# ORDINANCE

## AN ORDINANCE TO AMEND AND ADOPT CHAPTER 13.5 OF THE FAUQUIER CODE TO REGULATE NOISE

WHEREAS, the Fauquier Board of Supervisors, after due notice and public hearing, has determined that it is in the best interest of the health, safety and welfare of the citizens of Fauquier County to amend and adopt this Ordinance; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 8th day of September, 2016, That Chapter 13.5 of the Fauquier County Code be, and is hereby, amended and adopted, which Sections shall read as follows:

## FAUQUIER COUNTY CODE

## Chapter 13.5 NOISE

***Sections 13.5-1 and 13.5-2 are not changed and are only provided for reference.***

**Sec. 13.5-1. - Declaration of policy.**

The board hereby finds and declares that certain audible and discernible sounds are a serious hazard to the public health, safety, welfare and the quality of life of the citizens of Fauquier County; that the people have a right to and should be ensured an environment free from such sound that may jeopardize the public health, safety and welfare or degrade the quality of life; and that it is the policy of the board to prevent such sound to the extent such action is not inconsistent with a citizen's Constitutional rights.

***(Ord. No. 15-1, 6-11-15)***

**Sec. 13.5-2. - Penalty for violations of chapter.**

Any person who violates any provision of this chapter shall be subject to a civil penalty of two hundred fifty dollars ($250.00) for the first offense and five hundred dollars ($500.00) for each subsequent offense. These civil penalties may be charged once for each twenty-four-hour period and each offense charged for every twenty-four-hour period shall be deemed a separate and subsequent offense.

***(Ord. No. 15-1, 6-11-15)***

***State Law reference -- Enabling authority, Code of Virginia § 15.2-980.***

**Sec. 13.5-3. - Prohibitions.**

~~(a) Noise near schools, hospitals, etc. The creation of any excessive noise on any street adjacent to any school, institution of learning, library, hospital or sanitarium, or any court while the same is in session, which unreasonably interferes with the working or activities of such place.~~
~~(b) Noisy animals. 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) persons within a building. A~~

~~canine or canine crossbreed that is outside a fully enclosed structure without the owner or other adult capable of controlling the animal present that is confined by chain or tether to a trolley system, ground stake or other stationary or fixed object that barks or makes such other noise that is plainly audible to an animal control officer or other sheriff's deputy for more than one (1) minute shall be deemed to be in violation of this section.~~

~~(c) Loud parties, playing of radios, musical instruments, etc.~~

~~(1) Operating or permitting the use, or operation of any radio receiving set, musical instrument, television, phonograph or any other device for the production of sound between the hours of 10:00 p.m. and 7:00 a.m. the following day, except Friday and Saturday evenings, when the hours of noise limitation shall be 11:00 p.m. to 7:00 a.m. the following day in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) persons within a building or plainly audible at fifty (50) feet from such device when operated within a motor vehicle parked on a public right-of-way or in a public place.~~

~~(2) The conducting of any loud party, between the hours of 10:00 p.m. and 7:00 a.m., except Friday and Saturday evenings, when the hours of noise limitation shall be 11:00 p.m. to 7:00 a.m. the following day, with or without radios, musical instruments or stereos in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) persons within a building or plainly audible at fifty (50) feet from such device.~~

~~(d) Engine braking. The creation of any unreasonably loud, disturbing or unnecessary noise caused by the application of engine brakes by any driver of a motor vehicle and is not as of a result a bona fide emergency occurrence necessitating the application of an engine brake. Any violation of this subsection shall constitute a Class 1 misdemeanor, which misdemeanor is punishable by a fine of not more than two thousand five hundred dollars ($2,500.00) or confinement in jail for not more than twelve (12) months, or both.~~

~~(e) The collection of trash or refuse in residential use districts between the hours of 10:00 p.m. and 5:00 a.m. the following day.~~

(a) No person shall permit, operate, or cause any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling or place of business with the doors and windows of that residential dwelling or place of business closed. In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed. Plainly audible means the sound can be heard by the human ear with or without a medically approved hearing aid or device. Discernible means that the sound is sufficiently distinct such that its source can be clearly identified.

(b) No person shall permit, operate, or cause any source of sound or sound generation to create a sound that is in excess of 60 A-weighted decibels (dBA) measured at the emitter's property line or at any point within any other affected property.

(c) Any person owning, operating or controlling the sound generation or source shall be guilty of any violation caused by that sound generation or source. If it cannot be determined which person is the owner, operator or controller of the sound generation or source, any owner, tenant, resident or manager physically present on the property where the violation is occurring is

subject to a rebuttable presumption that they are the one operating or controlling the sound generation or source.

(d) The following activities that create sound that is measurable under subsections (a) or (b) above are a violation of this chapter only as specifically set out and prohibited below:

(1) Use of a loudspeaker, radio, musical instrument, stereo or other sound amplification device between the hours of 10:00 p.m. and 7:00 a.m., except Friday and Saturday evenings, when the hours of noise limitation shall be 11:00 p.m. to 7:00 a.m. the following day.

(2) Conducting any loud party, between the hours of 10:00 p.m. and 7:00 a.m., except Friday and Saturday evenings, when the hours of noise limitation shall be 11:00 p.m. to 7:00 a.m. the following day, with or without radios, musical instruments or stereos.

(3) Owning, keeping, possessing or harboring any animal or animals which make sound which is either: (i) plainly audible for more than five consecutive minutes without interruption of more than 10 seconds or (ii) measures more than 60 dBA for a 15 second interval at least once per minute for five consecutive minutes. A canine or canine crossbreed that is outside a fully enclosed structure without the owner or other adult capable of controlling the animal present that is confined by chain or tether to a trolley system, ground stake or other stationary or fixed object that barks or makes such other noise that is plainly audible to an animal control officer or other sheriff's deputy for more than one (1) minute shall be deemed to be in violation of this section. It shall not be a violation of this provision if the animal, at the time of the sound or sound generation, was responding to pain, injury or was protecting itself, its kennel or offspring, or any person at the time of the sound.

(4) The operation of off-road or recreational vehicles not used for agricultural purposes between the hours of 7:00 p.m. and 9:00 a.m.

*(Ord. No. 88-3, 6-7-88; Ord. No. 02-07, 10-21-02; Ord. No. 09-06, 7-9-09; Ord. No. 15-1, 06-11-15; Ord. No. 16-____, 09-__-2016)*

**Sec. 13.5-4. Exemptions.**

(a) The following activities shall be exempt from the provisions of this chapter:

(1) Animal shelters or kennels which were in existence prior to June 7, 1988 ~~as of the date of adoption of this chapter~~.

(2) Sporting events or other activities operated and conducted under the auspices of an official organization such as a hunt club, civic organization, ~~high~~ public or private school or that which occurs on or in any municipal, county, state, federal property or facility.

(3) Agricultural activities on agriculturally zoned property associated with crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, domesticated game animals, hogs, goats, horses, poultry, milk, honey,

eggs, aquaculture, timber including Christmas trees, and dogs working or being trained to work in conjunction with any agricultural activity.

(4) Automobile races at commercial facilities before 10:00 p.m., except Friday and Saturday evenings, which will be before 11:00 p.m.

(5) Lawful discharge of firearms during the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. on Saturday and Sunday or lawful hunting.

(6) Clocks, bells, carillons, and other calls to worship emanating from a public building, church or place of worship.

(7) Noise generated by a business on industrially zoned property.

(8) Railroads and any sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.

(9) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any threat is no longer imminent.

(10) The emission of sound in response to any emergency situation by law enforcement, fire and rescue personnel or any other public employee.

(11) Use and operation of any equipment to remove snow or ice.

(12) Operation of backup generators during power outages resulting from storms or other emergencies.

(13) Heat pumps and/or air conditioners operated in accordance with manufacturer's specifications.

(14) Electric garage door openers when properly installed and operated according to manufacturer's specifications and alarms or noise emanating from a motor vehicle when locking or unlocking such vehicle.

(15) Motor vehicles travelling on a public right of way and any other activities for which the regulation of noise has been preempted by federal or state law.

(16) Any noise associated with a use permitted by the issuance of Special Exception or Special Use Permit for that use on the subject property.

(17) The provisions of this chapter shall not subject a sport shooting range to noise control standards more stringent than those in effect at the time of the effective date of the range. The operation or use of a sport shooting range shall not be enjoined on the basis of noise, nor shall any person be subject to action for nuisance or criminal prosecution in any matter relating to noise resulting from the operation of the range, if the range is in compliance with all ordinances relating to noise in effect at the time of the effective date of the range. For the purposes of this section, the following definitions shall apply:

(i) a sport shooting range is an area or structure designed for the use for rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting; and

(ii) effective date means the time the construction or operation of the sports shooting range initially was approved, or at the time any application was submitted for the construction or operation of the sports shooting range, whichever is earliest.

(b) The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 10 p.m., unless specifically noted otherwise, from the prohibitions in this chapter:

(1) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, except no such activities shall commence before 9 a.m. on Saturdays, Sundays and federal holidays.

(2) Gardening, lawn care, tree maintenance or removal, and other landscaping activities.

(3) Refuse collection and sanitation services, except that refuse collection and sanitation services may begin at 5:00 a.m.

(4) Testing of audible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger, except such testing shall not occur after 8:00 p.m.

*(Ord. No. 88-3, 6-7-88; Ord. No. 16-__, 09-__-2016)*

***State Law reference – Limitation on regulation of sport shooting ranges, Code of Virginia § 15.2-917.***

**Sec. 13.5-5. - Severability; private nuisance actions preserved; enforceability.**

(a) In the event that any portion of this chapter is declared unconstitutional, invalid, or unenforceable for any reason, such declaration shall not affect the validity or enforceability of any other portion of this chapter.

(b) Nothing in this chapter is intended to preclude private actions to abate or enjoin nuisances. The enforcement of this chapter by public officers shall not be a precondition to the bringing of an action to restrain, abate or enjoin such nuisance.

(c) This chapter may be enforced by the sheriff or any deputy sheriff or animal control officer of Fauquier County.

(d) The provisions of this chapter are cumulative and not exclusive and shall supplement and be in addition to any noise performance standards or other standards set in the zoning ordinance of Fauquier County. ~~It shall not be necessary to utilize a sound measurement device to determine the precise decibel level of many sounds which are the subject of this chapter.~~

(e) It shall not be necessary to utilize a sound measurement device to determine the precise decibel level of sounds when they are plainly audible and cited as violations pursuant to Sec. 13.5-3(a).

(f) The sound level measurements in A-weighted decibels, or dBA, shall be made with an integrating sound level meter that meets or exceeds the standards for such equipment as established by *Code of Virginia* §§ 19.2-270.7, 2.2-1112, and any regulations promulgated thereunder. The results obtained by use of such equipment 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. If any question arises about the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for

accuracy of the equipment, and when and by whom the calibration or test was made, shall be admissible as evidence of the facts therein stated. The calibration or testing of such equipment shall be valid for 12 months.

(g) A-weighted sound level or decibels (dBA) is the sound pressure level in decibels as measured on a sound level meter (SLM) using the A-weighting network. L Equivalent (Leq) is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound level. A-weighted sound levels shall be measured with an integrating sound level meter (SLM) that meets or exceeds the standards established by *Code of Virginia* §§ 19.2-270.7, 2.2-1112, and any regulations promulgated thereunder. The response of such SLM shall be set to FAST, and a time period of 15 seconds shall be used. The operator may select another time period between a minimum of 10 seconds and maximum of 1 minute if a 15 second time period cannot adequately capture the A-weighted sound level. Samples shall be taken only when the subject sound can be clearly heard and identified by the operator without any extraneous sounds such as passing traffic, bird songs, etc. The operator shall take a minimum of 3 samples that demonstrate the repeatability and consistency of the subject sound. When possible, the operator should also take at least 1 sample when the subject sound is not heard for the purpose of establishing a baseline and comparison. When measuring sound, the microphone of the SLM shall be aimed toward the source of the subject sound and a standard microphone height of five feet above grade shall be used. It is a violation of this chapter for the arithmetic average of all samples that demonstrate the repeatability and consistency of the subject sound to exceed 60 dBA.

*(Ord. No. 15-1, 06-11-15; Ord. No. 16-__, 09-08-2016)*