



Noise Committee Meeting Agenda

January 11, 2021

6:00 - 7:30 p.m.

County Administration Building, Room 270

1800 Sandy Hook, Goochland, VA 23063

(Join via Mobile dial: 1-408-650-3123; Access Code: 395-516-525)

- | | |
|---|-------------------|
| Present follow up information on proposed ordinance
County staff
Commonwealth's Atty
Agricultural community | Tara McGee |
| Discuss 12/31/2020 draft Nuisance Noise Ordinance
Changes made in 12/15/20 draft
Changes made in 12/31/20 draft | Committee |
| Discuss 12/31/2020 draft report to the Board of Supervisors | Committee |
| Establish Action Items and next meeting date | Committee |

Action Items/Notes:

Nuisance Noise Ordinance

Goochland County Code Chapter 10 Offenses

Sec. 10-36 to 10-40. Reserved

Article II Noise Nuisances

10-41 Purpose.

Residents should be able to use and enjoy their homes free from noise that rises to the level of a nuisance. To that end, this article prohibits the creation of a noise nuisance on residential property which, by virtue of its volume, pitch, duration, repetition, and time of day, unreasonably and substantially disturbs or interferes with someone else's peaceful enjoyment of their residential property.

10-42 Definitions.

Agricultural activities. The raising or keeping of animals, fowl, or bees; the production or harvest of all crops including: fruits, vegetables, meat, dairy, poultry, fiber, nuts, tobacco, trees, timber, and flowers or other nursery products; the production or harvest of products from silviculture and aquaculture activity; and other, similar activities. Moreover, any activities added in the future to the definition of "agricultural operation" in the Right to Farm Act, Virginia Code § 3.2-300, are incorporated herein by this reference.

Nuisance. A nuisance is something that injuriously affects public safety or health, or which causes a material, substantial, repetitive, and unreasonable interference with the private use and enjoyment of another person's residential property.

Residential property. Residential property means any property on which one or more dwelling units exist, regardless of the property's zoning designation. For residential property containing more than one dwelling unit, a noise violation may be found if the noise generated in one dwelling unit or in a common area creates a noise nuisance in another dwelling unit located on the same property; however multifamily structures operated by a management company ~~containing more than 10 residential dwelling units~~ are exempt from this article.

10-43 Noise Nuisance Violation.

A. Noise nuisance.

It is a violation of this article for any person to intentionally or unintentionally make repetitive noise, or allow the making of repetitive noise, except the noises exempted below, on residential property that, by reason of its volume, pitch, duration, repetition, and time of day, unreasonably

and substantially disturbs or interferes with someone else's peaceful enjoyment of residential property they own, rent, or occupy.

B. Persons responsible.

Any person(s) who control the noise source can be held responsible for a violation, but if that person(s) cannot be reasonably ascertained, then any owner(s), tenant(s), resident(s) or occupant(s) who is physically present on the residential property during the nuisance noise, and to whom the required warning has been provided can be held responsible.

C. Warning.

No person shall be found in violation of this article unless there has been presented before the court competent evidence that the complainant or a law enforcement official had, prior to the issuance of any summons or warrant, requested the abatement of the nuisance complained of, and that such nuisance continued after the request for abatement. Written notice of the violation must be sent, certified mail, return receipt requested, to the property from which the noise nuisance emanated and, if a different address is listed for the property owner on the county's geographic information system (GIS), also to the property owner(s) at the address shown in GIS.

10-44 Exemptions.

The following are exempt such that noise from them cannot form the basis of a noise nuisance:

1. Agricultural activities;
2. Approved bBbusiness or commercial activity ~~permitted~~ on residential property;
3. Companion animal noises which violate Code § 3-104; and
4. Hunting that is lawful under state and local laws and regulations.
5. Activities permitted by zoning, special events permits, parade permits, fireworks permits, or other governmental approvals; and
6. Activities for which noise regulation has been pre-empted by federal law.

10-45 Penalties.

A. Violations of this article carry a civil penalty not to exceed \$250 for the first offense and not to exceed \$500 for subsequent offenses.

B. The public nuisance procedures set forth in Virginia Code § 48-1 et. seq. may be used for violations of this article.

C. If the violation is unabated at the time of a court finding, the court shall order the violator to abate or remedy the violation in compliance with this article within a time period established by the court. Failure to abate or remedy the violation within the specified time period shall constitute a separate violation.

D. In addition to and not in lieu of the other penalties, the county may apply to the circuit court for an injunction against any continuing, including intermittently continuing, violation of this article, and may seek any other remedy or relief authorized by law.

Report of the Goochland County Citizen Noise Committee

February 2021

Committee Members:

Kara Beville
Mary Day
Thomas Ford
Peter Lenk
Joe Ligon
Eric McKay
Patrick Murtaugh
Catherine O'Brien
Rose Sompayrac
Richard Willis
David Winchester
Eric Yim

Staff:
Tara A. McGee
County Attorney

I. Committee Formation

In spring 2019, several citizens spoke during Citizen Comment periods at Board of Supervisors' meetings to express their concerns with noises disturbing the peaceful enjoyment of their homes and the absence of a noise ordinance in Goochland. In response, a community listening session was held on May 22, 2019.

Approximately 75 citizens attended the community listening session and expressed a variety of opinions about noise; there was both support and opposition for regulating noise. Those in favor of the county adopting a noise ordinance cited their loss of the quiet enjoyment of their residence or property due to repetitive and loud noises from animals, ATVs, firearms, fireworks, and music; those opposing additional noise regulation cited their personal freedoms and rights, protections of the county's agrarian environment, and the possibility of "weaponizing" noise against neighbors. A complete summary of the listening session remarks and citizen emails is attached as **Exhibit A**.

Given the citizen engagement on the topic of noise and in light of the 2010 Board's promise to revisit a noise ordinance in the future (see noise ordinance history below), the Board of Supervisors decided to appoint a group of representative citizens to a Citizen Noise Committee. The committee includes residents of each magisterial district as well as representatives of the county's business interests and apartment complexes. More significantly, though, the committee includes residents who expressed support for additional noise regulation as well as those who would prefer that the county not adopt a noise ordinance.

The members of the Citizen Noise Committee are Kara Beville (D2), Mary Day (D1), Thomas Ford (D3), Peter Lenk (D2), Joe Ligon (D4), Eric McKay (Hardywood) Patrick Murtaugh (Hardywood), Catherine O'Brien (D2), Rose Sompayrac (D4), Richard Willis (D3), David Winchester (D2) and Eric Yim (Retreat at West Creek apartments).

II. Noise Ordinance History

Before 2007, the county had a run-of-the-mill noise ordinance under which noise which was "unreasonably loud, disturbing, and unnecessary" constituted a criminal violation. In May 2007, the Goochland County Circuit Judge ruled Goochland's noise ordinance unconstitutionally vague. The ordinance was revised in 2008 to enumerate some specific standards for certain noises, but it also contained the "unreasonably loud, disturbing, and unnecessary" standard for noise violations. In 2009, the Virginia Supreme Court, in deciding a noise violation case out of Virginia Beach, *Tanner v. City of Virginia Beach*, ruled that standards such as "unreasonably loud and annoying" were unconstitutionally vague for criminal noise violations.

In response to the Virginia Supreme Court decision, the county's noise ordinance was repealed and the County Attorney began to craft a new noise ordinance working with a small group of residents all of whom wanted the county to adopt a new constitutionally supportable noise ordinance.

In addition to the general noise ordinance, Goochland already had a nuisance ordinance for companion animals which included a noise component. Goochland County Code § 3-104 covered situations in which an owner failed to exercise proper control of a companion animal such that it becomes a nuisance by chasing vehicles, attacking other companion animals, causing damage to another person's property, interfering with a pedestrian's use of a public right of way, or making too much noise. The residents were working with the County Attorney to amend this noise standard as well.

In February 2011, the Board adopted a noise provision for the animal nuisance ordinance which imposed a civil penalty when a companion animal's bark, whine, or other noise is "plainly audible" across a property line continuously or repeatedly for at least 60 minutes (6:00 a.m.-10:00 p.m.) or 30 minutes (10:00 p.m.-6:00 a.m.). Before a charge can be placed for a companion animal violation, notice of the nuisance must be sent to the violator by an animal control officer, law enforcement personnel, or the complainant.

In October 2011, the Board of Supervisors held a public hearing on the newly proposed general noise ordinance. More than 20 residents and the Sheriff spoke in opposition to the ordinance; it was not adopted. After the vote on the proposed ordinance, the Board stated that it would take a look at a noise ordinance again in the future.

III. Committee Meetings, Data, and Feedback

At its inaugural meeting, in October 2019, staff briefed the committee members on the history of the county's noise ordinance, and the existence of the companion animal nuisance ordinance. In addition, the full summary of the community listening session notes was provided to each committee member. Staff also made committee members aware of the state law process for residents to ask the Circuit Court to declare a nuisance pursuant to Virginia Code Sections 48-1 through 48-6. The issues of gun safety (neighbor's shooting being too close to someone's property) and fireworks (which are permitted only by fireworks permits) were identified as being outside the scope of the committee.

In December, staff briefed the committee on the state law authority and limitations for localities' noise regulations as well as considerations for how to regulate noise. Committee members were provided and discussed the county's proposed 2011 noise ordinance and noise ordinances from Caroline, Bedford, Chesterfield, and Roanoke Counties. The committee members identified data that they would like to receive and review, including county noise complaints for the past 10 years.

Staff sent committee members the minutes of the 2011 Board of Supervisors' meeting involving the consideration of the proposed noise ordinance. In January, the committee reviewed, analyzed, and discussed the county's noise complaints between January 1, 2009 and July 31, 2019. Committee members had some questions about this data and asked to have the Sheriff attend the next committee meeting. In addition, the committee asked to receive noise complaints from Louisa, Powhatan, Fluvanna and Hanover Counties.

Due to the pandemic, the committee did not meet again in spring 2020; however, noise complaint information from Louisa, Powhatan, Fluvanna and Hanover Counties was sent to the committee members. To determine where and how growth was likely to be coming to the county, staff sent the committee the county's map of zoned but unbuilt residential lots. There was a request to determine whether county noise complaints increased dramatically after March 1, 2020, when the pandemic had caused so many people to remain home, potentially even for work. Goochland noise complaints between March 1, 2020 and June 16, 2020 were provided by the Sheriff's office and sent to the committee.

The committee next met in person and via conference call on July 1, with Sheriff Creasey and Major East in attendance. Sheriff Creasey and Major East provided information about noise complaints and answered the committee's questions about the types of calls for service the Sheriff's office receives. The Sheriff noted that when a deputy appears at someone's residence, most people voluntarily decrease or stop the noise which has annoyed their neighbor. Sheriff Creasey told the committee he was open to noise regulation. He expressed a concern that enforcement of a noise ordinance could take deputies away from other calls and that, on any given shift, there may be only four deputies on duty and responding to all calls from anywhere in the county's 284 square miles, including crashes on I-64 or I-288. After the Sheriff and Major concluded their discussions, the committee members outlined some general parameters for a proposed noise ordinance, including that it address only repetitive noise that would constitute a nuisance, that it not apply to any commercial or industrial noise, that it exempt agricultural activities, and that a warning be required.

A draft nuisance noise ordinance was sent to committee members about a week before the committee's September 14 meeting. At the meeting, the committee members went through the draft ordinance line by line, discussing each provision, asking questions, and suggesting revisions. The ordinance was updated both during the meeting and shortly thereafter. The September 14 version of the proposed ordinance was sent to the committee members, as well as to the Sheriff's Office and Commonwealth's Attorney.

At the committee's October 5 meeting, the committee members again went through the draft ordinance line by line, discussing each provision, asking questions, and suggesting revisions. The Commonwealth's Attorney's feedback prompted two revisions (removing posting and requiring notice to be sent certified mail). In addition, the committee members began to identify the provisions about which they had differences of opinion, so those differences could be included in this report. Revisions were again made to the ordinance during the meeting and in days shortly thereafter. An updated ordinance was sent to committee members on October 22 and it was also sent to the Sheriff's Office and the Animal Protection Office. Staff spoke with the Animal Protection Office about the similar warning provision in the animal nuisance ordinance. Staff also met with the Sheriff's Office about the proposed ordinance and some questions the committee members had raised.

On November 5, a draft committee report and the October 22 proposed ordinance was sent to the committee in preparation for the committee's meeting on November 16. At the November 16 meeting, staff relayed the circumstances of the failure of Buckingham County's recent noise ordinance amendment after a substantial number of residents spoke in opposition to the increased

regulation of gunfire at the public hearing. Staff relayed the Sheriff's Office feedback, including that an upcoming new CAD system will improve the accuracy of noise complaints and reports and that sheriff's deputies need to engage in off-duty target practice to maintain their required weapons proficiency. The Sheriff expressed concern about the subjectivity of sheriff's deputies having to determine if the noise is a nuisance and that the Circuit Court Judge struck down the county's last noise ordinance. He expressed support for complainants being added as persons who can provide written warnings (similar to the Companion Animal Nuisance ordinance), and for the proposed apartment complex exemption, The Sheriff cautioned that some neighbors may "pad the data" by calling the Sheriff's office regularly with a noise complaint.

Resident Jonathan Lyle attended the committee's November 16 meeting and provided his feedback about the proposed ordinance. He appreciated the committee's desire to exempt agricultural activities from the ordinance and recommended adding language to the exemption that would specifically capture all activities in the Right to Farm Act. He expressed that "unreasonably", "substantially", "disturbs", and "interferes" are subjective and that decibel measurements would be an objective standard. He stated he would like to see the hunting exemption expanded to include all lawful firearm activity. Finally, he stated that the ordinance covers residential dwellings even if they are on large agriculturally zoned parcels. He stated that he would share the proposed ordinance with the Goochland Farm Bureau staff and the directors of the Monacan Soil and Water Conservation District.

The committee discussed and approved making several changes to the proposed noise ordinance, as follows: revising the agricultural activities exemption to include all activities in the Right to Farm Act, as requested by Jonathan Lyle, exempting apartment complexes, eliminating from "persons responsible" owners who are not present when the noise is occurring, and revising the warning language to more closely match the companion animal nuisance ordinance.

The committee's recommended changes were incorporated into a new ordinance draft dated December 3, 2020. This draft also included staff revisions improving the language and reorganizing ordinance provisions. The December 3 draft ordinance was sent to the committee members, the Commonwealth's Attorney, the Sheriff, Jonathan Lyle (for both the Monacan Soil & Water Conservation District and the Goochland Farm Bureau), Virginia Farm Bureau President Wayne Pryor, Retreat at West Creek property manager Eric Yim, and 2000 West Creek property manager Brina Brigham. In addition, the December 3 draft ordinance was provided for review to the county's community development director.

Based on feedback from the county's community development director, the proposed ordinance was changed to reword the apartment complex exemption, and to add "approved" to the exemption for business and commercial activities at residential dwellings.

Virginia Farm Bureau President and Goochland resident Wayne Pryor provided feedback on the proposed ordinance, requesting that the agricultural exemption include tree harvesting and timber cutting and stating that he hoped the ordinance would not prohibit target practice or occasional clay shooting activities that occur during the daytime and last a couple of hours. In response, the agricultural activities definition was revised to specifically exempt noise from the production or harvest of trees and timber.

Jonathan Lyle provided staff with an email containing feedback on the November 5 draft committee report from the Virginia Farm Bureau's government relations personnel, Greg Maxey. Mr. Maxey stated that the draft committee report should not include a reference to best management practices in the state Right to Farm Act; consequently, that reference has been removed in the December 31 version of the committee report.

Jonathan Lyle reported to staff that no formal action was taken by the Monacan Soil and Water Conservation District Commission, but that the directors were aware of the ordinance and its exemption for agricultural activities. Mr. Lyle had also forwarded the proposed ordinance to the Goochland Farm Bureau staff and asked that it be provided to that organization's directors. The Goochland Farm Bureau did not take any action on the proposed ordinance or provide any specific feedback on the agricultural activities' exemption or any other portion of the proposed ordinance.

Commonwealth's Attorney Mike Caudill provided feedback in a meeting with staff. He said that the law is familiar with determining a nuisance from the totality of the circumstances and noted that the ordinance contained specific criteria to be reviewed to make the nuisance determination. He noted that certified mail was an appropriate method to provide notice. He stated that the burden of proof for a violation under the proposed ordinance would be a preponderance of the evidence (as opposed to the proof beyond a reasonable doubt standard for criminal charges). Mr. Caudill did not request any revisions to the proposed ordinance.

With respect to the exemption for the apartment complexes, committee member Eric Yim (property manager for Retreat at West Creek) had expressed support for the exemption in November, but staff received no additional feedback from him. The property manager for 2000 West Creek did not provide any feedback on the proposed ordinance.

IV. Proposed Noise Ordinance

Goochland County Code Chapter 10 Offenses Article II Noise Nuisances

10-41 Purpose.

Residents should be able to use and enjoy their homes free from noise that rises to the level of a nuisance. To that end, this article prohibits the creation of a noise nuisance on residential property which, by virtue of its volume, pitch, duration, repetition, and time of day, unreasonably and substantially disturbs or interferes with someone else's peaceful enjoyment of their residential property.

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B. Persons responsible.

Any person(s) who control the noise source can be held responsible for a violation, but if that person(s) cannot be reasonably ascertained, then any owner(s), tenant(s), resident(s) or

occupant(s) who is physically present on the residential property during the nuisance noise, and to whom the required warning has been provided can be held responsible.

C. Warning.

No person shall be found in violation of this article unless there has been presented before the court competent evidence that the complainant or a law enforcement official had, prior to the issuance of any summons or warrant, requested the abatement of the nuisance complained of, and that such nuisance continued after the request for abatement. Written notice of the violation must be sent, certified mail, return receipt requested, to the property from which the noise nuisance emanated and, if a different address is listed for the property owner on the county's geographic information system (GIS), also to the property owner(s) at the address shown in GIS.

10-44 Exemptions.

The following are exempt such that noise from them cannot form the basis of a noise nuisance:

1. Agricultural activities;
2. Approved business or commercial activity on residential property;
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4. Hunting that is lawful under state and local laws and regulations.
5. Activities permitted by zoning, special events permits, parade permits, fireworks permits, or other governmental approvals; and
6. Activities for which noise regulation has been pre-empted by federal law.

10-45 Penalties.

A. Violations of this article carry a civil penalty not to exceed \$250 for the first offense and not to exceed \$500 for subsequent offenses.

B. The public nuisance procedures set forth in Virginia Code § 48-1 et. seq. may be used for violations of this article.

C. If the violation is unabated at the time of a court finding, the court shall order the violator to abate or remedy the violation in compliance with this article within a time period established by the court. Failure to abate or remedy the violation within the specified time period shall constitute a separate violation.

D. In addition to and not in lieu of the other penalties, the county may apply to the circuit court for an injunction against any continuing, including intermittently continuing, violation of this article, and may seek any other remedy or relief authorized by law.

V. Committee Perspective on Noise Regulation Generally

The committee reached a consensus on the proposed nuisance noise ordinance, but there is still a minority perspective that no noise ordinance needs to be adopted. One committee member points to the low number of noise complaints received by the Sheriff during COVID (March-June 2020) as evidence that noise is not an issue the county needs to address. The majority perspective of the committee, though, is that there are too many noise complaints and problems not to address it with the proposed ordinance and that the current and future rate of residential development in the county will only exacerbate the current noise problems if the ordinance is not adopted.

VI. Committee Analysis of Each Ordinance Provision

10-41 Purpose

The committee believed in individual property rights and wanted to protect those rights unless someone created noise that was a nuisance interfering with someone else's right of quiet enjoyment at their residence.

The ordinance regulates only noise from residential activity (not commercial, industrial, or agricultural) which becomes a nuisance by disturbing someone else at their residence, not on property that is zoned or used for commercial or industrial purposes.

The noise must be repetitive and be a nuisance by virtue of its volume, pitch, duration, repetition and time of day.

10-42 Definitions

The agricultural activities definition began with the definition in the Right to Farm Act, Virginia Code § 3.2-300, but the committee expanded the definition and then incorporated recommendations to expand the exemption to include trees and timber and to include any activities covered by the Right to Farm Act in the future.

Residential property is broader than the zoning category and covers not only single-family dwellings, but also townhomes, and trailer parks. On properties that contain more than one dwelling unit, it is intended to cover noise from one dwelling unit to another, or from a common area to a dwelling unit. The committee chose to exempt from the ordinance apartment complexes large enough to have a management company because the management company is the best arbiter of what noise is acceptable within its complex and it has the opportunity to take action against a resident who creates a noise nuisance.

10-43 Violations

A. Generally, noise must be repetitive, and it must be considered a nuisance by virtue of its volume, pitch, duration, repetition, and time of day. The committee felt consideration of these characteristics for each situation would provide better coverage of noise nuisances than trying to identify specific standards for each type or circumstance of noise. Intentional noise is included because the committee became familiar with the situation where one neighboring property owner

was intentionally creating a noise nuisance for residents of the Reader's Branch subdivision and they wanted to ensure that the intentional creation of a noise nuisance would be considered a violation of the ordinance.

B. Persons responsible The first step is to hold responsible any person who controls the noise source, but if that person cannot be reasonably ascertained, then other persons associated with the property and physically present during the creation of the nuisance can be held responsible, if they received the required warning.

C. The warning language is similar to the language in the Companion Animal Nuisance ordinance except it specifically requires that written notice be provided by certified mail, return receipt requested. The warning requirement is tool to prevent neighbors from "weaponizing" the noise ordinance against one another. Based on the Sheriff's feedback and similar to the Companion Animal Nuisance ordinance, the warning can come from a complainant or law enforcement personnel because it provides a broader opportunity for notice to be given without as much impact on the Sheriff's resources; however, the issuance of a warning from law enforcement personnel also provides a check against one neighbor abusing the ordinance by issuing a warning when the noise doesn't rise to the level of a nuisance. The committee felt that appearing before a magistrate before a charge was issued provided a third-party review of the situation which would prevent a noise situation from being "weaponized" between neighbors.

10-44 Exemptions

1. The committee did not want to interfere with the county's robust agrarian character, so noises from agricultural activities are exempt, to the broadest extent possible.

2. In keeping with its desire not to interfere with business or commercial activity, the ordinance exempts that lawful activity even if it occurs on residential property.

3. The county already regulates noises from companion animals, so they are not covered under this ordinance. Some committee members stated that dog barking was one of the major complaints at the listening session; however, many residents had devoted significant time, thought, and effort into the 2011 revision of the noise standard in the animal nuisance ordinance and there was no evidence that the complaints could not be addressed through that ordinance.

4. It was agreed that lawful hunting is also part of the county's rural character; the committee agreed not to interfere with lawful hunting by exempting it. There was a discussion about exempting the lawful discharge of any firearms, but that was supported by only two committee members (2/7), with several committee members stating that a large number of the noise complaints described on social media are rapid-fire and excessive shooting. State law exempts preexisting shooting ranges from a later-adopted noise ordinance. Virginia Code § 15.2-917.

5 and 6. The ordinance acknowledges that there are other governmental approval processes which may allow noise that might otherwise be found to be a violation under this ordinance.

10-45 Penalties

A. This penalty provision is consistent with the maximum state law authority pursuant to Virginia Code § 15.2-980.

B, C, and D. These paragraphs set out other authority for enforcing either nuisances or general county code ordinance violations.

VII. Action by the Board of Supervisors

Upon receipt of this report, the Board of Supervisors may decide to take any of the following actions:

1. Hold a community listening session on the proposed nuisance noise ordinance.
2. Set a public hearing on the proposed nuisance noise ordinance.
3. Ask the Citizen Noise Committee to perform additional research, collect additional information, or consider a different perspective and report back.
4. Take any other action.