

ORDINANCE NO. 09-28

**AN ORDINANCE TO AMEND AND REENACT CHAPTER 16
OF THE HANOVER COUNTY CODE, ENTITLED "NOISE".**

WHEREAS the Board of Supervisors is cognizant of the recent decision of the Supreme Court of Virginia pertaining to the Virginia Beach noise ordinance and hereby amends the noise ordinance of Hanover County to reflect the opinion of the Court; and

WHEREAS the Board of Supervisors finds that excessive noise is a serious hazard detrimental to the public health, safety and welfare and the public interest requires regulation of certain types of noise by exercise of the county's police powers, in order to preserve the quality of life of residents and visitors,

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County that Chapter 16, "Noise," of the Hanover County Code shall be amended and reenacted to read in its entirety as follows:

Chapter 16 NOISE

Sec. 16-1. Short title.

This chapter may be referred to as the "Noise Ordinance" of the county.

Sec. 16-2. Declaration of policy.

It is hereby declared to be the public policy of the county to promote an environment for its residents free from noise that jeopardizes their health or welfare or degrades the quality of life.

Sec. 16-3. Definitions.

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

Agricultural production shall mean 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 shall mean 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 shall mean 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 proscribed dB(A) or dBA.

dBA shall mean 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.

Designated Code Enforcement Official shall mean any employee of Hanover County who has been appointed by the Circuit Court to be a special conservator of the peace.

Device shall mean any mechanism which is intended to or which actually produces noise when operated or handled.

Emergency work shall mean 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.

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

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

Lav (dBA) shall mean the average A-weighted sound pressure level measured over any continuous four-hour period.

Noise shall mean any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.

Noise source shall include 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 shall mean 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 shall mean any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.

Sound shall mean 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 shall mean 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 shall mean 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 Hanover County Zoning Ordinance.

Sec. 16-4. Exceptions from chapter.

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 the emission of sound in the performance of emergency work;
- (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; or

(4) Parades permitted by Hanover County or the Virginia Department of Transportation and events, functions or activities at places of public assembly that are subject to a conditional use permit or special exception issued pursuant to the zoning ordinance.

(5) Sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy.

Sec. 16-5. Enforcement of Chapter; Civil and Criminal Penalties.

(1) *Civil penalties:* The provisions of this chapter may be enforced by designated Hanover County code enforcement officials through the issuance of civil summonses assessing civil penalties which shall not exceed \$250 for each first offense and \$500 for each subsequent offense, each day of violation constituting a separate offense; provided, however, that civil penalties shall not be assessed in connection with business being performed on industrial property or the operation of railroads.

(2) *Criminal penalties:* Any person may request that the magistrate issue, and a deputy sheriff or designated code enforcement official may issue, a criminal summons to any person violating the provisions of Sec. 16-8, 16-9 and 16-10 of this chapter; provided that no designated code enforcement official shall seek a criminal summons for any violation of this chapter for which civil penalties are applicable. Any person found guilty upon a criminal summons of violating any provision of Sec. 16-8, 16-9 or 16-10 shall be convicted of a Class 3 misdemeanor with a fine of up to \$500.

(3) *Responsible person:* The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the noise source. It shall be unlawful for a property owner knowingly to allow other persons to create noise prohibited by this chapter within the boundaries of his or her property.

(4) *Abatement of violation:* If the violation is uncorrected at the time of a finding of liability on a civil summons or conviction on a criminal summons, the court shall order the violator to abate or remedy the violation in compliance with this chapter within a time period established by the court. Failure to remove or abate a violation within the specified time period shall constitute a separate Class 3 misdemeanor, and any such failure during any succeeding 10-day period shall constitute a separate Class 3 misdemeanor offense for each 10-day period.

(5) *Injunctive relief:* In addition to and not in lieu of the penalties prescribed in this section, the county may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this chapter and may seek any other remedy or relief authorized by law.

Sec. 16-6. Severability.

If any provision of this chapter should be determined by a court of competent jurisdiction to be invalid, such determination shall not affect the validity of the remaining provisions of this chapter.

Sec. 16-7. Prohibited noise generally.

(1) It shall be a violation of this chapter for any person, without compelling reason, to make noise that by reason of its volume, pitch, duration or repetition, considering the time of day, is likely to disturb the rest of any person of ordinary sensibilities or interfere with such person's lawful and peaceful enjoyment of property owned or rented by him.

(2) No person shall be charged with a violation of this section unless that person has (i) received verbal, electronic or written notice from any law enforcement officer or designated code enforcement official of Hanover County that he is violating or has violated the provisions of this section and (ii) had an opportunity to abate the noise disturbance.

Sec. 16-8. Specific acts as noise disturbances.

The following acts are declared to be noise disturbances in violation of this chapter, provided that this list shall not be deemed to be an exclusive enumeration of those acts which may constitute noise disturbances and that an act not listed below may nevertheless constitute a violation of section 16-7.

(1) Operating or causing to be operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, streets, alleys, drainage or public utility systems or parts thereof, and appurtenances thereto in the outdoors between the hours of 9:00 p.m. and 7:00 a.m. the following day, except as provided in section 16-4.

(2) Repairing, rebuilding or modifying any motor vehicle or other mechanical device in residential use districts between the hours of 9:00 p.m. and 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) residences within a building.

(3) The collection of trash or refuse in residential use districts between the hours of 9:00 p.m. and 6:00 a.m. the following day.

(4) Loading or unloading commercial motor vehicles as defined in the Zoning Ordinance in the outdoors within one hundred (100) yards of a residence between the hours of 9:00 p.m. and 6:00 a.m. the following day.

(5) Sounding the horn or warning device of a vehicle, except when necessary as a warning during the operation of the vehicle.

(6) 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 8:00 a.m. the following day, in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) residences within a building.

(7) Operating or permitting the operation of any radio, tape player, compact disc player or other device for the production of sound on a public right-of-way or in a public place in such a way that the sound is plainly audible at a distance of fifty (50) feet from such device, whether or not the device is situated within a motor vehicle.

(8) Allowing an animal to create howling, barking, whining, meowing, squawking or other such noises which are plainly audible across a property boundary or through partitions common to two (2) residences within a building and that take place continuously or repeatedly (i) during a period of at least 15 minutes in duration between 7:00 a.m. until 10:00 p.m. or (ii) during a period of at least 10 minutes in duration between 10:00 p.m. and 7:00 a.m., provided, however, that animal noises 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.

(9) The use of any on or off road motor vehicle so out of repair, so loaded or operated in such a manner as to create loud and unnecessary grating, grinding, rattling or other noises.

(10) The discharge of the exhaust of any internal combustion engine into the open air except through a device which will effectively prohibit loud and explosive noises.

(11) Operating any on or off road motor vehicle for a period in excess of five minutes in duration or a total of fifteen minutes during any 24 hour period whether on public or private property, not meeting the standards of Title 46.2 of the Code of Virginia pertaining to mufflers and exhaust systems.

(12) Creating noise which is plainly audible across a property boundary on property in the RS, R-1, R-2, R-3, R-4, R-5 or RM zoning districts between the hours of 10:00 p.m. and 7:00 a.m. in connection with construction or building maintenance, lawn care, leaf removal, gardening, tree maintenance or removal, or any landscaping, lawn or timbering activities.

Sec. 16-9. Operator of sound-producing devices in places of public entertainment or assembly.

It shall be unlawful for any person to operate, or permit to be operated, any loudspeaker or other device for the production of sound in any place of public entertainment or other place of public assembly which produces sound pressure levels of ninety (90) dB(A) or greater at any point that is normally occupied by a person, unless conspicuous and legible signs are located outside such place, near the entrance, stating "WARNING, EXPOSURE TO SOUND ENVIRONMENT WITHIN MAY CAUSE HEARING IMPAIRMENT."

Sec. 16-10 Maximum permissible sound pressure levels from noise sources.

It shall be unlawful for any person to operate, or permit to be operated, any noise source in such a manner that the noise source emits a sound pressure level which exceeds the limits set forth below when measured on property other than that on which the noise source is located. The category of applicable sound pressure limits shall be determined by the zoning district classification of the property on which the noise is measured, not the property on which the noise is produced. Property which has been specifically determined by the planning commission to be within an area designated on the comprehensive plan for industrial use shall be deemed to fall into the industrial classification for the purposes of this ordinance, even if the property has not yet been rezoned.

| <i>Land Use Designation Where Noise is Measured</i> | <i>Maximum Lav dB(A)</i> | |
|--|----------------------------------|-----------------------------------|
| | <i>7:00 a.m.- 10:00 p.m.</i> | <i>10:00 p.m. - 7:00 a.m.</i> |
| Agricultural and Residential: Zones A-C, A-1, AR-1, AR-2, AR-6, R-C, R-1, R-2, R-3, R-4, R-5, R-6 | 57 | 52 |
| Commercial: Zones B-1, B-2, B-3, O-S | 67 | 62 |
| Industrial: Zones M-1, M-2, M-3 | 77 | 77 |

2. That this Ordinance is effective on July 1, 2010.

On motion of Mr. McGhee, seconded by Mr. Setliff, the members of the Board of Supervisors voted to approve Ordinance No. 09-28, as follows:

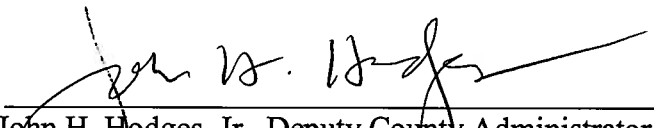
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|---------------------|-------|
| G. E. "Ed" Via III | Vote: |
| Deborah B. Coats | Aye |
| John E. Gordon, Jr. | Aye |
| Charles D. McGhee | Aye |
| Robert R. Setliff | Aye |
| Aubrey M. Stanley | Aye |
| Elton J. Wade, Sr. | Aye |

This is to certify that the above is a true copy of Ordinance No. 09-28 adopted by the Hanover County Board of Supervisors on June 9, 2010.

Public Hearing: June 9, 2010

Adopted: June 9, 2010

Dated: June 16, 2010



John H. Hodges, Jr., Deputy County Administrator
/ Deputy Clerk, Hanover County Board of Supervisors