to identify necessary and prudent amendments to make the County Noise Ordinance practical and enforceable. The County Attorney consulted with Sheriff Dempsey, Commonwealth’s Attorney Keri Gusmann, and others during this review and throughout the drafting process. Based upon input received from these sources, from the public, and at the direction of the Board, significant revisions were implemented that resulted in the present draft. This draft incorporates objective maximum decibel levels applicable to the entire County, which are more lenient during daytime hours and more stringent during nighttime hours. The decibel thresholds are representative of average thresholds from other, similarly situated localities in the Commonwealth.

As part of the review and drafting process, Sheriff Dempsey and his staff used the decibel measuring devices they procured for enforcement purposes to conduct a sound survey of the County. Sheriff Dempsey will present the survey findings to the Board on May 7th. As the survey results demonstrate, the decibel levels employed in this DRAFT Amended Noise Ordinance are both sensitive to the activities of daily living in the community and also sensitive enough to prohibit decibel levels that may be considered offensive under reasonable circumstances. In consultation with Sheriff Dempsey, we believe the survey findings demonstrate that the DRAFT Amended Noise Ordinance and the decibel levels employed are fair, reasonable, and enforceable.

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

Legal Review       X Complete       N/A
Attachments       X Yes           No

Attachment:
- DRAFT Amended Noise Ordinance
KING GEORGE COUNTY
VIRGINIA

NOISE ORDINANCE

Sec. 10-8. - Noise ordinance.

(a) Title. This section may be referred to as the “Noise Ordinance” of King George County.

(b) Applicability. The provisions of this section shall apply within the corporate boundaries of King George County without regard to the nature of formal land use designations.

(c) Purpose. To promote an environment for its citizens free from noise that jeopardizes their health or welfare or degrades the quality of life.

(d) Definitions. The following words and phrases, when used in this chapter, shall have the meaning assigned to them in this section:

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

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

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

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

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

Noise means any steady-state or impulsive sound occurring on either a continuous or intermittent basis that annoys or disturbs humans or that causes or tends to cause an adverse psychological or physiological
effect on humans; endangers or injures the safety or health of humans; or annoys or disturbs a reasonable
person of normal sensitivities; or endangers or injures personal or real property.

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

Sheriff means the Sheriff of King George County or his authorized agents.

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

(c) Prohibited noise generally. It shall be unlawful for any person to create any unreasonably
loud, disturbing and unnecessary noise. Noise of such character, intensity, and duration as to be detrimental to
the life or health of any person or unreasonably to disturb or annoy the quiet, comfort or repose of any person
is hereby prohibited.

(f) Exceptions and exemptions. The provisions of this chapter shall not apply to the following
activities:

(1) The emission of sound for the purpose of alerting persons to the existence of an
emergency or to the emission of sound in the performance of emergency work and/or by any
emergency vehicle in the discharge of duty, installation and/or testing.
(2) Noise caused by or arising out of activities related to repair, maintenance,
replacement or alteration of public utility systems or parts thereof, public drainage systems or
parts thereof, or streets and highways or parts thereof, and appurtenances thereto, where such
activity is reasonably necessary to further a public safety interest and/or to minimize
disruption in the provision of public services, e.g., water and sewer service.
(3) The production of agricultural, horticultural and forestal products, including sawmill
operations.
(4) Any noise generated during public and/or permitted ceremonies, celebrations,
parades, and other events.
(5) The lawful discharge of firearms.

(g) Responsibility of the property owner. It shall be unlawful for a property owner knowingly to
allow the creation of noise prohibited by this chapter, within the boundaries of his or her property.

(h) Enforcement. The provisions of this section shall be enforced by the sheriff and/or Virginia
State Police, who may issue orders and regulations and prescribe measurement procedures for such
enforcement.

(i) Penalties. Any person who violates this section shall be subject to a fine of $100.00 for the
first offense, a fine of $250.00 for a second offense committed within a one-year period, $500.00 for a third
offense committed within a one-year period, and $1,000.00 and/or a maximum of 12 months in jail for a fourth or subsequent offense committed within a one-year period.

(Ord. of 12-18-2007)

DRAFT AMENDMENTS

NOISE ORDINANCE

Section 10-8 Noise Ordinance

(a) Title. This section may be referred to as the "Noise Ordinance" of King George County.

(b) Applicability. The provisions of this section shall apply within the corporate boundaries of King George County.

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

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

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

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

(1) Field crops, including corn, wheat, oats, rye, barley, hay, tobacco, peanuts, potatoes and dry beans;

(2) Fruits, including apples, peaches, grapes, cherries and berries;

(3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions;

(4) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
(5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs and furs.

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

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

_Decibel_ means a unit which describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

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

_Horticultural products_ include commercial flowers, nursery stock, ornamental shrubs, ornamental trees and Christmas trees.

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

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

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

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

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

_Silvicultural products_ include, but are not limited to, lumber, pulpwood, posts, firewood, and other wood products for sale or for farm use.
**Sound** means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

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

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

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

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

- **Maximum dBA:**
  - Between 6:00 a.m. and 10:00 p.m.: 75
  - Between 10:00 p.m. and 6:00 a.m.: 65

(f) **Prohibited noise specifically.** The following acts are declared to be noise disturbances in violation of this section, provided that this list shall not be deemed to be an exclusive or exhaustive enumeration of those acts which may constitute noise disturbances and that an act not listed below may nevertheless constitute a violation of this section, regardless of the time the act occurs.

  (1) Owning, keeping, possessing, or harboring any animal or animals which frequently or habitually howl, bark, meow, squawk or make such other noise as is plainly audible across property boundaries or through partitions common to two (2) dwellings within a building and that take place continuously or repeatedly (i) during a period of at least fifteen (15) minutes in duration between 6:00 a.m. and to 10:00 p.m. or (ii) during a period of at least 10 minutes in duration between 10:00 p.m. and 6:00 a.m., provided, however, that animal noise on property subject to a special exception for a commercial kennel or conditional use permit for a public animal shelter shall be governed exclusively by the conditions of the special exception or conditional use permit.

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

  (1) Emergencies and emergency work.

  (2) Authorized repair, restoration, maintenance, replacement and/or alteration of public property, facilities, and equipment.
The production of agricultural, horticultural and silvicultural products, including sawmill operations, between the hours of 6:00 a.m. and 10:00 p.m.

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

The lawful discharge of firearms.

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

Sound traditionally associated with sporting events.

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

Sound produced by or emanating from the lawful operation of public or private landfills, utilities, and electrical power generation and transmission facilities.

Sound produced by or emanating from any lawfully operating area permitted by the Virginia Department of Mines, Minerals and Energy.

Sound produced by or emanating from United States military facilities.

Responsibility of the property owner. In addition to the person and/or persons creating or causing noise and or sound under this Ordinance, it shall be unlawful for a property owner to knowingly allow noise and/or sound prohibited by this chapter, within the boundaries of his or her property; and such person may also be charged under this Ordinance in addition to or in the alternative of the person creating the noise.

Enforcement. The provisions of this section shall be enforced by the sheriff and/or Virginia State Police, who may issue orders and regulations and prescribe measurement procedures for such enforcement.

Measurement.

Any person authorized to enforce this Ordinance may use equipment deemed proper pursuant to § 2.2-1112(C) of the Code of Virginia, as amended from time-to-time, to determine the decibel level of any sound, including noise. The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue.
of the facts therein stated. No calibration or testing of such equipment shall be valid for longer than 12 months.

(2) The measurement shall be made at the property boundary on or from which such noise is generated, at any point within the receiving property affected by the noise, at the location of the complainant, or at the closest point of public or permitted access to the property from which such noise is generated.

(k) **Penalties.** Any person who violates this section shall be subject to a civil fine of $250.00 for the first offense and a civil fine of $500.00 for a second offense committed within a one-year period. A third offense committed within a one-year period, shall constitute a Class 2 misdemeanor, and the offender shall be subject to penalties applicable under state law. The judge or court hearing the matter also shall have the authority to order abatement of the noise or activity causing the noise or other appropriate remedies, including injunctive relief.

(l) **Severability.** If any portion or part of this section or its subsections, paragraphs, sentences, clauses, or phrases shall be declared unconstitutional, invalid, or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect the validity of the section in its entirety or any of the remaining portions, parts, subsections, paragraphs, sentences, clauses, or phrases of the section.

State Law references: *Virginia Code Sections 2.2-1112; 15.2-1200; 18.2-11.*