



Noise Committee Meeting Agenda

February 11, 2021

6:00 - 7:30 p.m.

County Administration Building, Room 270

1800 Sandy Hook, Goochland, VA 23063

(Join via Mobile dial: 1-646-749-3122; Access Code: 677-617-765)

Review 1-31-21 draft Committee Report
to the Board of Supervisors

Committee

Further discuss firearms issue

Committee

Establish Action Items and next meeting date, if needed

Committee

Action Items/Notes:

Report of the Goochland County Citizen Noise Committee

March 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 period 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 regulate noise.

The members of the Citizen Noise Committee are Kara Beville (Dist. 2), Mary Day (Dist. 1), Thomas Ford (Dist. 3), Peter Lenk (Dist. 2), Joe Ligon (Dist. 4), Eric McKay (Hardywood), Patrick Murtaugh (Hardywood), Catherine O'Brien (Dist. 2), Rose Sompayrac (Dist. 4), Richard Willis (Dist. 3), David Winchester (Dist. 2) and Eric Yim (Retreat at West Creek apartments).

II. Noise Ordinance History

Before 2007, the county had a noise ordinance under which noise which was "unreasonably loud, disturbing, and unnecessary" constituted a criminal violation. In May 2007, Goochland County Circuit Court Judge Sanner ruled that Goochland's noise ordinance was unconstitutionally vague. In response to the Court's ruling, the ordinance was revised in 2008 to enumerate some specific standards for certain noises, but it continued to contain the "unreasonably loud, disturbing, and unnecessary" standard for noise violations. In 2009, the Virginia Supreme Court, in deciding a noise violation case from Virginia Beach, *Tanner v. City of Virginia Beach*, ruled that noise ordinance 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 worked with a small group of residents who wanted the county to adopt a new constitutionally supportable noise ordinance. After several months, the County Attorney and citizens drafted a new noise ordinance for consideration by the Board.

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.

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 became 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. There were residents working with the County Attorney to amend this noise standard as well. In February 2011, the Board adopted a noise provision for the companion 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.

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 given and discussed the county's proposed 2011 noise ordinance and noise ordinances from Caroline, Bedford, Chesterfield, and Roanoke Counties. The committee members identified data they would like to receive and review, including county noise complaints for the past 10 years. That data was requested, provided by the Sheriff's Office, and sent to the committee members.

Staff also sent committee members the minutes of the 2011 Board of Supervisors' meeting involving the consideration of the then-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 obtained and 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 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 comments and discussion with the committee, they left. The committee members then 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 the warning and requiring the warning 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 the days following. 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 companion animal nuisance ordinance and its similar warning provision. Staff also met with the Sheriff's Office about the proposed ordinance and questions the committee members had raised.

On November 5, a draft committee report and the October 22 proposed ordinance was sent to the committee. The committee next met on November 16. Staff told the committee about the failure of Buckingham County's recent noise ordinance amendment, due to a substantial number

of residents speaking at the public hearing in opposition to the increased regulation of gunfire in the proposed revision. Staff relayed the Sheriff's Office feedback, including that an upcoming new CAD system will improve the accuracy of addresses recorded for noise complaints. The Sheriff said that 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 expressed support for complainants being added to the ordinance as persons who can provide the written warnings (similar to the companion animal nuisance ordinance). The Sheriff noted that the Circuit Court Judge had struck down the county's last noise ordinance. The Sheriff also supported the proposed apartment complex exemption, The Sheriff cautioned that some neighbors may "pad the call 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 standards 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, 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 to the county's community development director for review.

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; further, he stated 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 to these comments, 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 was removed from 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 also stated that he 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.

Staff met with Commonwealth's Attorney Mike Caudill about the proposed ordinance. He said that a nuisance can be determined from the totality of the circumstances and noted that the ordinance contained specific criteria to be reviewed to make a nuisance determination. He noted that certified mail was an appropriate method to provide the written warning. 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, staff exchanged emails with committee member Eric Yim (property manager for Retreat at West Creek) in November in which Eric had expressed support for the exemption, but staff received no additional feedback from him after sending the proposed ordinance with the apartment exemption added. Despite several emails and phone messages from staff, the property manager for 2000 West Creek did not provide any feedback on the proposed ordinance with the apartment complex exemption.

At a January 7, 2021 meeting, the proposed noise ordinance was presented to the county's senior staff and their feedback was requested. No revisions were proposed or sought. Sheriff Creasey attended the meeting and stated that the Sheriff's Office deputies are concerned about the proposed ordinance's potential impact on their ability to target practice at their homes, which is necessary for them to do in order to maintain their weapons proficiency.

The committee next met on January 11, 2021. Staff provided the committee members with the feedback (set forth above) obtained since the last committee meeting. An article was also provided about a California situation in which one person harassed his neighbor by repetitively blaring the "Gilligan's Island" theme song and other music. In addition, staff advised the committee about a recent land use case for a private club that wanted to include an outdoor gun range; numerous residents had spoken in opposition to the outdoor gun range, and the applicant ultimately withdrew that portion of the application.

Staff told the committee that the negative feedback on the proposed ordinance has been directed at its potential impact on lawful shooting. The committee members discussed that shooting complaints can be about the safety of the shooting (which is outside the purview of this committee) rather than about the noise, but they also acknowledged that there were residents on the committee and at the community meeting who had specifically complained about the noise of repeated gunfire, especially when it occurs for several hours each weekend. There was discussion amongst committee members that they want to protect residents' Second Amendment rights to shoot firearms, but that there is a point at which gunfire can be so loud, continuous, and repetitive that it is a nuisance at a neighbor's residence.

Given the committee members' concerns about negative feedback to the proposed ordinance and because the December 31 draft committee report had inadvertently not been sent to committee members for review, the committee decided to hold another meeting in February to further review the draft report and continue to consider the negative feedback regarding the proposed ordinance's impact on shooting.

The committee met on February 11.

IV. Proposed Nuisance 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 repetitive 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. ny activities added in the future to the definition of "agricultural operation" in the Right to Farm Act, Virginia Code § 3.2-300, are incorporated 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 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 who controls the noise source can be held responsible for a violation, but if that person cannot be reasonably ascertained, then any owner, tenant, resident or occupant 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 nuisance noise from them cannot form the basis of a noise nuisance:

1. Agricultural activities;
2. Approved business or commercial activity 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;
6. Multi-family structures operated by a management company; and
7. 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 Perspectives

A. 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 the start of the COVID pandemic (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.

B. Applicable Only to Residential Dwellings and Residential Activity

The committee believes in individual property rights and wants to protect those rights unless someone creates noise that is a nuisance interfering with someone else's right of quiet enjoyment at their residential dwelling. Accordingly, the ordinance regulates only noise from residential activity which becomes a nuisance by disturbing someone else at their residence. The ordinance does not apply to noise generated on any commercial, industrial, or business properties. To provide the broadest possible exemption for commercial activity, the ordinance also contains an exemption for approved business or commercial activity on residential property.

Residential property is broader than the zoning category and covers agriculturally zoned property it that contains a dwelling unit. The definition includes not only single-family dwellings, but also townhomes, and trailer parks. On properties that contain more than one dwelling unit, the ordinance 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 property and it has the opportunity to take action against a resident who creates noise that annoys neighbors.

C. Nuisance Noise Standard

The committee wanted to make sure that this was not just a "noise" ordinance whereby a single instance of annoying noise would be a violation. The word nuisance had been used by many residents who spoke at the community meeting. The committee adopted noise nuisance as the standard that must be met before a violation occurs under the ordinance. The committee included a specific requirement that the noise must be repetitive and then established the following criteria to consider in determining if a noise nuisance has occurred; consideration of volume, pitch, duration, repetition and time of day determine if a repetitive noise rises to the level of a nuisance.

D. Agricultural Exemption

Recognizing that Goochland is a rural county, the committee wanted to adopt a very broad exemption for noises from agricultural activities. In crafting the agricultural activities exemption, the committee began with the activities specifically identified in the Right to Farm Act, Virginia Code § 3.2-300, but the committee also expanded the definition to specifically include additional activities. The committee also incorporated recommendations to expand the exemption to include trees and timber and to include any activities which are added to the Right to Farm Act in the future.

E. Warning Required

The committee wanted to ensure that people would receive a warning that the noise they created was considered a nuisance to their neighbor before they could be found in violation of the ordinance. The warning language in the proposed ordinance is similar to the language in the Companion Animal Nuisance ordinance, except this proposed ordinance specifically requires that written notice be provided by certified mail, return receipt requested, as was recommended by the Commonwealth's Attorney. 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; this provision allows more opportunity for notice to be given with less impact on the Sheriff's resources. The issuance of a warning from law enforcement personnel also provides a third-party 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 the ordinance's requirement that a complainant appear before a magistrate about a violation provided a third-party review of the situation which would prevent a noise situation from being "weaponized" between neighbors.

F. Firearms

It was agreed that lawful hunting is also part of the county's rural character; accordingly, the committee included an exemption for lawful hunting. When the proposed ordinance has been circulated for comment, the provision that has generated the most negative feedback is that it doesn't contain an exemption for all lawful shooting. Some committee members supported an exemption for the lawful discharge of any firearms, but the majority of committee members did not.

A large number of the noise complaints from the community meeting involved excessive shooting, so the majority of the committee members felt shooting should not be completely exempted from the ordinance. The committee expressed support for residents' Second Amendment rights and acknowledged that target shooting on residential property is a common activity that is not prohibited by the ordinance. Shooting is only regulated to the extent that someone engages in it such that its repetition, duration, volume, and time of day creates a nuisance at someone else's nearby residential dwelling. The situations described by people concerned about the application of this ordinance include: shooting clays for a couple of hours, sheriff's deputies' target shooting to maintain their firearms skills, and other residents target shooting at their homes. Ultimately, the

committee concluded that all of these activities should be able to occur without becoming a nuisance to a nearby residential dwelling.

Pursuant to Virginia Code § 15.2-917, preexisting shooting ranges are exempt from this noise ordinance.

G. Other Issues

Intentional noise is included in the ordinance because the committee became familiar with the Goochland situation where one neighboring property owner was intentionally creating a noise nuisance for residents of the Reader's Branch subdivision by constantly playing music, sometimes one song ("Baby Shark") repetitively. The committee wanted to ensure that the intentional creation of a noise nuisance would be considered a violation of the ordinance.

While the best enforcement action will be against the person who controls the noise source, the committee recognized that person may not always be reasonably ascertained; if so, then other persons associated with the property and physically present during the creation of the nuisance can be held responsible, if they receive the required warning and continue the noise nuisance activity.

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 community meeting; however, many residents had devoted significant time, thought, and effort in creating the 2011 revision of the noise standard in the companion animal nuisance ordinance and there was no evidence that the complaints could not be addressed through that ordinance.

The committee chose to enforce the nuisance noise ordinance through the civil penalty permitted pursuant to Virginia Code § 15.2-980. The other authority for enforcing either nuisances or general county code ordinance violations are also included in the penalty paragraph.

VI. 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.